



Agenda Item # \_\_\_\_\_

# Staff Report

## City of Manhattan Beach

**TO:** Honorable Mayor Fahey and Members of the City Council

**THROUGH:** Geoff Dolan, City Manager

**FROM:** Sherilyn Lombos, Deputy City Manager

**DATE:** September 6, 2005

**SUBJECT:** Consideration of a Status Report on the Transfer of the Cable Franchise from Adelphia Communications to Time Warner Cable, Inc. and Resolution Accepting for Purposes of Review the FCC Form 394 Submitted by Time Warner and Authorizing the City Manager to Deny the Transfer Application without Prejudice

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### **RECOMMENDATION:**

Staff recommends that the City Council receive and file a status report on the proceedings underway associated with the transfer of the cable franchise from Adelphia to Time Warner and adopt Resolution #5996, accepting for purposes of review the FCC Form 394 submitted by Time Warner and authorizing the City Manager authority to deny the transfer application without prejudice.

### **FISCAL IMPLICATION:**

There is no fiscal impact to the City based on the approval of this action.

### **BACKGROUND:**

Adelphia Communications, the City's current cable franchisee since 2000, is currently progressing through bankruptcy proceedings. Recently, Time Warner Cable, Inc. and Comcast Corp. entered into an Asset Purchase Agreement with Adelphia for the majority of their cable system operations throughout the country. Upon final approval of these complicated transactions, the affected Adelphia systems will be removed from bankruptcy proceedings and the operation of the systems will be divided between Time Warner Cable and Comcast Communications.

Currently, the City's cable television franchise is held in a partnership between Adelphia Communications, which holds a 75% stake, and Comcast Corporation, which owns 25%. Adelphia and Comcast Cable Holdings, LLC, an indirect subsidiary of Comcast Corporation, have entered into an Asset Purchase Agreement in which Comcast would acquire Adelphia's full interest in the partnership, giving them a 100% stake.

On June 14, 2005, the City received a FCC Form 394 from Time Warner Cable, Inc., requesting that the City approve transfer of the cable television franchise from Adelphia to CAC Exchange

I, LLC, an indirect subsidiary of Comcast. Then, pursuant to an exchange agreement between Comcast, Time Warner Cable, and the related entities, control of the franchise would again change hands from CAC Exchange I, LLC, to an indirect subsidiary of Time Warner Cable. Ultimately, the City's cable television franchise would be assigned to and do business as Time Warner Cable.

**DISCUSSION:**

According to FCC regulations governing franchise transfers, the City has 120 days from the date of submission of the FCC Form 394 to either approve or deny the transfer application. Should the City take no action within this 120-day period, the transfer will be deemed accepted and approved by the FCC. The current 120-day window is set to expire October 14, 2005. During this 120-day period, the City is doing a thorough review of all documents submitted by Time Warner, requesting information that was not provided, performing a compliance audit of the existing franchise to determine any areas of non-compliance, and performing a franchise fee audit to determine if the franchise fees are being calculated and paid appropriately. This is not the City's opportunity to renegotiate the franchise; anything that is found to be out of compliance will be brought into compliance or compensation will be negotiated for any non-compliance.

There is one other option available other than approval or denial of the application. The City may choose to seek an extension of the review period of the transfer application and all related appendices, reports, and materials. An extension of the 120-day review period requires the mutual consent of both the City and the applicant (Time Warner Cable).

The City has enlisted the support of consultant John Risk, a cable and communications expert, to assist throughout the transfer proceedings. City staff and Mr. Risk have been reviewing the application materials since receiving them on June 14, 2005. Due to the sheer size and scope of the application, and items remaining to be provided to the City, additional time beyond the original 120-day review period is required to complete a proper due-diligence review.

At this time, the City Council has neither approved nor denied the proposed franchise transfer. The attached resolution grants the City Manager the authority to deny the transfer application and agree to extend the 120-day review period without additional action by the City Council. This resolution does not empower the City Manager to accept or approve the transfer application. Any approval must be granted by the City Council.

The resolution will encourage Time Warner Cable, Inc., to agree to extend the review period deadline. Once an extension is agreed upon, staff will return to the Council with a formal recommendation relative to the franchise transfer application based on a fully completed review of the application.

John Risk of Communications Support Group will make a presentation at tonight's Council meeting. He will discuss the transfer application proceedings, general information about Time Warner, a summary of our due diligence findings, a status of the compliance and franchise fee audits, concerns regarding new management and operation changes after the transaction closes, some legal and practical ramifications, and strategy.

Attachment: A. Resolution #5996

RESOLUTION NO. 5996

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, ACCEPTING FOR PURPOSES OF REVIEW THE FCC FORM 394 SUBMITTED BY TIME WARNER CABLE, INC., RELATING TO A FRANCHISE TRANSFER AND AUTHORIZING THE CITY MANAGER THE AUTHORITY TO DENY THE TRANSFER APPLICATION WITHOUT PREJUDICE AND AGREE TO EXTEND THE APPLICATION REVIEW PERIOD

WHEREAS, the City of Manhattan Beach (the "City") has entered into an agreement granting a nonexclusive franchise to Adelphia Communications Corp. (the "Operator") to operate a cable television system in the City and setting forth conditions accompanying the granting of the franchise (the "Franchise"); and

WHEREAS, the Operator filed an FCC Form 394, dated June 10, 2005, seeking approval of a transfer of the Franchise to CAC Exchange I, LLC, (the "New Franchisee"); and

WHEREAS, the City has not, at the time of the adoption of this resolution, approved or denied the request to transfer the Franchise to the CAC Exchange I, LLC, and reserves its rights as outlined in the Franchise Agreement and other applicable Federal, State and local laws; and

WHEREAS, pursuant to the Franchise Ordinance and the Franchise Agreement between the City and the Operator, neither the Franchise nor control of the Operator may be changed, transferred or assigned without the consent of the City Council; and

WHEREAS, this proposed merger will result in a change in control of the Operator and requires the City's consent; and

WHEREAS, the City Council of the City now desires to acknowledge receipt of said FCC Form 394 and prescribe procedures for its review and consideration by the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The FCC Form 394, dated June 10, 2005 is hereby deemed accepted for the purposes of review, analysis, and consideration. Said review shall not constitute a waiver of the City's rights to determine compliance with the existing Cable Franchise and to take appropriate action therewith.

SECTION 2. Since receipt of the FCC Form 394 on June 14, 2005, the City Manager, Deputy City Manager, City Attorney, City Staff, and outside consultants designated by the City, and their designees have been reviewing and analyzing the FCC Form 394 and have requested additional information deemed necessary to properly analyze and make recommendations upon the FCC Form 394.

SECTION 3. The City Manager or his designee is hereby authorized, without further action by this Council, to reject the FCC Form 394 without prejudice, and the approvals requested therein, without further action of this City Council for the following reasons and upon the following bases:

- A. Failure or refusal to file a proper or complete FCC Form 394 with all information required therein.
- B. Failure or refusal to provide all documents and information requested by City Staff, Special Counsel, and outside consultants retained by the City.
- C. Failure or refusal to reasonably cooperate with City Staff, City Attorney, Special Counsel and outside consultants retained by the City in undertaking due diligence investigations including, but not limited to, physical inspections of the cable television system and inspection of records relating thereto.

- D. Failure or refusal to demonstrate compliance with the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"), any and all implementing regulations of the Federal Communications Commission, or any other applicable local, state or federal law.
- E. Refusal of any assignee or transferee to accept, without condition of reservation, the terms and conditions of the existing Franchise or to require as a condition of consent or approval the amendment, modification, extension or alteration of the terms and conditions of the Franchise.
- F. An announced or actual change in control of the Transferee, or any limited or general partner thereof, which occurred subsequent to the date of the FCC Form 394.

SECTION 4. The City Manager or his designee, without further action by this Council, shall be empowered to seek Operator's consent to a sufficient extension of the 120-day deadline for approval of the proposed transfer so that the City may complete its due diligence review of the franchise transfer application material submitted by Operator.

SECTION 5. Any decision made by the City Manager pursuant to the authority granted in this Resolution shall be deemed a decision of the City Council for the purposes of Section 617 of the 1992 Cable Act and the implementing regulations of the Federal Communications Commission.

SECTION 6. This resolution shall take effect immediately.

SECTION 7. The City Clerk shall make this Resolution reasonably available for public inspection within thirty (30) days of the date this Resolution is adopted.

SECTION 8. The City Clerk shall certify to the adoption of this Resolution and thenceforth and thereafter the same shall be in full force and effect.

PASSED, APPROVED AND ADOPTED this 6<sup>th</sup> day of September, 2005.

Ayes:  
 Noes:  
 Absent:  
 Abstain:

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 Mayor, City of Manhattan Beach, California

ATTEST:

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 City Clerk