



**CITY OF TYLER, TEXAS
CITY COUNCIL COMMUNICATION**

Agenda Number: O-

Date: February 8, 2006

Subject: Consider adopting an Ordinance amending Chapter 15, “Franchises”, Article II, “Cable Television Franchise”, by consenting to a Transfer of the Cox Southwest Holdings, L.P. (“Grantee”) Cable Franchise to Cebridge Acquisition, L.P. d/b/a Cebridge Connections (“Cebridge”), subject to Cebridge’s compliance with the provisions contained therein; requiring a written Acceptance by the Cox the Grantee, and Cebridge; and establishing an effective date.

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Item Reference: City Code Chapter 15, “Franchises”, Article II, “Cable Television Franchise”, Division 4, “Miscellaneous Provisions”, Section 15-75

The Tyler City Charter states that no holder of a franchise shall have the right to transfer or assign such franchise to any other person, firm, or corporation without the consent of a majority of the entire Council. Additionally, the City Code requires that a franchise shall not be assigned or transferred without the prior written consent of the City.

Cox Southwest Holdings, L.P. (“Grantee”) is a wholly owned subsidiary of Cox Communications, Inc. and is currently a Grantee for cable services in the City of Tyler, Texas pursuant to Ordinance No. 0-2005-66 of the City. Cox the “Grantee”, and Cebridge LLC have requested the City’s consent to transfer of the Cable Franchise to “Cebridge”, and have filed a FCC Form 394 with the City requesting such consent. “Cebridge” will become an indirect subsidiary (but subject to the direction and control) of Cebridge Connections Holdings, LLC.

In 2005, the Texas Legislature passed a law that resulted in a fundamental change in franchise relations with cable and telephone companies. The law now requires a state permit for all cable or video service providers, except those that currently have or had previously received a franchise to provide service with respect to a municipality until the expiration date of the existing franchise agreement.

In its request for consent to transfer, Cebridge has expressed its agreement that, upon the closing of the transfer transaction, it shall be the successor entity to the incumbent cable service provider, pursuant to Texas law, including Chapter 66, Texas Utilities Code, [Sec. 66.004 (a) and (c)] as adopted by S.B. 5, 79th Texas Legislature, 2nd Called Session. As such, it is Cebridge’s

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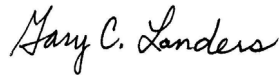
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intent and agreement that it will be operating under the Franchise being transferred from the current incumbent cable provider (Cox) in the City and to be the incumbent cable provider in the City under applicable law as if it were, and had at all times been, the incumbent cable provider in the City under the Franchise as of September 1, 2005 thereunder since that date regardless of the actual date of the Franchise transfer. Cebridge additionally agrees to abide by all the terms, conditions, standards, duties, responsibilities, and obligations of the Grantee under the Franchise upon the closing of the transfer transaction.

The City has used attorney Clarence West as a resource on cable matters, who has reviewed the related transfer, consent, and acknowledgement documents.

Recommendation:

It is recommended that the City Council consider adopting an Ordinance amending Chapter 15, "Franchises", Article II, "Cable Television Franchise", by consenting to a Transfer of the Cox, L.P. Cable Franchise to Cebridge, subject to Cebridge's compliance with the provisions contained therein; and requiring a Written Acceptance by the Grantee and Cebridge.



**Drafted/Recommended By: Gary C. Landers
Department Leader**

**Edited/Submitted By:
City Manager**

ORDINANCE NO. 0-2006-18

AN ORDINANCE AMENDING CHAPTER 15, "FRANCHISES", BY CODIFYING CONSENT TO TRANSFER OF THE COX SOUTHWEST HOLDINGS,L.P. ("GRANTEE") CABLE FRANCHISE TO CEBRIDGE ACQUISITION, L.P. D/B/A CEBRIDGE CONNECTIONS , SUBJECT TO CEBRIDGE'S COMPLIANCE WITH PROVISIONS CONTAINED HEREIN; REQUIRING A WRITTEN ACCEPTANCE BY COX AND CEBRIDGE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Tyler City Charter, Article V. "Franchises, Public Utilities and Improvements", Section 39. "Extension beyond term of franchise prohibited; surrendering and receiving anew; use, transfer assignment; supervisor of public utilities", provides that no holder of a franchise heretofore or hereafter granted shall have the right to transfer or assign such franchise to any other person, firm, or corporation without the consent of a majority of the entire Council; and

WHEREAS, the Tyler City Code Chapter 15, "Franchises", Section 15-41., "Transfers and Assignments", requires that a franchise shall not be assigned or transferred without the prior written consent of the city; and

WHEREAS, Cox Southwest Holdings, L.P. (hereinafter referred to as "Grantee") is currently a Grantee for cable services in the City of Tyler, Texas (the "City") pursuant to Ordinance No. 0-2005-66 of the City (the "Franchise"); and

WHEREAS, Grantee is a wholly owned subsidiary of Cox Communications, Inc.; and

WHEREAS, Grantee and Cebridge 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, pursuant to an Asset Purchase Agreement dated October 31, 2005 between Cebridge Acquisition Co. LLC ("Cebridge LLC") and Cox and certain related entities (the "Agreement"), Cox will cause the Grantee to sell and transfer the cable system owned and operated by Grantee within the City ("Transfer") to Cebridge Acquisition, L.P d/b/a/ Cebridge Connections ("Grantee"), which will become an indirect subsidiary (but subject to the direction and control) of Cebridge Connections Holdings, LLC (the "Transaction"); and

WHEREAS, current state law provides that a cable or video service provider that currently has or had previously received a franchise to provide cable or video service with respect to a municipality is not eligible to seek a state-issued certificate of franchise authority as to that municipality until the expiration date of the existing franchise agreement; and

WHEREAS, Cebridge agrees that, upon the closing of the Transaction, it shall be the successor entity to the incumbent cable service provider, the Grantee, pursuant to Texas law, including, without limitation, Chapter 66, Texas Utilities Code, [Sec. 66.004 (a) and (c)] as adopted by S.B. 5, 79th Texas Legislature, 2nd 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, Cebridge agrees to abide by all the terms, conditions, standards, duties, responsibilities, and obligations of the Grantee under the Franchise upon the closing of the Transaction; and

WHEREAS, Cebridge has indicated its agreement with the following ordinance and their intention to accept; 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 CITY OF TYLER, TEXAS:

PART 1: That Chapter 15, “Franchises”, Article II, “Cable Television Franchise”, Division 4, “Miscellaneous Provisions”, Section 15-75, is hereby amended as follows:

Section 15-75. Consent to Assignment of Franchise for cable services to Cebridge Connections.

a. The City of Tyler, at the request of Grantee and Cebridge, has consented to the Transfer, effective immediately upon the Closing on the Agreement, and subject to:

1. Cebridge’s agreement that, upon the closing of the Transaction, it shall be the successor entity to the incumbent cable service provider, the Grantee, pursuant to Texas law, including, without limitation, Chapter 66, Texas Utilities Code, [Sec. 66.004 (a) and (c)] as adopted by S.B. 5, 79th Texas Legislature, 2nd 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.
2. Cebridge’s agreement to abide by all the terms, conditions, standards, duties, responsibilities, and obligations of the Grantee under the Franchise, the Tyler City Charter, the Tyler Code and the franchise ordinance, upon the closing of the Transaction.
3. Strict compliance with the conditions set out in the acceptance form attached to this Ordinance as Exhibit "A".

4. Written Acceptance of the Ordinance by Grantee, and Cebridge, as follows:
 - (a) Within either thirty (30) days after passage of this Ordinance by the City Council or thirty (30) days after the Closing, whichever is later, Cebridge LLC, Cebridge and Grantee shall file their written acceptance of this Ordinance with the City Manager. The acceptance shall be in the form attached hereto as Exhibit "A";
 - (b) Cebridge and Grantee's acceptances shall be contingent only upon the final Closing of the Agreement. Such acceptance shall be otherwise unqualified and shall be construed to be an acceptance of all the terms, conditions and restrictions contained in this Ordinance;
 - (c) Cebridge or Grantee's failure, refusal or neglect to file such written acceptance within such time shall constitute an abandonment and rejection of the rights and privileges conferred hereby.
 5. Subject to the closing of the Transaction and Cebridge's compliance with the provisions contained herein, the City of Tyler accepts the transfer of the Franchise to Cebridge. 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.
 6. The City releases Grantee, effective upon the Closing Date, from all obligations and liabilities under the Franchise that accrue on and after the Closing Date; and Cebridge shall be responsible for any obligations and liabilities under the Franchise that accrue on and after the Closing Date. Notwithstanding any other provision of this Ordinance, Grantee shall continue to be responsible for any obligations and liabilities under the Franchise relating to time periods occurring prior to the closing date of the Transaction.
 7. Denial of Consent to Transaction. If for any reason Cebridge or Grantee fails, refuses or neglects to file the written acceptance as provided in Subsections 3 and 4, the City denies Grantee's request for the Transfer and/or consent to the Transaction.
- b. Automatic Nullification in Event of Failure to Close the Agreement or Closure on Materially Different Terms. In the event the Transfer which is the subject of this Ordinance is not consummated or does not reach final closure for any reason, or in the event such closure is reached on terms substantially and materially different to the terms described in the FCC Form 394 and subsequent information provided by or Cebridge and relied upon by the City, then this Ordinance, together with the written acceptance provided hereunder, shall be null

and void. If the closure is upon terms which are substantially and materially different, Grantee shall resubmit its request for a change of control and/or transfer of the Franchise. (0-2006-18, 2/8/05)

PART 2. This Ordinance shall become effective on the date of the Closing of the Transaction.

PASSED, ADOPTED AND APPROVED on this the 8th day of February, 2006.

JOSEPH O. SEEBER, MAYOR
OF THE CITY OF TYLER, TEXAS

A T T E S T:

APPROVED:

CASSANDRA BRAGER, CITY CLERK

CITY ATTORNEY

EXHIBIT "A"
**Written Acceptance of Consent to Change of Control of Franchise,
Ordinance No. O-2006-18**

TO: City of Tyler, Texas
Bob Turner, City Manager
212 N. Bonner, City Hall
Tyler, TX 757010

This is to advise the City of Tyler, Texas that Cebridge Acquisition, L.P d/b/a Cebridge Connections, (the "Cebridge" or "Grantee") and Cox Southwest Holdings, L.P. (the "Franchisee"), hereby unqualifiedly accept Ordinance No. O-2006-18 passed by the City Council on February 8, 2006, ("Ordinance") regarding the change in control and/or transfer of the Franchise (Cable Franchise Ord. No. 0-2005-66) to the Franchisee under the following terms and conditions:

1. Compliance with Franchise. Subject to Texas state law and federal law and in all respects and without exception, the Grantee shall comply with the requirements of the Franchise, including all applicable ordinances, orders, contracts, agreements, commitments, side letters, and regulatory actions taken pursuant thereto.

The parties acknowledges that the transfer will not affect, diminish, impair or supersede the binding nature on Grantee of the documents set forth in this paragraph.

In all instances, the Grantee will except as otherwise provided herein continue with all current obligations of the existing Franchise and continue to provide the level of service provided for therein.

The Franchisee acknowledges that the City has certain Franchise fee audit rights pursuant to the Franchise and assure that they do not have any contractual or other restrictions that will limit the ability of Cebridge to remit Franchise fees as provided in the Franchise or limit Cebridge's ability to provide all relevant information concerning the payment of Franchise fees as required by the Franchise except as otherwise provided herein. Notwithstanding any other provision of this acceptance or the accompanying Ordinance, Franchisee shall continue to be responsible for any obligations and liabilities under the Franchise relating to time periods occurring prior to the closing date of the transaction. The first payment of Franchise fees after Cebridge assumes 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 Cebridge and the Franchisee.

Further, neither the services currently provided nor the service area currently served by the Franchisee in the City of Tyler will be changed or altered in any significant manner by this transaction.

Cebridge agrees except as otherwise provided herein, 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, 79th Texas Legislature, 2nd 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.

2. No City Waiver or Release for any Non-Compliance. Grantee and Franchisee agree that the City does not waive and expressly reserves all legal rights and authority in regard to any and all non-compliance under the Franchise that may now exist or may later be discovered to have existed during the term of the Franchise, even if prior to or after the closing of the Agreement and Transfer that is the subject of this acceptance, as those terms are defined in the Ordinance.

Grantee and Franchisee acknowledge the City's reservation of rights as set forth above.

3. In the event the Agreement and Transfer, which is the subject of this Acceptance, is not consummated or does not reach final closure for any reason, or in the event such closure is reached on terms substantially and materially different to the terms described in the FCC Form 394, then Franchisee acknowledges that the City's Ordinance, together with the written acceptance provided hereunder, shall be automatically null and void without further action by either party. If the closure is upon terms which are substantially and materially different, Franchisee shall resubmit its request for a transfer or assignment in order to be in compliance with the Franchise.

Cox Southwest Holdings, L.P.

By: _____

Name: _____

Title: _____

Date: _____

**CEBRIDGE ACQUISITION, L.P d/b/a
CEBRIDGE CONNECTIONS**

By: _____

Name: _____

Title: _____

Date: _____