City of Culver City, California

City Council Agenda Item Report

Meeting Date: November 28, 2005	Item Number: A-6
AGENDA ITEM: Consideration of a Resolution Denying Without Prejudice 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 NY Cable LLC.	
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 [x]
Public Hearing: [] Action Item: [x] Attachments: [x]	
Public Notification: Master Notification List on 11/23/05; Comcast of Los Angeles, Inc.; Time Warner Cable	
Department Approval: Jerry Fulwood, CAO	CAO Approval: Martin Cole for Jerry Fulwood 11/23/05
City Controller Approval: N/A	

RECOMMENDATION:

That the City Council adopt the resolution denying without prejudice 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 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 requests 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.

DISCUSSION:

Section 35B-3(j) of Ordinance No. 87-201, 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. Based upon the representations set forth in that documentation, staff has concluded that the proposed transferee has failed to submit sufficient information to support a determination by the Franchise Authority 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. This conclusion is based upon the following:

A. The proposed transferee, C-Native Exchange I, LLC, is a Delaware limited liability company that was formed on May 11, 2005, after the Exchange Agreement was entered into on April 20, 2005, by Comcast Corporation, Time Warner Cable Inc., Time Warner NY Cable LLC, and other parties. As of this date, neither the franchisee nor the proposed transferee has complied with the Franchise Authority's request for a copy of a certificate of registration issued to the limited liability company by the California Secretary of State that authorizes C-Native Exchange I, LLC to transact business in this state. Nor has the franchisee or the transferee complied with the Franchise Authority's request for copies of the articles of organization and the operating agreement of this newly-formed limited liability company. Consequently, the conclusion is warranted that insufficient information has been provided to enable the Franchise Authority to fully evaluate the legal structure and legal qualifications of the proposed transferee.

B. The proposed transferee, C-Native Exchange I, LLC, has no documented history of business operations involving the ownership and operation of cable television systems in California or in any other state. It is therefore impossible for the Franchise Authority to evaluate the technical qualifications of the proposed transferee to conduct business in accordance with sound business principles and practices customary in the cable television industry. Consequently, the conclusion is warranted that the proposed transferee lacks the technical qualifications to own and operate the franchise previously granted by the Franchise Authority.

C. The franchisee and the transferee have failed or refused to provide all necessary and material documents and information requested by the City in order to conduct a "due diligence" evaluation of the transferee's financial qualifications to acquire control of and to operate the franchise and the cable system. In the absence of pro forma financial statements, specific information concerning the credit-worthiness of the proposed transferee, its access to funding sources, its entry into binding contractual commitments to obtain financing, or the amount of debt to be assumed and then refinanced, the Franchise Authority is unable to undertake a thorough evaluation of the financial capabilities of the proposed transferee. Consequently, the conclusion is warranted that the proposed transferee lacks the financial qualifications to own and operate the franchise previously granted by the Franchise Authority.

FISCAL ANALYSIS:

The denial of consent to the cable television transfer transaction described in the FCC 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 denying without prejudice the assignment and ultimate transfer of control of the cable television franchise by Comcast Corporation to C-Native Exchange I, LLC, a wholly-owned subsidiary of Time Warner NY Cable LLC.