City of Culver City, California

City Council Agenda Item Report

Meeting Date: September 26, 2005	Item Number: A-2
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.: Bill Rudell/Richards Watson & Gershon; Roland Miranda/City Attorney's Office	Phone Number: (213) 626-8484; (310) 253-5660
Fiscal Impact: Yes [] No [x]	General Fund: Yes [] No []
Public Hearing: [] Action Item: [x]	Attachments: [x]
Public Notification: Master Notification List 9/21/05; Comcast of Los Angeles, Inc.; Time Warner Cable	
Department Approval: Carol Schwab City Attorney 9/22/05	CAO Approval:
City Controller Approval: N/A	

RECOMMENDATION:

That the City Council adopt the 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 corporate 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, the transfer application will be deemed to have been unconditionally granted, unless the franchising authority and the requesting party have agreed to an extension of the 120-day deadline. Therefore, without action by the City Council on or before October 12, 2005 or an extension agreement between the City and Time Warner Cable Inc., Time Warner Cable Inc.'s transfer application will be deemed to have been unconditionally granted as of October 12, 2005.

DISCUSSION:

In accordance with Section 11.30.145 of Chapter 11.30 of the Culver City Municipal Code, 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 interim 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. In addition, the transfer resolution imposes a reimbursement obligation upon Comcast Corp. and Time Warner Inc. for the costs and expenses incurred by the City in reviewing and processing this franchise transfer application.

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 quarter of 2006.

Until the closing actually occurs, City staff intends to continue its negotiations with Comcast in connection with a cable television franchise renewal agreement and to agendize for City Council consideration a revised regulatory ordinance applicable to cable, video, and telecommunications service providers. In addition, until that closing, 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, any obligations relating to system maintenance and customer service requirements. 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 Inc., as the corporate guarantor of the franchisee's obligations.

FISCAL ANALYSIS:

The cable television transfer transaction described in the Form 394 is not expected to have any fiscal impact, positive or negative, on the City.

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.