

Telecommunications / Cable Television Advisory Board action reported to the City Council by Assistant City Attorney Steven Huggenberger

Comcast Transfer Recommendation of the Telecommunications / Cable Television Advisory Board

At the Telecommunications / Cable Television Advisory Board meeting held on August 4, 2014, the Board unanimously approved the following motion.

1. Recommend approval of the transfer conditioned upon the following:
 - a. The City does not waive any of its rights with regard to known and unknown underpayments of franchise fees. Comcast, or a subsidiary acceptable to the City, shall agree that it will be responsible and liable for any known and unknown franchise fee underpayments, and shall provide a written guarantee acceptable to the City within thirty (30) days of the effective date of a transfer resolution. The City is currently performing an audit of Time Warner Cable and is not complete with that effort;
 - b. The City does not waive any Franchise violations, whether known or unknown, which may be identified as part of a technical audit completed prior to or after the consummation of the proposed Transaction. Comcast, or a subsidiary acceptable to the City, shall agree that it will be responsible and liable for such Franchise violations, and shall provide a written guarantee acceptable to the City within thirty (30) days of the effective date of a transfer resolution;
 - c. The City does not waive any known or unknown yet existing Franchise non-compliance issues. Comcast, or a subsidiary acceptable to the City, shall agree that it will be responsible and liable for any known or unknown yet existing non-compliance issues under the Franchise and applicable laws, regulations, standards, codes and decisions, and shall provide a written guarantee acceptable to the City within thirty (30) days of the effective date of a transfer resolution;
 - d. Comcast must, within thirty (30) days of the effective date of a transfer resolution, provide a written performance guarantee for the Franchisee, which guarantee shall be acceptable to the City, specifying that the Franchisee will at all times comply with applicable technical and performance requirements set forth in the Franchise and in applicable regulations, codes, standards and decisions;
 - e. Comcast must, within thirty (30) days of the effective date of a transfer resolution, provide a written performance guarantee for the Franchisee, which guarantee shall be acceptable to the City, specifying that Comcast will be fully liable and/or responsible for (i) any violations, losses and obligations beyond the ability of the Franchisee and/or the Transferee to address in connection with the management, operation and/or maintenance of the System and ii) any and all past,

present and future financial obligations under the Franchise in the same capacity as the Franchisee;

f. Comcast, or a subsidiary acceptable to the City, shall provide a written guarantee acceptable to the City within thirty (30) days of the effective date of a transfer resolution specifying that subscriber rates and charges in the City will not increase as a result of the proposed Transaction;

g. Comcast shall affirmatively guarantee in writing, within thirty (30) days of the effective date of a transfer resolution, that it will not interfere, directly or indirectly, with the Franchisee's ability to comply with its Franchise obligations, and applicable laws, codes, standards, decisions and regulations;

h. Comcast shall provide a written guarantee acceptable to the City, within thirty (30) days of the effective date of a transfer resolution, specifying that it will cause the Franchisee to comply with the Franchise and applicable laws, regulations, standards, codes and decisions at all times;

i. The Franchisee shall, within thirty (30) days of the effective date of a transfer resolution, affirm in writing, in a form acceptable to the City, its understanding of and obligation to comply with all Franchise requirements;

j. The Franchisee and Comcast shall, within thirty (30) days of the effective date of a transfer resolution, provide an unqualified written commitment, acceptable to the City, to abide by all terms of the Franchise and applicable laws, regulations, codes, standards and decisions after the Transaction, and to assume all existing obligations, liabilities and responsibility for all acts and omissions under the Franchise and applicable law, known and unknown, including (but not limited to) all acts and omissions of TWC and its parent entities, affiliates and subsidiaries;

k. Comcast shall reimburse the City for all fees and expenses it incurred in reviewing and acting on the transfer application. This reimbursement shall not be passed through to subscribers;

l. The City's approval of the transfer application is made without prejudice to, or waiver of, any right of the City to consider or raise claims based on the Franchisee's or TWC's defaults, any failure to provide reasonable service in light of the community's needs, or any failure to comply with the terms and conditions of the Franchise, or with applicable laws, regulations, codes, standards and decisions;

m. The City waives none of its rights with respect to TWC's compliance with the terms, conditions, requirements and obligations set forth in the Franchise and in applicable laws, regulations, codes, standards and decisions. The City's approval of the transfer application shall in no way be deemed to be a representation by

City that TWC is in compliance with all of its obligations under the Franchise and applicable laws, regulations, codes, standards and decisions;

n. After the proposed transaction, the Franchisee will be bound by all the commitments, duties, and obligations, past, present and continuing, embodied in the Franchise and applicable laws, regulations, codes, standards and decisions. The proposed Transaction will have no effect on these obligations, commitments and duties;

o. After the proposed Transaction is consummated, the Franchisee will be responsible for all past acts and omissions, known and unknown, of TWC under the Franchise and applicable laws, codes, standards, decisions and regulations for all purposes, including but not limited to) Franchise renewal and Franchise enforcement to the same extent and in the same manner as TWC and its parents, subsidiaries and affiliates were responsible before the proposed Transaction;

p. The conditioned approval of the transfer application does not amend or alter the Franchise or any requirements therein in any way, and all provisions of the Franchise or amendments subsequent to this approval of the transfer, remain in full force and effect and are enforceable in accordance with their terms and with applicable law;

q. The City reserves all of its rights with respect to the Franchisee' s future compliance with the terms, conditions, requirements and obligations set forth in the Franchise;

r. The City is not waiving any rights it may have to require franchise fee payments on present and future services delivered by the Franchisee or its subsidiaries via the cable system;

s. The City is not waiving any right it may have related to any net neutrality, open access and information services issues;

t. The conditioned approval of the proposed transfer application shall not constitute a waiver or release of any of the rights of the City under the Franchise and applicable laws, codes, standards, decisions and regulations, whether arising before or after the date of consummation of the proposed Transaction.

u. Receipt of any and all state and federal approvals and authorizations;

v. Actual closing of the proposed Transaction consistent with the transfer application; and

w. The City does not waive its rights to require payment of identified franchise fee underpayments, either from TWC and its parent entities and/or subsidiaries or the Franchisee and its parent entities, affiliates and subsidiaries.

