

**CITY OF SAN ANTONIO**  
**Finance Department**  
**Interdepartmental Correspondence Sheet**

**CONSENT AGENDA**  
**ITEM NO. 57**

**TO:** Mayor and City Council  
**FROM:** Ben Gorzell Jr. CPA, Public Utilities Supervisor/Assistant Director, Finance Department  
**THROUGH:** Terry M. Brechtel, City Manager  
**COPIES:** Melissa Byrne Vossmer, Assistant City Manager; Andrew Martin, City Attorney, file  
**SUBJECT:** An Ordinance Consenting, Subject to Certain Conditions, to the Transfer and Assignment of the Cable Television Franchise and The Cable System Held by Paragon Communications to Time Warner Cable, Inc.  
**DATE:** December 12, 2002

**SUMMARY AND RECOMMENDATION**

This ordinance authorizes the City's consent to the transfer or assignment of the Cable Television Franchise from AOL Time Warner, Inc. to Time Warner Cable, Inc. and waives the procedural requirements of Section 6 of the Cable Franchise Agreement regarding the transfer of rights through a bill of sale.

Staff recommends approval of this ordinance.

**BACKGROUND INFORMATION**

Time Warner Cable operates under a franchise agreement originally granted to UA Columbia Cablevision of Texas, Inc. in 1978. This original franchise agreement has been transferred several times with acquisitions, reorganizations, and changes in ownership of the original franchise. As a result of these changes Paragon Communications (d/b/a Time Warner Cable), a subsidiary exclusively controlled by AOL Time Warner, Inc. (AOLTW), is the current franchisee. The franchise agreement was for a term of (15) fifteen years and was renewed for an additional (10) ten years and will expire in 2003.

On September 3, 2002, Time Warner Cable notified the City that AOLTW, AT&T Corp., and Comcast Corporation have entered into an agreement that will result in the transfer of all cable systems and franchises, of which the Franchise and the System in the City is one, to Time Warner Cable, Inc. Currently, through intermediate subsidiaries, AOLTW has 100% ownership in the Franchise and Cable System being operated in the City. As a result of the agreement, AOLTW will own at least 65%, with 77% voting interest and the public will own up to 35%, with 23% voting interest in Time Warner Cable Inc., the subsidiary which will be the transferee.

Time Warner Cable has submitted to the City FCC Form 394, "Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise." Time Warner Cable which holds the current cable franchise from the City of San Antonio will remain in existence and continue to be the franchise holder and operator of the cable television system. The consent to the transfer will have no impact on the existing cable system, its operations or local management under the Franchise Agreement and Time Warner Cable has reiterated the following in their notification to the City:

- All obligations under the current franchise will be expressly assumed by Time Warner Cable;
- Local management and staff will remain the same;
- There will be no change in the franchise control. The day-to-day management and operation of the cable system will continue to be the sole and exclusive responsibility of Time Warner Cable;
- There will be no impact on current business policies or practices; and,
- Local management will continue to report to the same executives of Time Warner Cable.

In order to preserve any and all claims the City might have regarding franchise compliance issues, staff recommends consent to TWC's request subject to the conditions set out below. If any of the conditions specified above are not satisfied, then the City's consent to the Transfer of the Franchise and the System from Paragon to Transferee is denied. The conditions are as follows:

- The transfer shall be consummated within (180) one hundred eighty days of the date that this Ordinance is passed and approved;
- The City's consent to the Transfer shall not constitute a waiver or release of any of the City's rights under the Franchise or applicable federal, state or City law, or of any claims the City may have against the franchiseholder or its predecessors or successors regardless of the date of occurrence;
- Transferee shall (i) assume and be responsible for all of the obligations and liabilities to the City regardless of the date of occurrence, and (ii) agree to be bound by and comply fully with the Franchise;
- Neither the System nor the rights and privileges granted by the Franchise shall be assigned or transferred without filing a written application to the City and obtaining the City's prior written consent to such assignment or transfer;
- Within (30) thirty days of the consummation of the Transfer, Transferee shall file with the City a Transferee Franchise Acceptance; and,
- Within (15) fifteen days of the passage and approval of this Ordinance, Paragon shall file with the City a Paragon Transfer Acceptance.

The proposed ordinance also waives the procedural requirements of Section 6 of the existing Franchise Agreement regarding the transfer of rights through a bill of sale or similar document.

#### **FISCAL IMPACT**

Under the existing franchise agreement, Time Warner Cable pays the City 5% of Gross Revenues. For Fiscal Year 2002, the City received \$8 million in franchise fee compensation from Time Warner Cable. The consent to the transfer has no impact on the financial provisions of the existing franchise agreement.

**COORDINATION**

The proposed Ordinance has been coordinated with Tim Lay, outside counsel with Miller, Canfield, Paddock and Stone, P.L.C., and the City Attorney's Office.

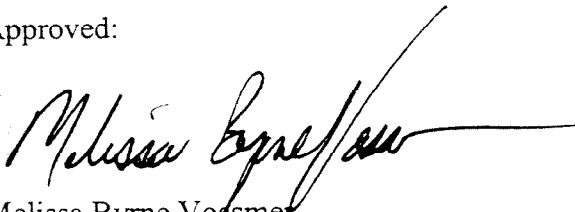
**SUPPLEMENTARY COMMENTS**

Disclosure documents required by the City's Ethics Ordinance are attached.



Ben Gorzell, Jr., CPA  
Public Utilities Supervisor/  
Assistant Director of Finance

Approved:



Melissa Byrne Vossmer  
Assistant City Manager

  
dr Terry M. Brechtel  
City Manager

## City of San Antonio Discretionary Contracts Disclosure\*

For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2  
Attach additional sheets if space provided is not sufficient.  
State "Not Applicable" for questions that do not apply.

\* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

### Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract

N/A

(2) the identity of any business entity that would be a party to the discretionary contract

Paragon Communications, a Colorado General Partnership

and the name of:

(A) any individual or business entity that would be a subcontractor on the discretionary contract

N/A

and the name of:

(B) any individual or business entity that is known to be a partner, or a parent or subsidiary business entity, of any individual or business entity who would be a party to the discretionary contract

N/A

<sup>1</sup> A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

(3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

The Francis Law Firm, P.C.

### Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
See Attached Schedule		

### Disclosures in Proposals

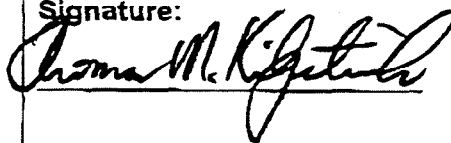
Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which reasonably understood raise a question<sup>2</sup> as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

Paragon Communications, a Colorado General Partnership

By: KBL Communications, Inc., a Delaware Corp.  
its Managing General Partner

By:

Signature:



Title: V.P. of Finance and Accounting

Date:

Company: KBL Communications, Inc.

12/05/02

<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

**THE FRANCIS LAW FIRM, A PROFESSIONAL CORPORATION**  
**POLITICAL CONTRIBUTIONS**  
**PAST 24 MONTHS**

TO WHOM MADE	AMOUNT
David Carpenter	\$250.00
Enrique M. Barrera	\$500.00
Antioniette R. "Toni" Moorhouse	\$100.00