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COUNCIL OF THE CITY OF PHILADELPHIA

3

PUBLIC HEARING

4

COMMITTEE ON PUBLIC PROPERTY

5

AND PUBLIC WORKS

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Room 400, City Hall
Philadelphia, Pennsylvania
Thursday, February 24, 2005
9:30 a.m.

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BILL 041071 - 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...

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PRESENT:

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COUNCILMAN DARRELL CLARKE, Chair

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COUNCILMAN FRANK RIZZO

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COUNCILMAN JAMES KENNEY

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COUNCILMAN MICHAEL NUTTER

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COUNCILWOMAN MARIAN TASCO

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COUNCILMAN JUAN RAMOS

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I N D E X

BILL 041071	PAGE
JOSEPH JAMES, Public Property.....	3

1 02/24/05 - PUBLIC PROPERTY - BILL 041071

2 COUNCILMAN CLARKE: Good morning.

3 We are reconvening the Committee on Public
4 Property and Public Works that was recessed
5 from February the 27th. We now have a quorum.
6 Present at this Committee is Councilman Ramos,
7 Councilman Kenney, Councilwoman Tasco and
8 Councilman Rizzo. Let the record reflect also
9 that Councilman Nutter is also at this
10 particular hearing.

11 Will the Clerk please read the title
12 of the bill?

13 THE CLERK: Bill No. 041071, an
14 ordinance consenting to the transfer of
15 control of the Area II cable television
16 franchise from Urban Cable Works of
17 Pennsylvania, LLC, to Time Warner Cable, Inc.,
18 and to transfer the assignment of the Area II
19 cable television franchise from Urban Cable
20 Works of Philadelphia, L.P., to Time Warner
21 Cable, Inc., both under certain terms and
22 conditions.

23 COUNCILMAN CLARKE: Thank you.

24 Mr. James.

25 MR. JAMES: Good morning. My name

1 02/24/05 - PUBLIC PROPERTY - BILL 041071
2 is Joseph James, Deputy commissioner for the
3 Department of Public Property. Good morning
4 to the Chair and Members of Council.

5 We completed our testimony from the
6 Department. What we like to do is enter an
7 amendment to the original bill that has an
8 impact on Exhibit C. I would like to read the
9 amended language. The amendment reads, Time
10 Warner Cable executes an agreement
11 substantially in the form attached hereto as
12 Exhibit C with additional provisions to the
13 following effect and specific form and content
14 satisfactory to the City Solicitor.

15 One, within 90 days following
16 execution of this assumption agreement, Time
17 Warner Cable shall be in full material
18 compliance with all terms and conditions of
19 the franchise agreement, the 1999 assumption
20 agreement, and the 1999 supporting agreement
21 or shall pay to the City liquidated damages as
22 provided in the franchise agreement or in the
23 case of terms and conditions of the 1999
24 assumption agreement and supporting agreement
25 liquidated damages of \$250 per day for each

1 02/24/05 - PUBLIC PROPERTY - BILL 041071
2 day that such noncompliance continues and for
3 each breach and shall be subject to all
4 applicable remedies provided by the franchise
5 agreement. Any imposition of liquidated
6 damages with respect to the terms and
7 conditions 1999 assumption agreement or
8 supporting agreement shall be in accordance
9 with the procedural requirements of the
10 franchise agreement with respect to liquidated
11 damages.

12 Number Two, Time Warner Cable shall
13 submit to the City not later than May 1, 2005,
14 an updated revision of the 15-year projections
15 attached as Exhibit B to the supporting
16 agreement. The revised projections shall
17 provide: One, actual figures for years 1999
18 through 2004 in each reporting category except
19 as reasonably agreed otherwise by the parties;
20 two, projections for year 2005 in all
21 reporting categories except as reasonably
22 agreed otherwise by the parties, including but
23 not limited to Operating and Capital Budgetary
24 projections for year 2005; and three, further
25 detail in the capital expenditures and

1 02/24/05 - PUBLIC PROPERTY - BILL 041071
2 investment reporting category by identifying
3 in separate line items projections for
4 investments and projections for capital
5 expenditures for head-in equipment,
6 distribution plant, subscriber equipment and
7 other capital expenditures. Time Warner Cable
8 shall submit such revised projections for year
9 providing actual figures in each reporting
10 category except as reasonably agreed otherwise
11 by the parties for the preceding five years
12 and projections in each reporting category for
13 the upcoming year, including but not limited
14 to Operating and Capital Budgetary projections
15 for the upcoming year. Such revised
16 projections shall be subject to the
17 confidentiality provisions of Article 2,
18 Section 11 of the franchise agreement.

19 The Department asks that the
20 original Bill 041071 be some voted out with a
21 fable recommendation with the amendment, as
22 read.

23 COUNCILMAN CLARKE: Thank you.

24 Are there any questions of this
25 witness by members of the Committee?

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2 (No response.)

3 COUNCILMAN CLARKE: The amendments
4 have been circulated?

5 MR. JAMES: Yes, they have.

6 COUNCILMAN CLARKE: Thank you.
7 Councilman Nutter.

8 COUNCILMAN NUTTER: Thank you, Mr.
9 Chairman.

10 No questions for Mr. James. I
11 appreciate his work in this particular matter
12 and also bringing forward the proposed
13 amendments. At the appropriate time, Mr.
14 Chairman, whether in the public hearing or in
15 the public meeting, I would have some
16 additional comments to be made with regard to
17 this matter, but I'll wait until the Chair's
18 direction for that particular moment. But I
19 want to thank Mr. James and the Department of
20 Public Property and the Law Department for
21 their extensive efforts in working on this
22 matter. Thank you.

23 COUNCILMAN CLARKE: I concur.

24 MR. JAMES: One clarification. In
25 the amended bill, as we circulated, there's a

1 02/24/05 - PUBLIC PROPERTY - BILL 041071
2 deletion of the provision that was originally
3 in the agreement, it's on the last page, B.
4 What I read to you replaces that. Of course,
5 we ask that the Rules be waived so that the
6 bill voted at the next hearing.

7 COUNCILMAN CLARKE: Councilwoman
8 Tasco.

9 COUNCILWOMAN TASCO: Are these the
10 Administration's amendments?

11 MR. JAMES: Yes.

12 COUNCILWOMAN TASCO: Could you
13 explain the amendments, why you are amending
14 this in this manner?

15 MR. JAMES: Sure. The amendments
16 are being put forth with concurrence from
17 Time Warner to, one, kind of clarify that the
18 original 1990 assumption agreement and the
19 supporting agreement when the original
20 transfer occurred did not have any liquidated
21 provisions for nonperformance. So what we've
22 done is made this consistent to the original
23 franchise agreement and attached liquidated in
24 areas where there would be noncompliance as it
25 relates to the supporting agreement and the

1 02/24/05 - PUBLIC PROPERTY - BILL 041071

2 assumption agreement from 1999.

3 The second part really deals with
4 the issue as far as monitoring the performance
5 of the franchise going forward. When we did
6 the transfer back in 1999, it followed, of
7 course, a renewal of the agreement for Wade
8 Cable Vision for Area II 2. Then we did the
9 transfer to a new entity called Urban Cable
10 Works which had Time Warner as a minority
11 partner. In that original bill, there was a
12 15-year projection that kind of laid out what
13 they -- kind of a per forma where they thought
14 they would be going in 15 years to kind of
15 give both Council and the Administration a
16 sense of their ability to perform and
17 successfulness going forward. What this
18 amendment attempts to do is to go back and
19 recapture their actual performance
20 year-to-date for the years 1999 through 2004,
21 and it also now requires that they continue to
22 update that 15-year projection as we go from
23 year to year with one-year budgetary numbers
24 as well as a recapture of the actual so that
25 Council and the Administration will have both

1 02/24/05 - PUBLIC PROPERTY - BILL 041071
2 a working document that tracks their
3 performance from the time that originally
4 started out with the partnership agreement and
5 now tracks it as just the Time Warner entity.
6 And where there are any issues as far as
7 concerns about investments in either capital
8 or equipment, it will be documented as part of
9 this agreement. So this is an attempt to kind
10 of give us a better picture of how they're
11 moving forward and also share that information
12 with Council.

13 COUNCILWOMAN TASCO: Okay.

14 COUNCILMAN CLARKE: Thank you.

15 Councilman Rizzo.

16 COUNCILMAN RIZZO: Commissioner,
17 could you explain some process for us? Could
18 you explain the FCC's role in this transaction
19 and the action that Council is taking versus
20 what the Federal Communications Commission
21 does here?

22 MR. JAMES: There are federal
23 regulations promulgated by the FCC that tracks
24 the compliance of the cable franchise and the
25 local municipalities in our local areas. And

1 02/24/05 - PUBLIC PROPERTY - BILL 041071
2 one of the requirements as relates to this
3 particular ordinance is that the new applicant
4 who is planning to acquire a franchise is
5 required to submit form called an FCC 394
6 which details questions about who they are and
7 in the areas that we are looked to review have
8 to deal with the technical ability, the
9 operating ability, and the financial
10 capabilities of the applicant. That FCC form
11 is submitted to the local jurisdiction for us
12 to review. The local jurisdiction then has
13 the opportunity to ask questions. There is a
14 time-sensitive element to that that says that
15 once the form is submitted to the local
16 jurisdiction, they have 120 days to take
17 action on that. If they do not take any
18 action, then from the federal regs it's deemed
19 approved for the applicant.

20 We received this back in August. We
21 have since asked substantive questions and
22 received additional material. We believe the
23 120-day clock started in November and that it
24 would expire around March the 9th.

25 COUNCILMAN RIZZO: So no matter what

1 02/24/05 - PUBLIC PROPERTY - BILL 041071

2 we do here, the FCC will approve this
3 transaction; is that correct?

4 MR. JAMES: Well, the applicant can
5 take the opinion that if the City takes no
6 action by March 9th, then their application is
7 automatically approved and they can move
8 forward.

9 COUNCILMAN RIZZO: Thank you.

10 COUNCILMAN CLARKE: Thank you,
11 Councilman.

12 Thank you, sir.

13 MR. JAMES: Thank you.

14 COUNCILMAN CLARKE: Anyone else to
15 testify on this bill?

16 Councilman, would you want to make
17 your statements now before we go into the
18 public meeting?

19 COUNCILMAN NUTTER: Thank you, Mr.
20 Chairman.

21 First, I want to thank the Chairman
22 for the incredible flexibility and patience
23 tat he and all the members of the Committee
24 have demonstrated through this process. There
25 have been any number of hearings. They have

1 02/24/05 - PUBLIC PROPERTY - BILL 041071
2 been extensive. There's been a significant
3 amount of detailed information laid out on
4 this record. And I, for my role in this and
5 as the sponsor of the legislation in
6 conjunction with Councilwoman Blackwell,
7 greatly appreciate the work that has been done
8 in this particular matter.

9 I would, again, say that this
10 Committee has truly done its work in asking
11 the necessary question that are pursuant to
12 the interests of the citizens of this City and
13 certainly the subscribers or potential
14 subscribers in the franchise area in
15 evaluating the qualifications and suitability
16 of the proposed new owner.

17 And while there is also significant
18 testimony and information on this record
19 regarding a variety of issues, we all know
20 that ultimately, as Councilmembers, we must
21 make an individual decision based on our
22 individual judgment of the information
23 provided, the credibility of that information,
24 and the answers provided to the questions that
25 members have asked. That is the standard by

1 02/24/05 - PUBLIC PROPERTY - BILL 041071

2 which I am sure all of us will look at this
3 particular matter.

4 There are, Mr. Chairman and members
5 of the Committee, I would suggest to you, a
6 number of questions that still, at least for
7 myself, remain questions with information not
8 necessarily answers, questions that have been
9 put on this record by the Public Property
10 Department regarding past noncompliance issues
11 with regard to the franchise agreement,
12 present operational issues that have been used
13 and not completely responded to regarding the
14 number of subscribers and whether subscription
15 rates are, in fact, going down, which they
16 appear to be over the past few years,
17 penetration rates and ratios calculated based
18 on the numbers that have been provided.

19 This morning, I received and I
20 appreciate from Urban Cable Works some
21 information about 20, 25 minutes ago related
22 to minority and female contract participation
23 and possibly employment. I literally have not
24 had a chance to look at it. What is clearly
25 unresolved and is a major issue as we look at

1 02/24/05 - PUBLIC PROPERTY - BILL 041071
2 franchise Area II, its long history of either
3 minority ownership, participation, investment,
4 opportunity or any other configuration, we
5 know in this particular transaction there is
6 presently any plan for active, direct, and
7 involved minority participation or ownership
8 with regard to the new proposed franchise
9 ownership coming out of this proposed
10 transaction. That is deeply troubling to me,
11 and I know that issue has been raised by any
12 number members of the Committee. With that in
13 mind, and I know based on the statement made
14 by Mr. James in response to Councilman Rizzo's
15 question, I know that some action must be
16 taken by this Committee, but I would only
17 suggest to that for any number of reason, but
18 certainly with regard to the lack of a current
19 minority participation plan involving
20 ownership opportunity, I have still grave
21 concerns about this transaction and I would
22 only ask the Committee take that and other
23 factors into consideration when we talk about
24 issues of qualifications or suitability. I
25 will respect the judgment, of course, of this

1 02/24/05 - PUBLIC PROPERTY - BILL 041071
2 Committee in conducting the work of the
3 Committee, but I thought it important as a
4 member who represents at least a part of the
5 franchise area that I would lay these views on
6 the record for your review.

7 Thank you, Mr. Chairman. I
8 appreciate the opportunity to speak on this
9 particular matter.

10 COUNCILMAN CLARKE: Thank you,
11 Councilman. I concur with your statements. I
12 want to say prior to any action from the
13 Committee on the record that I understand that
14 there are still some outstanding questions as
15 it relates to minority participation, other
16 aspects of the performance levels of the
17 current franchise. I would like to say prior
18 to either ultimate passage or non-passage of
19 the bill if in fact it comes out of
20 Committee -- I'm speculating here -- that any
21 information or any questions that any of the
22 Councilmembers have on this particular issue,
23 please feel free to forward that to the Chair
24 so we can subsequently send that information
25 to the pertinent parties and hopefully get the

1 02/24/05 - PUBLIC PROPERTY - BILL 041071

2 appropriate responses prior to any final
3 action taken by the full Council.

4 That being said, we are now going
5 from the public hearing to the public meeting.

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COUNCIL OF THE CITY OF PHILADELPHIA

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PUBLIC MEETING

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COMMITTEE ON PUBLIC PROPERTY

6

AND PUBLIC WORKS

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Thursday, February 24, 2005

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Public meeting conducted by the
Committee on Public Property and Public Works,
held in Room 400, City Hall, Philadelphia,
Pennsylvania, on the above date, to consider
action on the following:

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BILL 041071.

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PRESENT:

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COUNCILMAN DARRELL CLARKE, Chair

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COUNCILMAN FRANK RIZZO

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COUNCILMAN JAMES KENNEY

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COUNCILMAN MICHAEL NUTTER

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COUNCILWOMAN MARIAN TASCO

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COUNCILMAN JUAN RAMOS

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1 02/24/05 - PUBLIC PROPERTY - PUBLIC MEETING

2 COUNCILMAN CLARKE: Councilman
3 Kenney can you please give me a motion on the
4 amendment?

5 COUNCILMAN KENNEY: Mr. Chairman, I
6 move that Committee approve the amendments to
7 Bill No. 040071.

8 COUNCILWOMAN TASC0: Second.

9 COUNCILMAN CLARKE: All in favor?
10 (Aye.)

11 COUNCILMAN CLARKE: All opposed?
12 (No response.)

13 COUNCILMAN CLARKE: The amendments
14 have been approved on Bill No. 041071.

15 Councilman Kenney, can I ask for a
16 motion.

17 COUNCILMAN KENNEY: Mr. Chairman, I
18 move that Bill No. 041071, as amended, be
19 reported out of this Committee with no
20 recommendation, and further request for
21 suspension of rules to allow for first reading
22 at the next Council Session.

23 COUNCILMAN RAMOS: Second.

24 COUNCILMAN CLARKE: All in favor?
25 (Aye.)

1 02/24/05 - PUBLIC PROPERTY - PUBLIC MEETING

2 COUNCILMAN CLARKE: Let the record
3 reflect that Bill No. 041071 is reported out
4 of Committee with no recommendation and
5 request for a suspension of the rules has been
6 granted and will be placed on the next Session
7 of Council.

8 Thank you very much for your time.

9 Have a good day, and be careful going home.

10 (Council adjourned at 9:45 a.m.)

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RE: COMMITTEE ON PUBLIC PROPERTY

14

AND PUBLIC WORKS

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Lisa C. Bradley, RPR

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