

ORDINANCE NO. 3776

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TRANSFER OF THE CABLE FRANCHISE AGREEMENT FROM AT&T COMCAST CORPORATION TO C-NATIVE EXCHANGE III, L.P.; PROVIDING FOR AN AMENDMENT TO THE CABLE FRANCHISE AGREEMENT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, AT&T Comcast Corporation (“Franchisee”) is currently a franchisee for cable services in the City of Mesquite (“City”) pursuant to Ordinance No. 3416 (“Franchise”); and

WHEREAS, Franchisee is a wholly-owned subsidiary of Comcast Corporation (“Comcast”); and

WHEREAS, pursuant to an exchange agreement between Time Warner Cable, Inc. (“Time Warner Cable”), Comcast and certain related entities, Comcast will cause the Franchisee to transfer the cable system and Franchise to C-Native Exchange III, L.P. (“New Franchisee”), which will become an indirect subsidiary of Time Warner Cable (the “Transaction”); and

WHEREAS, Franchisee and Time Warner Cable have requested the City’s consent to the transfer of the Franchise and have filed a Federal Communications Commission (“FCC”) Form 394 with the City requesting such consent; and

WHEREAS, New Franchisee agrees to abide by all the terms of the Franchise upon the closing of the Transaction; and

WHEREAS, New Franchisee agrees that, upon the closing of the Transaction, it shall be the successor entity to the incumbent cable service provider, the Franchisee, pursuant to Texas law, including, without limitation, Chapter 66, Texas Utilities Code [Sec. 66.004(a) and (c) as adopted by S.B. 5, 79th Texas Legislature, 2nd Called Session], and as such will be operating under the Franchise being transferred from the current incumbent cable provider in the City and will be the incumbent cable provider in the City under applicable law as if it were the incumbent cable provider in the City under the Franchise as of September 1, 2005, and had at all times been the incumbent cable provider in the City thereunder since that date regardless of the actual date of the Franchise transfer; and

WHEREAS, the City is willing to consent to the proposed transfer as detailed in the FCC Form 394, pursuant to the conditions set forth below.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That all matters stated in the preamble are found to be true and correct and are incorporated herein as if copied in their entirety.

SECTION 2. That Time Warner Cable agrees that upon the closing of the Transaction, the New Franchisee will abide by all terms of Ordinance No. 3416 ("Franchise") and its amendments, and all other ordinances of the City.

SECTION 3. That the New Franchisee agrees that it will provide service pursuant to the requirements of the Franchise and its amendments after the closing of the Transaction.

SECTION 4. That subject to Time Warner Cable and the New Franchisee's compliance with the provisions contained herein, the City accepts the transfer of the Franchise to C-Native Exchange III, L.P. Such acceptance does not preclude further investigation by the City of any potential franchise violations, including those occurring prior to the closing of the Transaction. With respect to any violation or noncompliance issues that are not extinguished prior to the closing of the Transaction, the City will have all rights to continue investigation of such matters following the closing under the terms set forth in the Franchise.

SECTION 5. That Time Warner Cable acknowledges that the City has certain franchise fee audit rights pursuant to the Franchise. Time Warner Cable assures that it does not have any contractual or other restrictions that will limit the ability of the New Franchisee to remit franchise fees as provided in the Franchise or limit the New Franchisee's ability to provide all relevant information concerning the payment of franchise fees as required by the Franchise. The first payment of franchise fees after Time Warner Cable assumes control of the Franchise will be accompanied by a statement itemizing the revenue categories on which franchise fees are being paid with a statement as to any differences between the calculations by Time Warner Cable and the Franchisee.

SECTION 6. That any actions which have the effect of circumventing payment of any lawfully required ordinance fees and/or evasion of payment of the ordinance fees by non-collection or non-reporting of gross receipts, bartering or any other means which evade the actual collection of revenues for businesses authorized by the New Franchisee are prohibited. Pursuant to the Texas Constitution, the City is prohibited from granting anything of value without compensation. The City has the right to audit all records relating to the calculation of the franchise fee as provided in the Franchise.

SECTION 7. That Time Warner Cable will provide to the City within 45 calendar days following the date of closing of the Transaction at the City's discretion one of the following: 1) a guarantee in the form attached hereto as Exhibit "A," guaranteeing the performance of the New Franchisee under the terms of the Franchise and that all such terms of the Franchise, as noted in the original document and all amendments and transfers, will be fulfilled; or 2) a guarantee consistent with the most favorable such guarantee agreed to by Time Warner Cable in the State of Texas guaranteeing the performance of the New Franchisee under the terms of the Franchise. Failure to provide such guarantee within the specified time frame will result in the automatic and immediate repeal of this ordinance without any further action by the City Council of the City of Mesquite and this ordinance shall thereafter be deemed null and void.

SECTION 8. That by granting consent to the transfer of the Franchise, the City does not waive and specifically retains any right to regulate and receive compensation as allowed by law for all cable services offered over the cable system. Upon request and if the City is

lawfully allowed to make such a request, the Franchisee shall inform the City of any uses of the cable system by persons who are not cable operators.

SECTION 9. That the City, through its duly designated officers, agents or representatives shall have access to all books of accounts and records of the Franchisee which are reasonably related to the enforcement of this Franchise pursuant to all the terms and conditions of the Franchise, specifically, as found in Section 19.2 therein.

SECTION 10. That in the event that the Transaction is not closed by October 1, 2006, the terms of this ordinance will become null and void. Until the closing of the Transaction, the Franchisee (AT&T Comcast Corporation) will continue to be responsible for the performance of the terms of the Franchise. Also, in the event that the Transaction does not close by October 1, 2006, Time Warner Cable will reimburse the City for all out-of-pocket costs incurred in review of the FCC Form 394 and related actions up to the amount of Five Hundred (\$500.00) Dollars.

SECTION 11. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

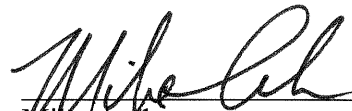
SECTION 12. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

SECTION 13. That this ordinance shall take effect immediately from and after being duly passed and approved on its third and final reading.

DULY PASSED AND APPROVED on first reading by the City Council of the City of Mesquite, Texas, on the 4th day of October, 2005.

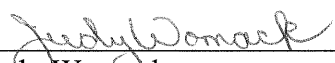
DULY PASSED AND APPROVED on second reading by the City Council of the City of Mesquite, Texas, on the 17th day of October, 2005.

DULY PASSED AND APPROVED, on third and final reading by the City Council of Mesquite, Texas, on the 21st day of November, 2005.




Mike Anderson
Mayor

ATTEST:



Judy Womack
City Secretary

APPROVED:



B. J. Smith
City Attorney

GUARANTEE

GUARANTEE, dated as of _____, made by TIME WARNER CABLE INC., a Delaware corporation ("Guarantor"), in favor of City of Mesquite, Texas ("Beneficiary").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Beneficiary to timely consent to the transfer of a franchisee for cable services in the City of Mesquite ("City") pursuant to Ordinance No. 3416 (the "Franchise") to C-Native Exchange III, L.P. ("Transferee") in accordance with the Federal Communications Commission Form 394 filed by Transferee, Guarantor agrees as follows:

1. Interpretive Provisions

(a) The words "hereof," "herein" and "hereunder" and words of similar import, when used in this Guarantee, shall refer to this Guarantee as a whole and not to any particular provision of this Guarantee, and section and paragraph references are to this Guarantee unless otherwise specified.

(b) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

2. Guarantee

(a) Guarantor unconditionally and irrevocably guarantees to Beneficiary the timely and complete performance of all Transferee obligations under the Franchise as the same may be amended from time to time, and all Transferee obligations set forth in the transfer Ordinance No. _____ adopted on November 21, 2005, subject to applicable law (the "Guaranteed Obligations"). The Guarantee is an irrevocable, absolute, continuing guarantee of payment and performance, and not a guarantee of collection. If Transferee fails to pay any of its monetary Guaranteed Obligations in full when due in accordance with the terms of the Franchise, Guarantor will promptly pay the same to Beneficiary or procure payment of same to Beneficiary. Anything herein to the contrary notwithstanding, Guarantor shall be entitled to assert as a defense hereunder any defense that is or would be available to Transferee under the Franchise or otherwise.

(b) This Guarantee shall remain in full force and effect until the earliest to occur of: (i) performance in full of all Guaranteed Obligations at a time when no additional Guaranteed Obligations remain outstanding or will accrue to Transferee under the Franchise and (ii) direct or indirect transfer of the Franchise from Transferee to (or direct or indirect acquisition of Transferee or any successor thereto by (whether pursuant to a sale of assets or stock or other equity interests, merger or otherwise)) any other person or entity a majority of whose equity and voting interests are not beneficially owned and controlled, directly or indirectly, by Guarantor. Upon termination of this Guarantee in accordance with this Section 2(b), all contingent liability of Guarantor in respect hereof shall cease and Guarantor shall remain liable solely for Guaranteed Obligations accrued prior to the date of such termination.

(c) This Guarantee shall apply to the Franchise, any extension or renewal thereof and to any holdover term following the expiration of the Franchise or renewal thereof.

3. Waiver

Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by Beneficiary upon this Guarantee or acceptance of this Guarantee. Guarantor waives diligence, presentment, protest and demand for payment to Transferee or Guarantor with respect to the Guaranteed Obligations; provided, however, that Guarantor shall be furnished with a copy of any notice of or relating to default under the Franchise to which Transferee is entitled or which is served upon Transferee at the same time such notice is sent to or served upon Transferee. Guarantor waives all rights of a guarantor or surety under Chapter 34 of the Texas Business and Commerce Code.

Guarantor agrees that Beneficiary may, without notice to or consent by Guarantor, and without in any way releasing or impairing or otherwise affecting any liability or obligation of Guarantor hereunder (i) modify, amend, supplement, add, or otherwise change any provision of the Franchise to the extent permitted under the terms of the Franchise, (ii) grant extensions or renewals of the Franchise, or effect any release, compromise or settlement in connection therewith, (iii) consent to the assignment or other transfer or conveyance by Transferee of its rights and interest under the Franchise, and (iv) deal in all respects with Transferee and the Guaranteed Obligations as if this Guarantee were not in effect.

4. Representations and Warranties

Each of Guarantor and Beneficiary represents and warrants that: (i) it is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of organization; (ii) the execution, delivery and performance by it of this Guarantee is within its corporate, limited liability company or other powers, have been duly authorized by all necessary corporate, limited liability company or other action, and do not contravene any law, order, decree or other governmental restriction, or any agreement or instrument, binding on or affecting it and (ii) no authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by it of this Guarantee except as may have been obtained or made, other than, in the case of clauses (i) and (ii), contraventions or lack of authorization, approval, notice, filing or other action that would not, individually or in the aggregate, impair or delay in any material respect such party's ability to perform its obligations hereunder.

5. Binding Effect; Other Matters

This Guarantee, when executed and delivered by Beneficiary, will constitute a valid and legally binding obligation of Guarantor, and its successor and assigns, enforceable against it in accordance with its terms, and shall inure to the benefit of Beneficiary and its successors and assigns. except as such enforcement may be limited by

applicable bankruptcy, insolvency or other similar laws applicable to creditors' rights generally and by equitable principles (whether enforcement is sought in equity or at law).

Beneficiary shall not be required, before invoking the benefits of this Guarantee, to institute suit against or exhaust its remedies with respect to Transferee or any other person liable for the Guaranteed Obligations or to enforce its rights with respect to any security which shall have ever been given to secure the payment and performance of the Guaranteed Obligations; and the obligations of Guarantor hereunder shall not be released or impaired in any way by any neglect, delay, omission, failure or refusal of Beneficiary to take or prosecute any action for the collection or enforcement of the Guaranteed Obligations, or any failure of Beneficiary to give Guarantor any notice of any kind under any circumstances whatsoever with respect to or in connection with the Guaranteed Obligations. Suit may be brought and maintained against Guarantor without the joinder of Transferee or any other person, and in the event that there is more than one guarantor of the Guaranteed Obligations, Beneficiary may (i) bring suit against all guarantors jointly and severally or against any one or more of them, (ii) compound or settle with any one or more of such guarantors for such consideration as Beneficiary may deem proper, and (iii) release one or more of the guarantors from liability without impairing the liability of the guarantors not so released; and no action brought by Beneficiary against any one guarantor of the Guaranteed Obligations shall impair the right of Beneficiary to bring suit against any remaining guarantor or guarantors.

In addition to and without limiting the foregoing or any other provision of this Guarantee, Guarantor's liability under this Guarantee shall in no way be affected by (i) the release or discharge of Transferee in any process initiated by or on behalf of Transferee which assigns Transferee's assets to the benefit of its creditors, or in any receivership, bankruptcy or other similar proceedings, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Transferee or its assets, or any resulting release or discharge of any obligation of the Transferee; (ii) the impairment, limitation or modification of the liability of Transferee or the estate of Transferee in bankruptcy, or of any remedy for the enforcement of Transferee's said liability under the Franchise, resulting from the operation of any present or future provision of the United States Bankruptcy Code or other statute or from the decision in any court, whether state or federal; (iii) the rejection or disaffirmance of the Franchise in any such proceedings; (iv) the assignment or transfer or other conveyance of the Franchise by Transferee except as otherwise provided for herein; (v) any disability of Transferee, except as provided for herein; (vi) the existence of any claim, setoff or other rights, which the Guarantor may have at any time against the Transferee, whether in connection herewith or any unrelated transactions, except as provided for herein; or (vii) any change in the existence, structure or ownership of the Transferee.

Guarantor shall remain liable for the Guaranteed Obligations, even though the Guaranteed Obligations shall be unenforceable against the Transferee because of lack of power or authority on the part of the Transferee.

6. Notices

All notices, requests, demands, approvals, consents and other communications hereunder shall be in writing and shall be deemed to have been duly given

and made if served by personal delivery upon the party for whom it is intended or delivered by registered or certified mail, return receipt requested, or if sent by telecopier, provided that the telecopy is promptly confirmed by telephone confirmation thereof, to the party at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such party:

To Guarantor and Transferee:

Time Warner Cable Inc.
290 Harbor Drive
Stamford, CT 06902-6732
Telephone: (203) 328-0631
Telecopy: (203) 328-4094
Attention: General Counsel

To Beneficiary:

City of Mesquite
1515 North Galloway Avenue
Mesquite, TX 75149
Telephone: (972) 216-6403
Telecopy: (972) 216-6431
Attention: City Manager

7. Integration

This Guarantee represents the agreement of Guarantor with respect to the subject matter hereof and there are no promises or representations by Guarantor or Beneficiary relative to the subject matter hereof other than those expressly set forth herein.

8. Amendments in Writing

None of the terms or provisions of this Guarantee may be waived, amended, supplemented or otherwise modified except by a written instrument executed by Guarantor and Beneficiary, provided that any right, power or privilege of Beneficiary arising under this Guarantee may be waived by Beneficiary in a letter or agreement executed by Beneficiary.

9. Section Headings

The section headings used in this Guarantee are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

10. No Assignment or Benefit to Third Parties

This Agreement shall be binding upon and inure to the benefit of the parties hereto. Nothing in this Agreement, express or implied, is intended to confer upon anyone other than Guarantor and Beneficiary and their respective permitted assigns, any rights or remedies under or by reason of this Guarantee.

11. Expenses

All costs and expenses incurred in connection with this Guarantee and the transactions contemplated hereby shall be borne by the party incurring such costs and expenses.

12. Counterparts

This Guarantee may be executed by Guarantor and Beneficiary on separate counterparts (including by facsimile transmission), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

13. GOVERNING LAW

THIS GUARANTEE SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS AND COURT DECISIONS OF THE STATE OF TEXAS WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. THE OBLIGATIONS OF THE PARTIES TO THIS AGREEMENT ARE PERFORMABLE IN DALLAS COUNTY, TEXAS, AND IF LEGAL ACTION IS NECESSARY TO ENFORCE SAME, EXCLUSIVE VENUE SHALL LIE IN A STATE OR FEDERAL COURT HAVING JURISDICTION FOR DALLAS, COUNTY, TEXAS.

14. WAIVER OF JURY TRIAL

EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS GUARANTEE AND FOR ANY COUNTERCLAIM THEREIN.

IN WITNESS WHEREOF, each of the undersigned has caused this Guarantee to be duly executed and delivered by its duly authorized officer as of the day and year first above written.

TIME WARNER CABLE INC.

By: _____

Name: _____

Title: _____

BENEFICIARY

By: _____

Name: _____

Title: _____