

ORDINANCE NO. 85-2005

Offered by All of Council

AN ORDINANCE OF THE VILLAGE OF RICHFIELD, OHIO CONDITIONALLY APPROVING THE REQUEST FOR AN ASSIGNMENT OF THE CABLE TELEVISION FRANCHISE FROM ADELPHIA TO TIME WARNER; AND DECLARING AN EMERGENCY.

WHEREAS, Adelphia Cleveland, LLC, an indirect wholly-owned subsidiary of Adelphia Communications Corporation (collectively "Adelphia") has the right to own, operate and maintain a cable system (the "Cable Franchise") in the Village of Richfield, Ohio, pursuant to a Franchise Agreement effective April 15, 2000 (the "Franchise Agreement"); and

WHEREAS, Adelphia and Time Warner NY Cable LLC ("TWN") entered into an Asset Purchase Agreement dated as of April 20, 2005 for an assignment of the Cable Franchise (the "Transfer") from Adelphia to TWNY, an indirect subsidiary of Time Warner Cable Inc. (together with TWNY, "Time Warner"), which will hold the Cable Franchise and operate the cable system in the Village; and

WHEREAS, on June 14, 2005, Adelphia and Time Warner submitted an FCC Form 394 dated June 10, 2005 to the Village, describing the Asset Purchase Agreement and Transfer and requesting the Village's consent to the proposed Transfer; and

WHEREAS, after reviewing the FCC Form 394 and other information submitted by Adelphia and Time Warner, the Village determined that the FCC Form 394 was incomplete and requested additional information from Time Warner in order to perform its due diligence review of the legal, technical and financial ability of Time Warner to perform the obligations of the Cable Franchise and consider the effect of the proposed Transfer on the health, safety and welfare of the citizens of Richfield, and additional information was supplied by Time Warner; and

WHEREAS, under federal law, the Village has a period of one hundred twenty (120) days to act on the request for consent to the Transfer, which period of time would have elapsed on or about October 11, 2005 but which was extended by agreement with Time Warner and Adelphia until and including October 25, 2005; and

WHEREAS, the Village has determined to approve the Transfer, provided that certain conditions as set forth in this Ordinance are met.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Richfield, Summit County, State of Ohio:

SECTION 1. That the Village of Richfield hereby consents to and approves the request to Transfer the Cable Franchise from Adelphia to TWNY, an indirect subsidiary of Time Warner Cable Inc., provided the following conditions are met:

- A. Prior to completion of the Transfer, Time Warner shall provide the Village with a Good Standing Certificate to do Business in the State of Ohio for TWNY.

- B. TWNY shall assume the obligations and requirements under the Franchise Agreement from and after the date of the Transfer.
- C. Pursuant to Section 8.3 of the Franchise Agreement, TWNY's Annual Performance Review to the Village for the remainder of the franchise term shall include (1) a description of all tiers or levels of service being offered in the Village with a description of any changes in any service during the reporting year and (2) a copy of TWNY's or its ultimate parent's annual report, if any.
- D. At the request of the Village, TWNY and/or Adelphia agree to engage in good faith discussions with the Village and/or One Cleveland regarding the Village's use of its Institutional Network.
- E. Within thirty (30) days of the Transfer, TWNY shall certify to the Village in writing that the Transfer has been completed, and that there has been no material change in the information disclosed to the Village pursuant to the request to approve the Transfer as described in FCC Form 394 dated June 10, 2005 and submitted to the Village on June 14, 2005 and additional information submitted by Time Warner subsequent to June 14, 2005.
- F. Within thirty (30) days of the Transfer, Time Warner Cable Inc. shall execute and provide the Village with a guaranty that will require it, as the parent company, to perform all obligations under which TWNY may be in default in connection with its operation of the Cable Franchise in the Village of Richfield, Ohio.
- G. Within thirty (30) days of the Transfer, TWNY shall provide the Village with a certificate of insurance in compliance with Section 10.8 of the Franchise Agreement.
- H. Within thirty (30) days of the Transfer, TWNY shall provide the Village with a Performance Bond in compliance with Section 10.3 of the Franchise Agreement.
- I. The Transfer shall be completed by October 1, 2006.
- J. TWNY shall execute the Franchise Transfer Acceptance attached to this Ordinance as Exhibit A within ten (10) business days of the passage of this Ordinance, indicating that it assumes and is bound by the terms and conditions of this Ordinance and all obligations of the Franchise under the Franchise Agreement from and after the time of Transfer.
- K. Time Warner and Adelphia agree and acknowledge that the Village reserves any and all rights it may have under the Adelphia bankruptcy proceedings in the United States Bankruptcy Court for the Southern District of New York, Case No. 02-41729 (REG) including but not limited

to each and every default, liability, breach or obligation, whether presently known or unknown, that may be asserted pursuant to the court ordered procedures governing the determination of cure amounts and the assumption and assignment of the Franchise Agreement.

L. Adelpia shall execute the Franchise Transfer Ordinance Acceptance attached to, and incorporated into, this Ordinance as Exhibit B within ten (10) business days of the passage of this Ordinance, indicating that it assumes and is bound by the terms and conditions of this Ordinance.

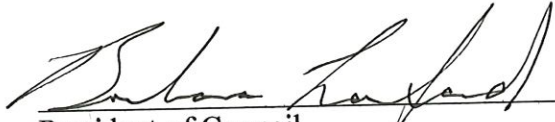
SECTION 2. The failure of Adelpia and/or TWNY or Time Warner Cable Inc. to satisfy each of their respective conditions in Section 1 above within the time specified shall mean that the Transfer is disapproved, and the Village's consent to the Transfer is denied, by operation of this Ordinance as of its effective date, unless such failure is cured within fifteen (15) days of notice of said failure to TWNY or Adelpia, as applicable.

SECTION 3 It is found and determined that all formal actions by the Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council, and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

SECTION 4 The Clerk of Council is hereby directed to serve a certified copy of this Ordinance by certified mail upon Adelpia and TWNY.

SECTION 5 This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the residents of this Village, in that it is necessary for the Village Council to take action to either approve or disapprove the Transfer request within the deadline established by federal law and for the Village and its residents to receive the advantages of the provisions contained in this Ordinance, for which reason and other reasons manifest to this Council, this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: 10/18/05

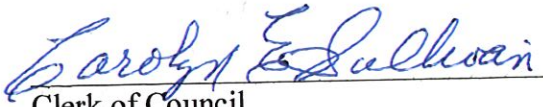


President of Council

ATTEST:



Mayor



Clerk of Council

Dated: 10/18/05

EXHIBIT A

TIME WARNER NY CABLE LLC FRANCHISE
TRANSFER ACCEPTANCE

Subject to the closing of that transaction more fully described in Ordinance No. __85-2005, Time Warner NY Cable LLC hereby accepts and agrees to abide by the terms and conditions of the Franchise Agreement between the Village of Richfield, Ohio and Adelphia Cleveland, LLC, effective April 15, 2000, and the Village of Richfield, Ohio's Ordinance No. 85-2005, adopted 10/18, 2005, conditionally approving and consenting to the transfer of the Village of Richfield, Ohio's Cable Television Franchise from Adelphia Cleveland, LLC to Time Warner NY Cable LLC.

Time Warner NY Cable LLC warrants and represents that this Franchise Transfer Acceptance is executed by a person lawfully authorized to act on its behalf and that this Franchise Transfer Acceptance is a legally binding obligation of Time Warner NY Cable LLC.

TIME WARNER NY CABLE LLC

By: [Signature]

Name: Gary R. Matz

Title: Vice President

STATE OF CT)
COUNTY OF Fairfield) SS:

The undersigned, a Notary Public in and for said County and State, hereby certifies that Gary R. Matz, the Vice President of Time Warner NY Cable LLC personally appeared before me and acknowledged that, having full authority so to do, he/she signed the foregoing Franchise Transfer Acceptance on behalf of Time Warner NY Cable LLC, in his/her capacity as Vice President, and that the same was his/her free and voluntary act and deed, and the free and voluntary act and deed of Time Warner NY Cable LLC.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Stamford, CT, on October 24, 2005.

Lucinda M. Seufert
Notary Public
My Commission Expires
June 30, 2008

[Signature]
Notary Public

EXHIBIT B

ADELPHIA FRANCHISE
TRANSFER ORDINANCE ACCEPTANCE

Adelphia hereby accepts and agrees to abide by the terms and conditions of the Village of Richfield, Ohio's Ordinance No. 85-2005, adopted Oct 18, 2005, conditionally approving and consenting to the transfer of the Village of Richfield, Ohio's Cable Television Franchise from Adelphia Cleveland, LLC to Time Warner NY Cable LLC.

Adelphia warrants and represents that this Franchise Transfer Ordinance Acceptance is executed by a person lawfully authorized to act on its behalf and that this Franchise Transfer Ordinance Acceptance is a legally binding obligation of Adelphia.

ADELPHIA CLEVELAND, LLC

By: _____

Name: _____

Title: _____

STATE OF Virginia)
City) SS:
COUNTY OF Charlottesville)

The undersigned, a Notary Public in and for said County and State, hereby certifies that Nancy Murphy, the Vice President of Adelphia Cleveland, LLC personally appeared before me and acknowledged that, having full authority so to do, he/she signed the foregoing Franchise Transfer Ordinance Acceptance on behalf of Adelphia Cleveland, LLC, in his/her capacity as Vice President, and that the same was his/her free and voluntary act and deed, and the free and voluntary act and deed of Adelphia Cleveland, LLC.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Charlottesville,
VA, _____ on October 19, 2005.

Melissa Height
Notary Public

CLIENT MEMORANDUM
-- PRIVILEGED & CONFIDENTIAL --

To: Mayor Michael K. Lyons, Village of Richfield
From: R. Todd Hunt & William Hanna
Date: October 17, 2005
RE: Transfer of Cable Franchise from Adelphia to Time Warner

Attached is a proposed Ordinance granting the Village's conditional consent to the transfer of the cable franchise from Adelphia to Time Warner. A brief description of the transfer process and the Ordinance follows.

As you know, Adelphia, currently in bankruptcy, is selling all of its Ohio cable franchises to Time Warner. The Village's franchise agreement requires the Village's consent before the franchise may be transferred to a new cable operator. Under the franchise and the federal Cable Act, the Village has 120 days from the date of the request for consent to review and act on the proposed transfer. The Village must either grant or deny the request within that period or the request will be deemed approved by law. Because Adelphia and Time Warner submitted their request for consent to transfer the franchise on June 14, 2005, the 120 day period expired on October 11, 2005. However, Time Warner and Adelphia have granted an extension until October 25, 2005, which means that Council will need to pass this Ordinance on an emergency basis at its meeting on Tuesday, October 18, 2005.

We have reviewed, on the Village's behalf, the legal, financial and technical qualifications of the newly created entity that will assume the cable franchise (Time Warner NY Cable LLC, or "TWN") and have consulted with you regarding the identification of areas in which Adelphia is not currently in compliance with the franchise and concerns regarding Time Warner's performance in the future.

Based upon the above review and compliance analysis, we recommend that the Village approve the proposed transfer, subject to Time Warner's consent to the conditions in the enclosed Ordinance. Based upon our negotiations with Time Warner, it is our understanding that Time Warner has accepted these conditions. The primary purpose of the conditions is to protect the Village by ensuring the legal and financial capabilities of TWNY and its agreement to accept the obligations of the franchise. You will note that Time Warner Cable Inc. will be providing a "parent guaranty" of the performance of its subsidiary, TWNY.

Please be advised that due to Adelphia's bankruptcy and the structure of the purchase transaction with Time Warner, Time Warner will only be responsible for defaults that arise or continue after the date the franchise is transferred. Bankruptcy law requires that Adelphia cure any and all defaults under the franchise before it can be assigned to Time Warner. Therefore, later this fall, Adelphia will be required to serve the Village with a notice of any defaults it believes exist under the current franchise (this type of notice is called a "Contract Notice" or

“Cure Notice”). The Village will have only *30 days* to respond to that Notice if the Village disagrees with its contents. ***If the Village fails to respond and object to the Notice within 30 days, the opportunity to pursue pre-transfer defaults (other than continuing defaults) will be waived and lost forever.***

For purposes of example, this would mean that if Adelphia has failed to pay franchise fees properly, the Village will need to identify the amount of underpayment and submit that information to the Bankruptcy Court within 30 days of receiving the Contract Notice — or lose the opportunity to pursue those underpaid fees (or other similar defaults) from Adelphia (or Time Warner). But Time Warner *will* be responsible for paying franchise fees from the date of transfer forward, and the Village *will* be able to audit Time Warner’s franchise fee payments from and after the date of transfer. And Time Warner will also be responsible for *all* ongoing obligations under the franchise agreement, such as providing bonds, liability insurance, cable connections and free cable service to public buildings, etc.

Should you have any questions about the enclosed ordinance or the transfer process, please contact us immediately. It has been a pleasure to represent the Village in connection with the transfer of the cable franchise from Adelphia to Time Warner.

290 Harbor Drive
Stamford, CT 06902-7441



VIA FEDERAL EXPRESS

February 10, 2006

Ms. Carolyn Sullivan
Clerk of Council
Village of Richfield
44100 West Streetsboro Road
Richfield, OH 44286

Re: Ordinance 85-2005

Dear Ms. Sullivan:

Enclosed please find Guaranty executed by Time Warner Cable pursuant to Ordinance 85-2005 as well as Good Standing Certificate to do Business in the State of Ohio for TWNY.

Very truly yours,

A handwritten signature in cursive script that reads "Huma Khan".

Huma Khan
Regulatory Paralegal

**United States of America
State of Ohio
Office of the Secretary of State**

I, J. Kenneth Blackwell, do hereby certify that I am the duly elected, qualified and present acting Secretary of State for the State of Ohio, and as such have custody of the records of Ohio and Foreign corporations; that said records show TIME WARNER NY CABLE LLC, a Delaware Limited Liability Company, Registration Number 1570306, filed on September 20, 2005, is currently in FULL FORCE AND EFFECT upon the records of this office.



*Witness my hand and the seal of the
Secretary of State at Columbus, Ohio
this 12th day of October, A.D. 2005*

A handwritten signature in cursive script that reads "J. Kenneth Blackwell".

Ohio Secretary of State

Validation Number: V20052850A1A17

GUARANTEE

GUARANTEE, dated as of Feb 10, 2006, made by TIME WARNER CABLE INC., a Delaware corporation ("Guarantor"), in favor of the Village of Richfield, Ohio ("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 the franchise from Adelphia, (the "Franchise") to Time Warner NY Cable LLC ("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) Effective upon the close of the Adelphia Transfer, Guarantor unconditionally and irrevocably guarantees to Beneficiary the timely and complete performance of all Transferee obligations under the Franchise (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) any 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.

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.

4. Representations and Warranties. Each of Guarantor and Beneficiary represents and warrants that: (i) 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 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. This Guarantee, when executed and delivered by Beneficiary, will constitute a valid and legally binding obligation of Guarantor, enforceable against it in accordance with its terms, 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).

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:

Village of Richfield
Co Mayor
1440 W. Streetsboro Road, Richfield, OH 44286
Telephone: *(330) 659-9201*
Telecopy: _____
Attention: *Mayor*

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 OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

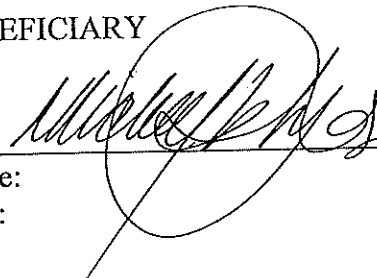
14. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS GUARANTEE AND FOR ANY COUNTERCLAIM THEREIN.

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: David O'Hayre
Title: EVP, Investments

BENEFICIARY

By: 
Name:
Title: