

**TOWN OF ADDISON, TEXAS**

**ORDINANCE NO. 005-061**

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, PROVIDING CONDITIONAL APPROVAL OF CONSENT OF THE TRANSFER OF A CABLE FRANCHISE AGREEMENT FROM AN ENTITY CONTROLLED BY COMCAST CORPORATION TO C-NATIVE EXCHANGE II, LP; PROVIDING FOR THIS ORDINANCE TO BECOME NULL AND VOID IN CERTAIN CIRCUMSTANCES AS SET FORTH HEREIN; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Addison, Texas (the "City") has previously granted a cable television franchise, set forth in Ordinance No. 099-011 of the City, as amended (the "Franchise"), to an entity (hereinafter referred to as "Franchisee") presently controlled by 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 owned and operated by Franchisee within the City and the Franchise to C-Native Exchange II, LP ("New Franchisee"), which will become an indirect subsidiary (but subject to the direction and control) of Time Warner Cable (the "Transaction"); and

**WHEREAS**, Franchisee and Time Warner Cable have requested the City's consent to transfer of the Franchise and have filed a FCC Form 394 with the City requesting such consent; and

**WHEREAS**, C-Native Exchange II, LP agrees to abide by all the terms, conditions, standards, duties, responsibilities, and obligations of the franchisee under the Franchise upon the closing of the Transaction; and

**WHEREAS**, C-Native Exchange II, LP, 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, 79<sup>th</sup> Texas Legislature, 2<sup>nd</sup> 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 and subject to the conditions set forth herein.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:**

**Section 1.** All matters stated in the above preamble to this Ordinance are found to be true and correct and are incorporated herein as if copied in their entirety.

**Section 2.** Time Warner Cable and New Franchisee agree that upon the closing of the Transaction, New Franchisee will abide by all terms of the Franchise and its amendments, and all other ordinances of the Town of Addison.

**Section 3.** 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.** Subject to the closing of the Transaction and Time Warner Cable and the New Franchisee's compliance with the provisions contained herein, the Town of Addison accepts the transfer of the Franchise to C-Native Exchange II, LP. Such acceptance does not preclude further investigation and action by the City of any potential Franchise violations or non-compliance issues, including those occurring prior to the closing of the Transaction. With respect to any violation or non-compliance issues that are not extinguished prior to closing of the Transaction, the City will have all rights following the closing of the Transaction to continue investigation of such matters and to pursue action as determined by the City in connection therewith under the terms set forth in the Franchise.

**Section 5.** Time Warner Cable and New Franchisee acknowledge that the City has certain Franchise fee audit rights pursuant to the Franchise. Time Warner Cable and New Franchisee assure that they do 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 and New Franchisee assume control of the Franchise will be accompanied by a statement itemizing the revenue categories by account 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.** 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 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.** 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, 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 Town of Addison, and this Ordinance shall thereafter be deemed null and void.

**Section 8.** 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, Franchisee shall inform the City of any uses of the Cable System by persons who are not Cable Operators.

**Section 9.** In the event that the Transaction is not closed by October 1, 2006, this Ordinance will become and shall be deemed to be null and void. Until the closing of the Transaction, the Franchisee (an entity controlled by Comcast, and reflected in the Form FCC 394 filed in connection with the Transaction as being Comcast of Texas II, LP) 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 Form 394 and related actions up to the amount of \$500.

**Section 10.** The provisions of this Ordinance are severable, and if any section, paragraph, subdivision, clause, phrase, provision or word of this ordinance shall be judged, by a final, non-appealable judicial order or judgment, to be invalid or unconstitutional, such order or judgment shall not affect the remainder of this Ordinance.


**Section 11.** If any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance which shall remain in full force and effect.

**Section 12.** This Ordinance shall take effect upon its adoption in accordance with the provisions of the City Charter.

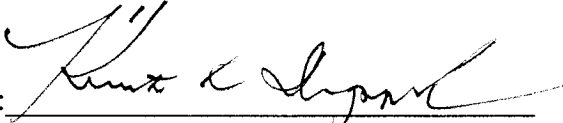
**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the 8th day of November, 2005.

  
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Joe Chow, Mayor

ATTEST:

By:   
\_\_\_\_\_  
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By:   
\_\_\_\_\_  
Ken Dippel, City Attorney

Published  
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12-22-05

