

**CITY OF EL PASO, TEXAS
REQUEST FOR COUNCIL ACTION (RCA)**

CITY CLERK DEPT.

DEPARTMENT: Financial Services
AGENDA DATE: October 14, 2008
CONTACT PERSONS/PHONE: William F. Studer, Deputy City Manager, 541-4252
DISTRICT(S) AFFECTED: ALL DISTRICTS

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SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

Discussion and action on a Resolution regarding the quality of transmission and customer service provided by Time Warner Cable under the state issued certificate of franchise authority.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

The City Council directed City staff on Tuesday to place a matter on the Council agenda regarding the transmission quality and customer service provided by Time Warner to El Paso residents. The City staff and Council members regularly receive citizen complaints regarding the poor quality of the services and transmission provided by Time Warner. Since the City's franchise agreement with Time Warner expired in March, 2007 and they are now operating under a state-issued certificate of franchise authority, the City is unable to take any action regarding the complaints and refers the complainants to the State Public Utilities Commission. This resolution requests that the state and federal lawmakers and regulators revise the laws and regulations and require that Time Warner and other cable television comply with higher standards for transmission and customer service, and that the City of El Paso and other local jurisdictions have more enforcement authority.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

No

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____

FINANCE: _____

DEPARTMENT HEAD: _____

APPROVED FOR AGENDA: _____

CITY MANAGER: _____

DATE: _____

RESOLUTION

WHEREAS, Time Warner Entertainment – Advance/Newhouse Partnership (“Time Warner”) operated a cable television system under a Franchise Agreement with the City of El Paso until March 31, 2007, when the franchise agreement expired by its own terms;

WHEREAS, as of April 1, 2007, Time Warner has the right to install, operate and maintain a cable television system under a state-issued certificate of franchise authority within the City of El Paso pursuant to Chapter 66 of the Texas Utilities Code,

WHEREAS, state and federal law establish minimal standards for cable service providers regarding transmission quality and customer service, which standards are less stringent than the standards the City previously established under the now-expired franchise agreement between the City and Time Warner, which City franchise requirements are attached hereto as Exhibit A;

WHEREAS, while the state is now the franchising authority and the City is unable to regulate or monitor the quality of the cable transmission or the customer service provided by Time Warner, El Paso residents regularly and routinely provide written and verbal complaints to the City about the problems with the cable service provider and their experiences with acute transmission problems due to inadequate infrastructure and maintenance, and Time Warner’s inferior and ineffective customer service and the City’s only recourse is to refer the complaints to the Federal Communications Commission or the Texas Public Utilities Commission who have no statutory enforcement authority;

WHEREAS, in February, 2008, Time Warner assured City staff that they were hiring a senior manager at a El Paso-based customer service facility and customer service would be improved, Time Warner in fact closed its El Paso customer service facility in early Summer, 2008 and the customer service provided to El Paso residents has continued to deteriorate;

WHEREAS, the City Council desires to send a strong message to Time Warner, the City’s federal and state legislative delegation and regulatory authorities regarding Time Warner’s serious deficiencies in providing quality transmission and customer services to the El Paso community and strongly encourage both regulatory agencies and legislators to enact new regulations to expand the requirements for transmission quality and customer service standards to which cable companies must adhere (such as the requirements in the City’s now-expired franchise agreement attached hereto as Exhibit A) and enhance the enforcement authority of municipalities to enforce those standards; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. That the City Council hereby finds that the transmission quality and customer service provided by Time Warner to El Paso residents is seriously inadequate and ineffective and that the standards for customer service in existing state and federal

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law and regulations do not provide adequate protection to consumers of cable television services and the enforcement mechanisms available at any level are insufficient;

2. That the City Council hereby strongly encourages both state and federal legislators to enact new legislation in light of recently enacted state franchise authority, and that regulatory agencies enact new regulations, to require cable television services to meet higher standards for quality transmission and customer service (such as the requirements in the City's now expired franchise agreement attached hereto as Exhibit A), and that the new laws and regulations further enhance the enforcement authority of municipalities to enforce those standards; and

3. That the City Manager provide a copy of this resolution to the state and federal legislative delegations representing the City and citizens of El Paso, the Federal Communications Commission and the State Public Utilities Commission, and other appropriate and interested parties.

PASSED AND APPROVED this _____ day of _____, 2008.

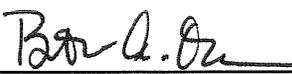
THE CITY OF EL PASO

John Cook
Mayor

ATTEST:

Richarda D. Momsen
Municipal Clerk

APPROVED AS TO FORM:



Bertha A. Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT:



William F. Studer, Jr.
Deputy City Manager, Finance and Public Safety

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EXHIBIT "A"

SECTION 19. SERVICE STANDARDS

- a. Grantee shall maintain all parts of the system in good condition throughout the entire Franchise period.
- b. Upon termination of service to any subscriber, the Grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon owner's request.
- c. Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use.

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d. Grantee shall not allow its cable or other operations to interfere with television reception of persons not served by Grantee, nor shall the system interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents of the City.

e. A Grantee shall continue, through the term of this Franchise, to maintain the technical, operational, and maintenance standards and quality of service set forth in this Ordinance and Franchise. Should the City find, by resolution, that the Grantee has failed to maintain these standards and quality of service, and should it, by resolution specifically enumerate improvements to be made, the Grantee shall make such improvements. Failure to make such improvements within forty-five (45) days of such resolution will constitute a breach of condition for which the remedy of Section 28 is applicable.

SECTION 20. CONTINUITY OF SERVICE MANDATORY

a. It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify, or sell the system, or the City gives notice of intent to terminate or fails to renew this Franchise, the Grantee shall act so as to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances.

In the event of a change of Grantee, or in the event a new operator acquires the system, the Grantee shall cooperate with the City, new Grantee or operator in maintaining continuity of service to all subscribers. During such period, Grantee shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services when it no longer operates the system.

b. In the event Grantee fails to operate the system for ninety-six (96) consecutive hours without prior approval of the City or without just cause, the City may, at its option, operate the system or designate an operator until such time as Grantee restores service under conditions acceptable to the City or a permanent operator is selected. If the City is required to fulfill this obligation for the Grantee, the Grantee shall reimburse the City for all reasonable costs or damages in excess of revenues from the system received by the City that are the result of the Grantee's failure to perform.

SECTION 21. RIGHTS RESERVED TO THE CITY

a. Nothing contained in this ordinance shall be construed to impair or effect in any way the police power of the City, its right of eminent domain or any right or power reserved to it by law, ordinance or this Franchise.

SECTION 22. COMPLAINT PROCEDURE

- a. The Grantee shall maintain an office within the City, which shall be open during all usual business hours, have a publicly-listed telephone with a toll-free number and sufficient lines; and be so operated that complaints and requests for repairs, billing or adjustments shall be received on a twenty-four (24) hour basis.
- b. The Grantee shall maintain a repair and maintenance crew capable of responding to subscriber complaints or requests for service within twenty-four (24) hours after receipt of the complaint or request. No charge shall be made to the subscriber for this service unless such maintenance or repair is required as a result of damage caused by subscriber. The Grantee may charge for service calls to the subscribers' home that are not the result of cable failure upon approval of a rate and equitable procedure by the City.
- c. The Grantee shall establish procedures for receiving, acting upon, and resolving subscriber complaints to the reasonable satisfaction of the City. The Grantee shall furnish a notice of such procedures to each subscriber at the time of initial subscription to the system.
- d. The Grantee shall keep a maintenance service log which will indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint and the time and date thereof. This log shall be made available for periodic inspection by representatives of the City. All service complaint entries shall be retained on file for a period consisting of the most recent two (2) years.

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e. When there have been similar complaints made or when there exists other evidence which casts doubt on the reliability or quality of cable service, the City shall have the right to compel the Grantee to test, analyze, and report on the performance of the system. Such report shall be delivered to the City no later than fourteen (14) days after the City formally notifies the Grantee and shall include the following information: the nature of the complaints which precipitated the special tests; what system component was tested, the equipment used, and procedures employed in said testing; the results of such tests; and the method in which said complaints were resolved.

f. The City may require that tests and analyses shall be supervised by a professional engineer not on the permanent staff of the Grantee. The aforesaid engineer should sign all records of the special tests and forward to the City such records with a report interpreting the results of the tests and recommending actions to be taken by the Grantee and the City. The reasonable costs of such tests shall be paid by the Grantee, provided however in the event such tests determine that the system is operating in accordance with all technical performance standards and requirements of this Franchise, all costs for such tests shall be paid by the City.

g. The City's right under this section, shall be limited to requiring tests, analyses, and reports covering specific subjects and characteristics based on said complaints or other evidence when and under such

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circumstances as the City has reasonable grounds to believe that the complaints or other evidence requires that tests be performed to protect the public against cable service not in conformity with the standards set forth herein.

SECTION 23. REFUNDS

a. Subscribers not satisfied that services have been provided as outlined in this Ordinance and Franchise shall be encouraged to notify the System Manager. The Grantee shall work with the subscriber to resolve the problem within 48 hours, and upon request by a subscriber, the Grantee shall credit the subscriber's account on a pro rata basis for loss of service commencing 48 hours after notification of the Grantee.

b. A Grantee shall, at the time of initial subscription to the system, and annually thereafter furnish a notice to subscribers of their right to a refund for any loss or interruption of service for 48 hours or more.

SECTION 24. AVAILABILITY OF BOOKS AND RECORDS

A Grantee shall fully cooperate in making available at reasonable times, and the City Attorney or his designee shall have the right to inspect the appropriate books, records, maps, plans and other like materials of the Grantee applicable to the CATV system, at any time during normal business hours; provided where volume and convenience necessitate, Grantee may require inspection to take place on Grantee's premises.

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