

AN ORDINANCE 100201

**CONSIDERING CONSENT TO THE TRANSFER OR ASSIGNMENT OF THE CABLE TELEVISION FRANCHISE, CABLE RIGHTS, DUTIES, AND OBLIGATIONS FROM TIME WARNER CABLE, INC., TO TIME WARNER CABLE SAN ANTONIO, L. P.; PRESERVING ANY AND ALL CLAIMS THE CITY MAY HAVE AGAINST TIME WARNER CABLE, INC.; ESTABLISHING CERTAIN CONDITIONS RELATED TO THE CITY'S CONSENT; AND WAIVING THE PROCEDURAL REQUIREMENTS OF SECTION 6 OF THE CABLE FRANCHISE AGREEMENT.**

\* \* \* \* \*

**WHEREAS**, on or about June 1, 1978, the City of San Antonio ("City"), adopted Ordinance 49433, which granted to the predecessor-in-interest of Time Warner Cable, Inc. ("TWC" or "Franchisee"), a nonexclusive franchise to construct, operate and maintain a cable system in the streets and rights-of-way of the City to provide cable television service to the residents of the City (Ordinance No. 49433, and as thereafter amended, transferred and extended being hereafter collectively referred to as the "Franchise," and the Franchisee's cable system being hereinafter referred to as the "System"); and

**WHEREAS**, Section 6 of the Franchise provides, among other things, that neither the Franchisee's rights or obligations under the Franchise, nor the Franchisee's System, may be assigned or transferred to another person without the prior consent of the City Council ("Council"); and

**WHEREAS**, TWC, Time Warner Cable of San Antonio, L.P. ("TWCSA" or "Transferee") and other affiliates of TWC have entered into an agreement (the "Contribution Agreement"), dated August 30, 2004, pursuant to which TWC has agreed, among other things, to contribute substantially all of the assets of the System, including its rights under the Franchise, to TWCSA (such contribution being hereinafter referred to as the "Transfer"); and

**WHEREAS**, upon consummation of the Transfer, TWCSA will be a wholly-owned indirect subsidiary of TWC; and

**WHEREAS**, on or about September 1, 2004, Franchisee and Transferee filed an application with the City requesting the City's consent to the Transfer of the Franchise and the System to Transferee (the application, together with all subsequent correspondence and information provided by Franchisee and Transferee concerning the application and the Transfer being hereinafter referred to as the "Application"); and

**WHEREAS**, City staff has reviewed and relied upon the Application, as well as all relevant documents and the representations of the Franchisee and Transferee concerning the proposed Transfer of the Franchise and System to Transferee; and

**WHEREAS**, the Council has determined that consent to the Transfer of the Franchise and the System from Franchisee to Transferee is in the public interest, provided that the Franchisee and Transferee are willing to accept in writing and agree to abide by certain terms and conditions relating thereto, such terms and conditions being set forth below in this Ordinance, in an Acceptance of the Franchise by Transferee attached hereto as Exhibit A (such acceptance being hereinafter referred to as the ("Transferee Franchise Acceptance")) and in an Acceptance of the Franchise Transfer Resolution by the Franchisee attached hereto as Exhibit B (such acceptance being hereinafter referred to as the "Franchisee Transfer Acceptance"); **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO, TEXAS THAT:**

**SECTION 1.** The Council hereby consents to the Transfer of the Franchise and the System from Franchisee to Transferee, subject to the following conditions:

(a) The transfer shall be consummated within one hundred eighty (180) days of the date that this Ordinance is adopted and on the terms and conditions set forth in this Ordinance and, to the extent not inconsistent with this Ordinance, the Application.

(b) The Council's consent to the Transfer of the Franchise and the System from Franchisee to Transferee shall not constitute a waiver or release of any of the City's rights under the Franchise or applicable federal, state or City law, or of any claims the City may have against the Franchisee or its successors, regardless whether such rights or claims arose before or after the date of this Ordinance or the date of consummation of the Transfer of the Franchise and the System from Franchisee to Transferee.

(c) Upon consummation of the Transfer, Transferee shall (i) assume and be responsible for the Franchisee's obligations and liabilities to the City under the Franchise, regardless whether those obligations or liabilities arose before or after the date of this Ordinance or the date consummation of the Transfer, and (ii) agree to be bound by and comply fully with the Franchise and to fulfill the Franchisee's obligations and duties hereunder throughout the remaining term of the Franchise. With particular respect to the ongoing Cable Act Franchise renewal proceeding, Transferee will assume all rights, obligations and liabilities of the Franchise, including without limitation, responsibility for Franchisee's performance under 47 U.S.C. Section 546(c)(i) (A) and (B).

(d) Within thirty (30) days of the consummation of the Transfer of the Franchise and System to Transferee, Transferee shall file with the City the Transferee Franchise Acceptance in the form attached hereto as Exhibit A, executed by Transferee and certified and sworn to as the legally binding act of Transferee.

(e) Within thirty (30) days of the adoption of this Ordinance, Franchisee shall file with the City the Franchisee Transfer Acceptance attached hereto as Exhibit B, executed by the Franchisee and certified and sworn to as the legally binding act of the Franchisee.

**SECTION 2.** If any of the conditions specified in Section 1 hereof are not satisfied, then the Council's consent to the Transfer of the Franchise and the System from Franchisee to Transferee is denied.

**SECTION 3.** Any material misrepresentation in the Application shall constitute a material violation of the Franchise and shall be subject to all of the remedies available to the City under the Franchise and applicable law.

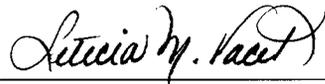
**SECTION 4.** Any violation of this Ordinance shall constitute a material violation of the Franchise and shall be subject to all of the remedies available to the City under the Franchise and applicable law.

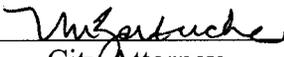
**SECTION 5.** This Ordinance is a final decision on the Application within the meaning of 47 U.S.C. §537, and for these purposes the Application is deemed acted upon on the date this Ordinance is adopted by the Council.

**SECTION 6.** This Ordinance shall take effect on the tenth (10<sup>th</sup>) day after the date of passage hereof.

**PASSED and ADOPTED** by the City Council of the City of San Antonio, Texas, this 16th day of December, 2004.

  
**MAYOR**  
EDWARD D. GARZA

ATTEST:   
City Clerk

APPROVED AS TO FORM:   
for City Attorney

# Agenda Voting Results

**Name:** 53.

**Date:** 12/17/04

**Time:** 12:49:17 AM

**Vote Type:** Multiple selection

**Description:** An Ordinance considering consent to the transfer or assignment of the Cable Television Franchise, cable rights, duties, and obligations from Time Warner Cable, Inc., to Time Warner Cable San Antonio, L.P.; preserving any and all claims the City may have against Time Warner Cable, Inc.; establishing certain conditions related to the City's consent; and waiving the procedural requirements of Section 6 of the Cable Franchise Agreement. [Presented by Ben Gorzell, Jr., Director, Public Utilities; Melissa Byrne Vossmer, Assistant City Manager]

| Voter              | Group       | Status                 | Yes | No | Abstain |
|--------------------|-------------|------------------------|-----|----|---------|
| ROGER O. FLORES    | DISTRICT 1  | Not present            |     |    |         |
| JOEL WILLIAMS      | DISTRICT 2  |                        | x   |    |         |
| RON H. SEGOVIA     | DISTRICT 3  |                        | x   |    |         |
| RICHARD PEREZ      | DISTRICT 4  |                        | x   |    |         |
| PATTI RADLE        | DISTRICT 5  |                        | x   |    |         |
| ENRIQUE M. BARRERA | DISTRICT 6  |                        | x   |    |         |
| JULIAN CASTRO      | DISTRICT 7  | Not present            |     |    |         |
| ART A. HALL        | DISTRICT 8  |                        | x   |    |         |
| CARROLL SCHUBERT   | DISTRICT 9  | <del>Not present</del> |     |    | X       |
| CHIP HAASS         | DISTRICT_10 |                        | x   |    |         |
| MAYOR ED GARZA     | MAYOR       |                        | x   |    |         |