



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 041071
(As Amended, 2/24/05)

Introduced December 9, 2004

Councilmembers Nutter and Blackwell

**Referred to the
Committee on Public Property and Public Works**

AN ORDINANCE

Consenting to the transfer of control of the Area II cable television franchise from Urban Cable Works of Pennsylvania, LLC to Time Warner Cable Inc., and to the transfer and assignment of the Area II cable television franchise from Urban Cable Works of Philadelphia, L.P. to Time Warner Cable Inc., both under certain terms and conditions.

WHEREAS, Urban Cable Works of Philadelphia, L.P., a Delaware limited partnership (“Urban Cable”), is the cable television franchisee in Area II of the City of Philadelphia, pursuant to a transfer of the Area II franchise from Wade Communications Partnership, d/b/a Wade Cablevision, to which the City consented by ordinance (Bill No. 990842, approved December 16, 1999); and

WHEREAS, Urban Cable is a Delaware limited partnership formed on or about June 3, 1999 by Wade Communications Partnership, a Pennsylvania general partnership and a subsidiary of Time Warner, Inc. which holds both a two per cent general partnership interest and a 38 per cent limited partnership interest in Urban Cable, Urban Cable Works General, LLC, a Delaware limited liability company which holds a three per cent general partnership interest in Urban Cable and is ultimately controlled by Inner City

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Broadcasting Corporation (“Inner City”), a privately held New York corporation), and Urban Cable Works of Pennsylvania, LLC a Delaware limited liability company which holds a 57 per cent limited partnership interest in Urban Cable and also is ultimately controlled by Inner City; and

WHEREAS, Urban Cable currently operates the Area II Franchise pursuant to an assignment to and assumption by Urban Cable of a Franchise Renewal Agreement (the "Area II Franchise Agreement") which was executed on December 21, 1999 by the City as Franchisor and Wade Communications Partnership, d/b/a Wade Cablevision, as Franchisee, as approved by Bill No. 990843 approved December 16, 1999; and

WHEREAS, Urban Cable as a condition to the City of Philadelphia consent to the transfer of the Area II franchise to Urban Cable from Wade Communications Partnership also entered into an Assumption Agreement with the City of Philadelphia dated December 21, 1999 (the “Assumption Agreement”), as well as a Supporting Agreement with the City of Philadelphia dated December 21, 1999 (the “Supporting Agreement”) which was Exhibit A to the Assumption Agreement; and

WHEREAS, Time Warner Cable, a division of Time Warner Entertainment Company, L.P., a Delaware limited partnership and a subsidiary of Time Warner, Inc., currently manages the Area II franchise for Urban Cable pursuant to a Management Agreement dated as of June 3, 1999 between Urban Cable and Time Warner Cable; and

WHEREAS, Under the terms of the Area II Franchise Agreement, the Area II franchise terminates as of August 12, 2015; and

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WHEREAS, Time Warner Cable Inc., a Delaware company and a majority owned subsidiary of Time Warner, Inc. (“TW Cable”), entered into a Purchase Agreement dated as of June 30, 2004 with Urban Cable Works General, LLC and Urban Cable Works of Pennsylvania, LLC, as general and limited partners, respectively, of Urban Cable (the “Purchase Agreement”), a redacted form of which is attached as Exhibit A, whereby Urban Cable Works General, LLC and Urban Cable Works of Pennsylvania, LLC will sell and transfer their partnership interests in Urban Cable to TW Cable, pursuant to the terms of such Purchase Agreement, including the condition that consent of the City of Philadelphia as franchise authority be obtained (such sale and transfer of partnership interests is hereinafter referred to as the “Change of Control”); and

WHEREAS, TW Cable following the Change of Control intends to enter into an Agreement and Plan of Merger with Urban Cable (the “Merger Agreement”), a form of which is attached as Exhibit B, whereby Urban Cable will be merged with and into TW Cable, which will be the surviving entity, in accordance with the terms of the Merger Agreement and Delaware law, and all property rights and franchises of Urban Cable will vest in TW Cable and all debts, liabilities and duties of Urban Cable will become the debts, liabilities and duties of TW Cable (the merger and the transfer of assets and assumption of liabilities is hereinafter referred to as the “Merger”); and

WHEREAS, it is intended that TW Cable will become the franchisee for Area II effective upon the Change of Control and the Merger, that it will assume and be bound by

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all provisions, terms, and conditions of the Area II Franchise Agreement including any amendments thereto, the Assumption Agreement, and the Supporting Agreement; and

WHEREAS, TW Cable commits that it will assume and be bound by all of the provisions, terms and conditions of the Area II Franchise Agreement, the Assumption Agreement, and the Supporting Agreement; and

WHEREAS, Urban Cable and Urban Cable Works of Pennsylvania, LLC seek the consent of the City for the transfer of control of the Area II franchise and the transfer of the Area II franchise and all interests therein to TW Cable; and

WHEREAS, Article II, Section 10 of the Area II Franchise Agreement requires that the franchisee obtain the consent of the City by ordinance prior to the transfer of control of the franchise or transfer of the franchise or any interest therein; and

WHEREAS, The Change of Control and the Merger are events requiring the consent of the City by ordinance pursuant to Article II, Section 10 of the Area II Franchise Agreement; and

WHEREAS, Article II, Sections 10.c and 10.d of the Area II Franchise Agreement require Urban Cable to demonstrate the character and financial qualifications of the proposed new franchisee TW Cable, and Urban Cable and TW Cable have submitted documents so demonstrating, now, therefore,

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. City Council hereby consents, pursuant to Article II, Section 10 of the Area II Franchise Renewal Agreement (approved by Bill No. 990843, approved

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December 16, 1999) to the transfer of control of the Area II Franchisee Urban Cable Works of Philadelphia, L.P. (“Urban Cable”) from Urban Cable Works of Pennsylvania, LLC to Time Warner Cable Inc. (“TW Cable”), pursuant to the Purchase Agreement dated as of June 30, 2004 among TW Cable, Urban Cable Works General, LLC and Urban Cable Works of Pennsylvania, LLC, a redacted copy of which is attached hereto as Exhibit “A,” and also to the assignment and transfer of the Area II Franchise from Urban Cable to TW Cable, pursuant to an Agreement and Plan of Merger, a form of which is attached hereto as Exhibit “B,” by which two transactions TW Cable will first purchase the partnership interests in Urban Cable which Time Warner, Inc. does not currently control, and then will merge Urban Cable into TW Cable, and transfer to TW Cable the interests and obligations pursuant to the Area II Franchise Agreement and all amendments thereto, the Assumption Agreement and the Supporting Agreement, provided TW Cable executes an agreement substantially in the form attached hereto as Exhibit “C,” with additional provisions to the following effect, in specific form and content satisfactory to the City Solicitor:

1. Within 90 days following execution of this Assumption Agreement, TW Cable shall be in full material compliance with all terms and conditions of the Franchise Agreement, the 1999 Assumption Agreement and the 1999 Supporting Agreement or shall pay to the City liquidated damages as provided in the Franchise Agreement, or, in the case of the terms and conditions of the 1999 Assumption Agreement and Supporting Agreement, liquidated damages of two hundred and fifty dollars (\$250.00) per day for each day that such noncompliance continues and for each breach, and shall be subject to all other applicable remedies provided by the Franchise Agreement. Any imposition of liquidated damages with respect to the terms and conditions of the 1999 Assumption Agreement or Supporting

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Agreement shall be in accordance with the procedural requirements of the Franchise Agreement with respect to liquidated damages.

2. TW Cable shall submit to the City, not later than May 1, 2005, an updated revision of the Fifteen Year Projections attached as Exhibit B to the Supporting Agreement. The revised projections shall provide (i) actual figures for years 1999 through 2004 in each reporting category (except as reasonably agreed otherwise by the parties); (ii) projections for year 2005 in all reporting categories (except as reasonably agreed otherwise by the parties), including, but not limited to, operating and capital budgetary projections for year 2005; and (iii) further detail in the Capital Expenditures and Investment reporting category by identifying, in separate line items, projections for investments and projections for capital expenditures for head end equipment, distribution plant, subscriber equipment and other capital expenditures. TW Cable shall submit such revised projections each year, providing actual figures in each reporting category (except as reasonably agreed otherwise by the parties), for the preceding five (5) years, and projections in each reporting category for the upcoming year, including, but not limited to, operating and capital budgetary projections for the upcoming year. Such revised projections shall be subject to the confidentiality provisions of Article II, Section 11 of the Franchise Agreement.

and with such other additions, deletions and changes as the City Solicitor deems appropriate, to accomplish the undertaking by TW Cable that it will assume and be bound by all of the provisions, terms and conditions of the Area II Franchise Agreement and all amendments thereto, the Assumption Agreement and the Supporting Agreement, and all applicable federal, state and local laws and regulations; and will be primarily liable under the Area II Franchise Agreement and all amendments thereto, the Assumption Agreement and the Supporting Agreement, and all such laws and regulations.

SECTION 2. The Chief Clerk of City Council shall keep all Exhibits to this ordinance on file and make them available to the public for inspection and copying during regular office hours.