City of Culver City, California

# City Council Agenda Item Report

| | |
|---|---|
| Meeting Date: 02/13/06 | Item Number: A-1 |
| **AGENDA ITEM: Consideration of a Resolution Conditionally Authorizing the Assignment and Ultimate Transfer of Control of a Cable Television Franchise by Comcast Corporation to C-Native Exchange I, LLC, a Wholly-Owned Subsidiary of Time Warner Cable Inc.** | |
| Contact Person/Dept.: Martin R. Cole, ACAO & Roland Miranda/City Attorney's Office | Phone Number: (310) 253-6000; (310) 253-5660 |
| Fiscal Impact: Yes [] No [x] | General Fund: Yes [] No [] |
| Public Hearing: [] Action Item: [x] | Attachments: [x] |
| Public Notification: Master Notification List (02/08/06); Comcast of Los Angeles, Inc. (02/08/06); Time Warner Cable (02/08/06) | |
| Department Approval: Martin R. Cole (02/08/06) | CAO Approval: Martin R. Cole for Jerry B. Fulwood (02/08/06) |
| City Controller Approval: N/A | |

## RECOMMENDATION

Staff recommends the City Council adopt a resolution conditionally authorizing the assignment and ultimate transfer of control of the cable television franchise from Comcast Corporation to a wholly-owned subsidiary of Time Warner Cable Inc.

## BACKGROUND

Comcast of Los Angeles, Inc., a corporate subsidiary of Comcast Corporation, is the holder of the current Culver City cable television franchise. On June 14, 2005, the City received an FCC Form 394 entitled "Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise" ("Form 394"). The Form 394 seeks the City's consent to the transfer of the City's cable television franchise from Comcast Corporation to a subsidiary of Time Warner Cable Inc. As detailed below, if consented to by the City Council, the proposed transfer will involve various corporate transactions which will ultimately result in the Culver City cable television franchise being held by a subsidiary of Time Warner Cable Inc.

On April 20, 2005, Time Warner NY Cable, LLC ("TWNY"), a wholly-owned subsidiary of Time Warner Cable Inc., and Comcast Corporation ("Comcast"), the ultimate parent company of the City's franchised cable operator, each entered into separate definitive agreements to acquire, collectively, substantially all of the assets of Adelphia Communications Corporation ("Adelphia") for a total of $12.7 billion in cash (of which TWNY will pay $9.2 billion and Comcast will pay the remaining $3.5

billion) and 16% of the common stock of Time Warner Cable Inc. It should be noted that Adelphia filed for protection under Chapter 11 of the U.S. Bankruptcy Code on June 25, 2002. At the same time that Comcast and TWNY entered into the agreements to purchase Adelphia's assets, Time Warner Cable Inc., Comcast, and their respective subsidiaries also agreed to swap certain cable systems to enhance their respective geographic clusters of subscribers ("Cable Swaps"). The cable system now owned and operated by Comcast of Los Angeles, Inc., the franchisee in the City of Culver City, is one of many cable systems in Southern California involved in the Cable Swaps.

Under federal law, a franchising authority (in this case, the City Council) has 120 days from the date of submission of a Form 394 to act upon such an application for transfer of a franchise. If a franchising authority does not act upon a transfer application within 120 days, and no extension has been granted, the transfer application will be deemed to have been unconditionally approved. At the City Council meeting held on September 26, 2005, Comcast's representative agreed to an extension of the 120-day review period through November 29, 2005. This extension was confirmed in writing by the City Attorney's office. Further extensions were agreed to by Comcast and the City ultimately extending the original 120-day review period to February 15, 2006.

## DISCUSSION

Section 35B-3(j) of Ordinance No. 87-021, which remains applicable to the cable franchise, provides that the City has the right to review and to approve the financial, technical, and legal qualifications of the proposed transferee in connection with the requested assignment and ultimate transfer of control of the franchise.

City staff, the City's cable consultant, and the City's special counsel have reviewed the documentation that accompanied the Form 394 and, based upon the representations set forth in that documentation, have concluded that the proposed transferee has the requisite financial, technical, and legal qualifications to adequately perform, or to ensure the performance of, all obligations required of the franchisee under the franchise, and that the transferee will be bound by all existing terms, conditions, and obligations of the franchise as it currently exists or as it may be modified or superseded prior to the closing of the transaction involving the Cable Swaps.

The ultimate proposed transferee of the City's cable franchise, C-Native Exchange I, LLC, is a new entity with no history related to the ownership and operation of cable television franchises. Consequently, the proposed transfer resolution is conditioned upon Time Warner Cable Inc. guaranteeing C-Native Exchange I, LLC's contractual obligations under the franchise agreement.

The transactions between Time Warner Cable Inc., Comcast, and Adelphia are subject to regulatory review and approvals, including the U.S. Department of Justice, the Federal Communications Commission, and local franchise authority approvals, as well as the Adelphia bankruptcy process, which involves approvals by the bankruptcy court having jurisdiction of Adelphia's Chapter 11 case and Adelphia's creditors. The closing of these transactions is expected to occur during the first half of 2006. Until the closing actually occurs, Comcast will continue to be required to perform all of its obligations under the existing franchise agreement. These obligations would include, but not be limited to, obligations relating to system maintenance, customer service requirements, and the correction of electrical code and safety violations, as discussed below. Once the cable franchise has been transferred to C-Native Exchange I, LLC, all obligations under the franchise will become the obligations of C-Native Exchange I, LLC, as the franchisee, and Time Warner Cable Inc., as the corporate guarantor of the franchisee's obligations.

At its meeting on September 26, 2005, the City Council considered the City's technical consultant's report that summarized a safety inspection of Comcast's cable television system. After considerable discussion, City staff was directed to request Comcast to inspect its cable plant, to identify all safety code violations, and to implement a corrective action plan acceptable to the City. By letter dated September 29, 2005, Comcast responded to the City's letter dated August 18, 2005, which transmitted the report of the safety inspections and requested a written remedial plan. Comcast's response was thereafter evaluated by City Staff, the City's technical consultant, and the City Council's Cable TV Subcommittee. The City Attorney's office and the City's special counsel drafted and submitted to Comcast on October 21 a proposed corrective action plan that was discussed by representatives of the parties on October 28. Comcast submitted a counter-proposal on November 2 that was discussed by the parties' representatives that same day. No agreement was reached on the terms and provisions of a proposed corrective action plan.

During the week of November 7, the City's technical consultant attended a meeting with officials in a neighboring municipality regarding the correction of safety violations similar to those identified in Culver City. This meeting was also attended by representatives of Adelphia, the incumbent cable operator, and of Time Warner Cable, the parent company of the subsidiary to which the cable franchises will ultimately be transferred. The representatives of Time Warner Cable noted that several other Southern California cities were also in the process of negotiating corrective action plans to remedy code violations and that Time Warner Cable desired to develop and implement uniform and standardized procedures for the remedial work that must be done. To achieve this objective, counsel for the affected cities, in conjunction with technical and legal representatives of Time Warner Cable, are expediting the negotiation and preparation of a uniform corrective action plan that is acceptable to Time Warner Cable and that can be implemented in those cities. The Time Warner Cable representatives informed the City's technical consultant that this uniform corrective action plan, when approved by Time Warner Cable, could and should be made applicable to Culver City.

Because the Corrective Action Plan (CAP) is a vital part of ensuring Culver City residents receive high quality cable television services, the City Council Cable Television Subcommittee (Councilmembers Corlin and Gross) continued to emphasize the importance of this document and suggested staff pursue all avenues to successfully negotiate a Plan that would achieve this goal. Unfortunately, after many months' time, discussions with Comcast on this subject were not producing the desired outcome.

Based upon these facts, staff and the City's Cable Television Consultant (Mr. Jonathan Kramer) and the City's Special Counsel for Cable Television (Mr. William Rudell) opened communications with Time Warner Cable, the ultimate transferee of the City's cable television franchise, in January, 2006. With the intercession of Time Warner, productive discussions resumed and have resulted in Schedule 2 to the Assignment and Assumption Agreement: the CAP.

In summary, the CAP provides for the following:

- Comcast shall achieve substantial compliance no later than June 1, 2007
- Inspections shall be made by a "Field Inspection Crew" which shall consist of one City inspector and one representative from Comcast
- Comcast shall report its progress in achieving substantial compliance beginning no later than six months after approval of the CAP and every three months thereafter
- Substantial Compliance shall be based upon a statistically accurate inspection (SAI) made to the 90% level
- Comcast may request an "early SAI" prior to June 1, 2007
- Comcast is required to provide public notification of its inspections through advertisement in a Culver City newspaper no fewer than once every second week and through one of the following: (1) local advertising avails, (2) subscriber bill inserts, or (3) the Culver City Community Bulletin Board

The CAP contains provisions that mirror those contained in other nearby cities and, in staff's opinion, adequately protects the interests of the City's cable television subscribers. It is expected the City and Comcast will work closely together during this process to ensure strict adherence to the requirements of the Resolution and all related documents.

## FISCAL ANALYSIS

The proposed resolution and attachments require the City to retain and pay for a statistician to produce the statistically appropriate list of cable subscribers to be used in the SAI. These costs are expected to be minimal and can be absorbed in current appropriations in Fiscal Year 2005/2006. Should the SAI be conducted in Fiscal Year 2006/2007, an amount therefore will be requested in the Proposed Budget.

## CONCLUSION

This process began on June 14, 2005 and has spanned a period of eight months. Despite early roadblocks, the City Council Subcommittee on Cable Television and staff appreciate the efforts of the City's Cable Television Technical Consultant, Mr. Kramer, and the City's Special Counsel on Cable Television, Mr. Rudell, for their persistence which ultimately led to this proposed agreement.

Mr. Deane Leavenworth, Vice President of Corporate Relations and Communications for Time Warner, and Mr. Lee Alpert, counsel to Time Warner, have also re-engendered an environment of good-faith and cooperation as these negotiations came to a close. Both representatives of Time Warner have been invited to tonight's meeting and are expected to be available for questions or comments from the City Council.

Should the City Council take the recommended action tonight, it is expected staff will prepare for renewed negotiations on the issue of renewal of the Franchise Agreement and the City's Franchise Ordinance. We look forward to continued productive negotiations in the spirit of cooperation and good-faith.

## ATTACHMENTS

Resolution.

## MOTION:

That the City Council:

Adopt the resolution conditionally authorizing the assignment and ultimate transfer of control of the cable television franchise by Comcast Corporation to a wholly-owned subsidiary of Time Warner Cable Inc.