

July 20, 2006

Honorable Mayor and Members of  
the Hermosa Beach City Council

Regular Meeting of  
July 25, 2006

**RESOLUTION PROVIDING FOR THE TRANSFER OF CONTROL OF THE  
CITY'S CABLE TELEVISION FRANCHISE.**

**Recommendation:**

Staff recommends adoption of the attached resolution providing for the transfer of control of the City's cable television franchise.

**Background:**

The City's cable franchise is currently held by a partnership owned 75% by a subsidiary of Adelphia Communications Corporation, and 25% by a subsidiary of Comcast Corporation. As part of Adelphia's bankruptcy, it was eventually decided to seek offers for purchase of Adelphia's assets as a method to generate the most value for Adelphia's debt holders and shareholders. The highest bid for the company was a joint bid by Comcast and Time Warner.

However, the transactions between Comcast and Time Warner are more than just the Adelphia purchase. The two companies have franchises they jointly own which they desire to change, and they also seek to exchange other franchises to build more complete geographic areas of service in the areas where they already hold most of their franchises. This means that certain Comcast-owned or controlled franchises will also be transferred to Time Warner. Generally, Time Warner will receive the franchises in the western United States, and Comcast in the east.

This transfer request was originally disapproved by the City Council on October 11, 2005. Throughout the time since the Council's disapproval, Adelphia and Time Warner have continued to request Council reconsideration, and has Staff continued to negotiate with Adelphia and Time Warner representatives based on Council instruction. The City Council then approved a cable television franchise for Verizon Communications in December 2005. The negotiations eventually focused on achieving an interconnection of the Verizon and Adelphia systems, which would allow the simultaneous broadcast of the City's public, education, and government programming on both systems. Time Warner's representative has now indicated that the company will agree to interconnection, and the attached approval resolution contains a requirement for interconnection, based on the interconnection ordinance approved by the City Council in May 2006 (Ordinance No. 06-1266).

### The Transaction

The transactions between Adelphia, Time Warner, and Comcast are extraordinarily complex. The documentation they submitted in support of this transfer request was over 22,000 pages. Basically, Hermosa Beach's franchise will be transferred three times. First, Comcast's subsidiary will take complete ownership of the franchise, and transfer that ownership to a holding company ("C-Native Exchange I, LLC"), and then that holding company will be transferred to Time Warner Cable as a subsidiary of Time Warner Cable. This all will take place simultaneously.

### The Transfer Review Request

A request for transfer or a change of control of a cable franchise must be transmitted to the City on an FCC Form 394. The applicant did so, which triggered a 30-day period under the federal Cable Act for the City to request additional information about the transfer. Our office did submit a request for additional information on behalf of the City, and Time Warner responded within the period allowed by the Cable Act. The City had 120 days to complete its review and act on the application, which expired on October 12, 2005. If a city does not act before the 120 days elapses, then the request is deemed approved under Federal law. The transfer request was brought before the City Council on October 11, 2005, and was disapproved by the City Council.<sup>1</sup>

The courts have clarified that the City may request almost any additional information that it deems necessary to review the transfer application. The City's review and decision is a legislative one, and will be treated deferentially by the courts if there were a challenge to its review. "This is not to say that government bodies can elicit information of any kind or any quantity, but that the discretion within which the government operates is broad."<sup>2</sup>

### The City's Review

Once all of the information needed is obtained, the City's review is primarily focused on the legal, technical, and financial qualifications of the proposed new franchisee. In the past, when franchisees were often small companies or companies new to the cable industry, there were franchisees that lacked the legal, technical, and financial capabilities to operate the franchise. As cable companies have consolidated into a few massive operators, their resources and experience make it much more likely that they possess the necessary qualifications.

Generally, the Cable Act does not contain strict criteria for the City's decision to approve or deny a transfer request. However, case law has explained that the City's review is

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<sup>1</sup> Because the City Council acted to disapprove the transfer, that likely avoided the automatic approval under federal law, since the Council did act on the request.

<sup>2</sup> *Charter Communications, Inc. v. Santa Cruz County*, 304 F.3d 927, 932 (2002), *cert den.* 124 S.Ct. 1036 (2004)

entitled to deference as a legislative decision, In *Charter Communications, Inc. v. County of Santa Clara* (304 F.3d 927 (9th Cir. 2002)) after confirming that approval or denial of a transfer request was a legislative decision subject to significant judicial deference, the court concluded under that standard a denial, “should be upheld as long as there is substantial evidence for any one sufficient reason for denial.”

Despite that breadth, most transfer reviews focus on the same criteria as granting of a franchise: the financial, technical, and legal qualifications of the new franchisee to operate the franchise. Also, the Cable Act does specifically allow a franchising authority to prohibit the ownership or control of a cable system:

- “(1) because of such person’s ownership or control of any other cable system in such jurisdiction; or
- (2) in circumstances in which the State or franchising authority determines that the acquisition of such a cable system may eliminate or reduce competition in the delivery of cable service in such jurisdiction.” (47 USC 533(d).)

With those criteria in mind, we turn to the review of the application for transfer submitted to the City, first focusing on the financial, technical, and legal qualifications of the new franchisee.

#### Financial Qualifications.

With regard to the financial qualifications of the new franchisee, the instructions for the FCC Form 394 ask if the franchisee has sufficient net liquid assets on hand or from committed resources to consummate the transfer and operate the cable system for three months. The applicant asserts they do have such assets on hand or committed, and submitted copies of their 10-K and recent 8-K filings with the Form 394.

Time Warner is an enormous corporation, with cable systems in 29 states serving approximately 10.9 million cable customers. Their financial documents detail not just its cable-related assets, but also its other operations such as movies, television, and America OnLine. Time Warner asserts that the new franchise holder, C-Native Exchange I, LLC, will become a wholly-owned subsidiary of Time Warner Cable, and so the cable television segments of the 10-K and 8-K for Time Warner, Inc. are sufficient to support the assertion the franchisee will have sufficient assets on hand to consummate the transfer and operate for three months. While we would prefer a greater degree of precision in the information supporting this assertion, we found nothing in the information provided that would reasonably suggest the new franchisee would be insufficiently capitalized. Therefore, it is our recommendation the Council finds the new franchisee, C-Native Exchange I, LLC, is financially qualified to operate the franchise.

### Legal Qualifications

C-Native Exchange I, LLC is a limited liability corporation which the applicant asserts will be duly qualified to transact business in California. Our review of the application documents and additional information found nothing to contradict this assertion. Therefore, it is our recommendation the Council finds the new franchisee, C-Native Exchange I, LLC, is legally qualified to operate the franchise.

### Technical Qualifications

As noted above, the new franchisee's parent company already operates cable systems in 29 states serving approximately 10.9 million cable customers. They assert that "nearly all" of their systems have been upgraded to at least 750MHz capacity, which is sufficient to offer all advanced cable services such as video on demand, digital cable, digital video recorders, as well as non-cable services like telephony service and high-speed data. Based on their assertions and existing cable operations, it is our recommendation the Council finds the new franchisee, C-Native Exchange I, LLC, is technically qualified to operate the franchise.

### Other Issues and Qualifications

As discussed above, the City's review may extend beyond the base financial, legal, and technical qualifications of the franchisee. Our request for additional information sought any information about anticipated increases in rates<sup>3</sup>, changes in service levels, changes in billing practices, changes in any items subject to the franchise fee, and channel line-ups. We also requested any information about disruptions to Adelphia's data service customers, since the franchisor historically receives complaint calls from those customers despite that service not being subject to the cable franchise. In each case, Time Warner provided no information, asserting that it was too early in the transaction for them to speculate on what changes might be made after the transaction was complete.

Historically, these are areas that can be significantly impacted by a transfer or merger. Time Warner is paying about \$3275 per subscriber for the Adelphia systems, and in our experience a profitable cable system usually generates \$25 to \$30 per subscriber per month. While most cable rate increases are beyond the City's authority to regulate, it is possible these increased costs could impact the new franchisee's ability to comply with the franchise terms. Time Warner asserts it is not yet able to determine if there will be any such impacts.

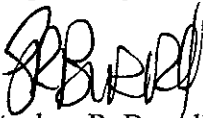
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<sup>3</sup> Though the Council should keep in mind that rate regulation is limited by federal law to basic service and equipment rates, the rates for higher tiers of service are not subject to regulation, and non-video services (data, telephony) are not subject to the City's franchise authority at all.

Remaining Review and Approvals

Since this item was last before you, the transactions between Comcast, Adelphia, and Time Warner have been approved by the federal Bankruptcy Court, the FTC, and the FCC. The FCC added certain conditions regarding carriage of sporting events, but otherwise the transactions are in the form requested by the companies. Review by some states is still pending, but the significant barriers have been crossed. However, the transactions are not yet complete, so if the transactions ultimately fail, the City has the option under the attached resolution to revoke its approval. Based on the approvals so far, we do not expect this to occur.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. Burrell', written in a cursive style.

Stephen R. Burrell  
City Manager

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH PROVIDING FOR TRANSFER OF CONTROL OF A CABLE TELEVISION FRANCHISE

WHEREAS, the City of Hermosa Beach ("Franchising Authority") has granted a cable television franchise (the "Franchise") to Century-TCI California, L.P., an entity (the "Franchisee") presently controlled by Adelphia Communications Corporation, which is currently in Chapter 11 bankruptcy proceedings;

WHEREAS, pursuant to an Asset Purchase Agreement dated April 20, 2005 between Adelphia and Comcast Corporation ("Comcast"), an indirect wholly-owned subsidiary of Comcast will acquire Adelphia's interest in the Franchisee (the "Adelphia Transaction");

WHEREAS, pursuant to an Exchange Agreement between Time Warner Cable Inc. ("Time Warner Cable") and Comcast dated April 20, 2005, Comcast is to cause the Franchisee to assign the Franchise to CAC Exchange I, LLC (the "New Franchisee") and the New Franchisee will become an indirect subsidiary of, and will do business as, Time Warner Cable (the "Exchange"); and

WHEREAS, through the Adelphia Transaction and the Exchange the Franchise will be removed from Adelphia's bankruptcy proceeding, and control of the franchise and operation of the cable system assigned to the New Franchisee;

WHEREAS, Franchisee has submitted to the City an FCC Form 394 regarding the Adelphia Transaction and the Exchange;

WHEREAS, the Franchising Authority has concluded the Adelphia Transaction and the Exchange will result in a change of control of the Franchisee; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Hermosa Beach does hereby determine and find as follows:

1. To the extent required under the terms of the Franchise and applicable law, the Franchising Authority hereby authorizes and consents to the Adelphia Transaction and the Exchange.
2. From and after the close of the Exchange, the New Franchisee shall assume and be responsible for all obligations under the Franchise.
3. Nothing in this Resolution shall be deemed or interpreted to be a waiver by the Franchising Authority of any past non-compliance with the terms of the Franchise by the Franchisee and the Franchising Authority reserves any and all rights with respect to any such non-compliance. Similarly, New Franchisee reserves any and all rights and defenses with respect to the same. The authorizations and consents granted herein shall be effective upon the closing of the Transaction. Notwithstanding the foregoing, if the Transaction should not close by 5:00 p.m. Pacific Standard Time on December 31, 2006, then the Franchising Authority's authorization and consent shall lapse and expire as to any such transaction that has not closed by such time.
4. This authorization and consent is conditioned that the parties to the Adelphia Transaction and the Exchange, and any other reviewers of the Adelphia Transaction and the Exchange (for example, the Federal Communications Commission) approve the Adelphia

Transaction and the Exchange in a form not materially different from the form reviewed, authorized and consented to by the Franchising Authority.

5. Nothing in this Resolution shall be considered or construed to limit the Franchising Authority's right to regulate or charge a fee upon the New Franchisee related to the cable or non-cable services provided by the New Franchisee, so long as the regulation or fee complies with applicable federal, state, and local law.
6. The Franchising Authority hereby gives the New Franchisee notice that the Transaction may create taxable possessory interests upon which Franchisee may be liable for certain property taxes. New Franchisee shall acknowledge that it has received actual notice as provided by California Revenue and Taxation Code section 107.6.
7. Within thirty (30) days of consummation of the Exchange, the New Franchisee shall execute and return to the Franchising Authority an acceptance of this Resolution in a form substantially similar to the form attached to this Resolution.
8.
  - a. For purposes of public, educational, and governmental programming consistent with its Franchise, New Franchisee shall interconnect its cable system with any other cable system serving the Franchise Area ("Other System"). Such interconnection may be accomplished by direct cable, microwave link, satellite or other reasonable method of connection.
  - b. Interconnection Procedure. Within 30 days of receiving notice from the Franchising Authority that any Other System has received a franchise from the Franchising Authority, New Franchisee shall begin negotiations with the owner(s) and operator(s) of the Other System(s) to determine their equitable share of costs for both construction and operation of the interconnection link. Franchisee shall negotiate in good faith with Other System operator(s) respecting reasonable, mutually convenient, cost-effective, and technically viable interconnection points, methods, terms and conditions. The New Franchisee shall provide such interconnection to Other System operator(s) on commercially reasonable terms and conditions. The construction costs and ongoing expenses of interconnection shall be fairly shared between the New Franchisee and the Other System operator(s). New Franchisee and the Other System operator(s) shall negotiate the precise terms and conditions of an interconnection agreement.
  - c. Relief. If the New Franchisee and the Other System operator(s) are unable to reach agreement on the terms of interconnection, including, but not limited to, compensation and timing, the dispute shall be submitted to the Franchising Authority for resolution. New Franchisee shall be granted reasonable extensions of time to interconnect, which shall be granted if New Franchisee has negotiated in good faith and has failed to obtain an approval from the owner or operator of the Other System(s). If the cost of interconnection would be unreasonable, interconnection is not technically feasible or would cause an unacceptable increase in Subscriber rates, or if an Other System operator will not agree to reasonable terms and conditions of interconnection, New Franchisee's failure to comply with the obligation to carry PEG programming originating on the cable system of the Other System operator or to interconnect the Cable System will not be deemed a failure to comply that is subject to rescission in accord with Section 10.
9. Within thirty (30) days, of the approval of this Resolution, New Franchisee shall provide all requested information to the Franchising Authority regarding the actual costs and expenditures by the Franchisee for the costs of operating and equipping the studio,

equipment, and broadcasts necessary for compliance with the PEG obligations of the Franchise.

10. Failure of the Franchisee to comply with any condition of this Resolution shall render this Resolution subject to rescission, in which case Franchisee's request for a change of control shall be considered denied. Prior to any such rescission, Franchisee shall be provided reasonable notice and opportunity to cure any alleged failure to comply with any condition of this Resolution.
11. Nothing in this Resolution shall be considered or construed to grant the Franchising Authority's consent that may be required for any future change of control, transfer, or any other transaction, including any transfer of the Franchise to any subsidiary or affiliate of the Franchisee, the New Franchisee, or their corporate parent(s). The Franchising Authority expressly reserves all of its rights regarding any future transactions.

PASSED, APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

STATE OF CALIFORNIA            )  
COUNTY OF LOS ANGELES        )  
CITY OF HERMOSA BEACH         )

I, \_\_\_\_\_, City Clerk of the City of Hermosa Beach, do hereby certify that the foregoing Resolution was duly adopted by the City Council of the City of Hermosa Beach at a regular meeting thereof, held on the \_\_\_\_ day of \_\_\_\_\_, 2006 by the following vote of Council:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

\_\_\_\_\_  
CITY CLERK



ACCEPTANCE OF A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH  
PROVIDING FOR TRANSFER OF CONTROL OF A CABLE TELEVISION FRANCHISE

CAC Exchange I, LLC, an indirect subsidiary of, and doing business as, Time Warner Cable, hereby accepts and agrees to comply with all terms, and each of them, of Resolution No. \_\_\_\_\_ of the City Council of the City of Hermosa Beach entitled::

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERMOSA  
BEACH PROVIDING FOR TRANSFER OF CONTROL OF A CABLE  
TELEVISION FRANCHISE

CAC Exchange I, LLC, d.b.a. Time Warner Cable warrants and represents that this Acceptance is executed by a person legally authorized to act on its behalf, and that this Acceptance is a legally binding obligation.

Dated: \_\_\_\_\_

CAC Exchange I, LLC, d.b.a. Time Warner Cable

By: \_\_\_\_\_

Title: \_\_\_\_\_