

ORDINANCE NO. 625

AN ORDINANCE ADOPTING THE RECOMMENDATION OF THE MT. HOOD CABLE REGULATORY COMMISSION OF A CHANGE IN CONTROL OF KBL PORTLAND CABLE SYSTEMS, L.P. AND KBL MULTNOMAH CABLE SYSTEMS, L.P., DBA PARAGON CABLE, TO TIME WARNER, INC.

WHEREAS, Time Warner Inc. ("TWI" or "Transferee ") has agreed to acquire KBLCOM Incorporated ("KBLCOM") pursuant to an Agreement and Plan of Merger, dated January 26, 1995, among TWI, KBLCOM, KBLCOM's parent Houston Industries Incorporated ("HII"), and TW KBLCOM Acquisition Corp, and

WHEREAS, HII and KBLCOM presently own and control cable franchises originally issued by the City of Portland to Rogers-Portland Cablesystems (1981), now KBL Portland Cablesystems L.P. dba Paragon Cable ("Portland franchise") and by the County of Multnomah and the Cities of Fairview, Gresham, Troutdale, and Wood Village ("the Multnomah Jurisdictions") to Rogers-Multnomah Cablesystems (1983), now KBL Multnomah Cablesystems L.P. dba Paragon Cable ("Multnomah franchise"). The Portland franchise and Multnomah franchise as originally issued required the ultimate corporate parent, Rogers Communications, Inc., ("RCI") to serve as a guarantor of performance under the franchises, and

WHEREAS, The Portland and Multnomah franchises were transferred in 1989 to HII and KBLCOM, dba Paragon Cable, with the approval of the City of Portland (Ord. No. 161629 dated February 15, 1989) and the Multnomah Jurisdictions (Consent and Guaranty Agreement executed March 14, 1989). The transfer of the Portland franchise and the Multnomah franchise to HII, KBLCOM, et al. included various franchise revisions and modifications agreed to by HII, KBLCOM, the City of Portland, the Multnomah Jurisdictions, and all other relevant parties. The City of Portland and the Multnomah Jurisdictions agreed at that time to accept the guaranty of HII as a substitute for the guaranty of RCI under the respective franchises, and

WHEREAS, Section 1.5 of the Portland franchise (Ord. No. 151208) prohibits a transfer of control without the prior consent of the City of Portland expressed by ordinance. Section 1.6 of the Portland franchise provides that the City of Portland may condition a transfer upon such terms and conditions as the City deems appropriate in order to insure proper construction and operation of the system, and

WHEREAS, Section 3.7 of the Multnomah franchise provides that a change in control

renders the franchise subject to revocation unless and until the Multnomah Jurisdictions give prior written consent, and further provides that the Jurisdictions may make their approval of a change in control subject to any conditions they deem appropriate, and

WHEREAS, The process utilized in reaching a decision on the proposed transfer of ownership of the Paragon cable system is subject to the requirements of the Cable Communications Policy Act of 1992 ("1992 Cable Act"), and applicable implementing regulations of the Federal Communications Commission ("FCC"). Among other things, these requirements and regulations require that franchising authorities have a maximum of 120 days from the submission of FCC Form 394, together with all information required pursuant to applicable franchise agreements, to render a final decision on a transfer request. Unless mutually extended, the 120 day federal deadline will expire locally on June 20, 1995; or 120 days from February 21, 1995 when TWI's FCC Form 394 with accompanying exhibits was submitted to the Mt. Hood Cable Regulatory Commission ("Commission"), and

WHEREAS, The Commission represents the Cities of Fairview, Gresham, Portland, Troutdale, and Wood Village and the County of Multnomah ("the Jurisdictions"). The Commission was created by an Intergovernmental Agreement (dated 12/24/92) among the Jurisdictions. As set forth in the Intergovernmental Agreement ("IGA") establishing the Commission (Section 4.B.2.): "(a)ny decision concerning a change of ownership or control of a cable communications system or a Grantee" is an area where the Jurisdictions have reserved full authority to act on their own behalf. However, each Jurisdiction has agreed "to take no action in these areas until the Commission has had a prior opportunity to consider the matter." (IGA §4.B.) Thus, the Commission acts in an advisory capacity to the Jurisdictions in connection with the Applicant's proposed transfer of system ownership and control, and

WHEREAS, The Commission receives staff support from the City of Portland Office of Cable Communications and Franchise Management ("Cable Office"). The Cable Office with the assistance of financial consultant KFA Services and Commission legal counsel has studied the qualifications of TWI to assume ownership and operation of the Portland and Multnomah franchises and applicable regulatory framework, as set forth in the Commission Request for Qualifications dated February 17, 1995 ("RFQ"). After studying TWI's FCC Form 394 submittal, and TWI's response to the RFQ, the Cable Office concluded that the qualifications of TWI were adequate to ensure the performance of the franchises, subject to certain conditions. The Cable Office has recommended such conditions to the Commission, and

WHEREAS, The Commission has received an initial FCC Form 394 filing with exhibits from TWI (February 21, 1995), held a public hearing (March 20, 1995), received TWI's response to the Commission's RFQ (March 29, 1995), and held a meeting of the Commission's Regulation Standing Committee which reviewed potential options and conditions in connection with the proposed transfer of control to TWI. The Commission

held a work session on April 17, 1995 to review this material and make a recommendation to the Jurisdictions. The Commission has recommended that the Jurisdictions approve the transfer of control subject to certain conditions, and

WHEREAS, The City of Troutdale should approve the transfer of control of the Paragon Portland (Paragon Multnomah) franchises to TWI subject to the formal acceptance by TWI, KBLCOM Incorporated, KBL Portland Cablesystems L.P./dba Paragon Cable, and KBL Multnomah Cablesystems L.P./dba Paragon Cable of the conditions set forth in this ordinance.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TROUTDALE;

Section 1. The City of Troutdale (hereafter: the Franchise Authority) hereby approves the transfer of control of KBL Portland Cablesystems L.P. dba Paragon Cable (and/or) KBL Multnomah Cablesystems L.P. dba Paragon Cable) (hereafter: the Franchisee) including its partners and parent organization KBLCOM Incorporated, to Time Warner Inc. (hereafter: the Transferee) subject to the following conditions:

1. **Compliance with franchise.** The Transferee, in its role as guarantor of franchise obligations, shall comply, and shall cause the Franchisee to comply, with the lawful requirements of the Portland (Multnomah) franchise, including all applicable ordinances, orders, contracts, and regulatory actions taken pursuant thereto, including but not limited to Public, Educational, and Governmental (PEG) access support requirements and the various settlement agreements and transfer ordinances set forth in the Acceptance attached hereto as Exhibit A, in all respects and without exception.
2. **Acknowledgment of regulatory requirements.** The Transferee acknowledges that the Franchise Authority has made a good faith effort in the time available to provide the Transferee with as complete information as possible concerning the franchise(s) and all related regulatory requirements taken pursuant thereto. The Transferee acknowledges that a failure by the Franchise Authority to provide information or references to any lawful Portland or Multnomah franchise requirement does not affect the ability of the Franchise Authority to fully enforce such requirement, or the Transferee's obligation to abide by such requirement.
3. **Transferee acceptance.** The Transferee shall fully accept, as guarantor, the lawful provisions of the Portland and Multnomah franchises in accordance with the applicable terms thereof. HII shall be released as guarantor when and only

when Transferee's Acceptance and Guaranty has been fully executed and returned to the Franchise Authority and the acquisition of KBLCOM Incorporated by TWI has closed, subject to the provisions of Section 2, paragraph 10 and 11 hereof. The Transferee's acceptance shall be in the form attached to this ordinance as Exhibit A.

4. **Documentation of Transferee's financing.** The Transferee shall provide to the Mt. Hood Cable Regulatory Commission ("Commission") on behalf of the Franchise Authority final copies of the Transferee's loan agreements and all financing documents related to this transaction. The completeness of the documentation provided by Transferee under this Section shall be subject to reasonable review and approval by the Commission. Transferee agrees to provide further documentation upon a determination by the Commission that the documentation provided by Transferee under this section is incomplete. The Commission shall use best efforts to provide confidential treatment, to the extent lawful, of any information identified as confidential by the Transferee, and shall notify the Transferee of any request to disclose such information. The Franchise Authority may terminate the approval of the transfer of the Portland or Multnomah franchise herein if the Franchise Authority finds that the structure and terms of the Transferee's financing are substantially different from the proposed financing relied upon by the Franchise Authority in analyzing this transaction, and that such difference could materially and adversely affect the interests of the Franchise Authority and Transferee's subscribers.

5. **Reimbursement of costs.** The Transferee shall, upon invoice from the Commission, reimburse all direct costs of the Commission and the Franchise Authority incurred in analyzing and taking action on Transferee's request for approval of a change in control of the franchise. Such costs may include, but are not limited to, costs of financial consulting, legal counsel, printing, and any publication. The Transferee acknowledges that due to its status as an applicant and not as a cable operator the amounts reimbursed in such transfer-related costs do not represent franchise fees, and shall in no way modify or otherwise affect the franchisee's obligation to pay franchise fees as provided under the Portland or Multnomah franchise agreements.

6. **Relation of transfer to Paragon/Portland and Paragon/Multnomah renewal processes.** The Transferee acknowledges that the Franchise Authority, acting through the Commission, is presently engaged in considering the proposed renewal of the Portland and Multnomah franchise agreements, pursuant to the provisions of applicable federal law and local agreements between and among Paragon/Portland, Paragon/Multnomah, and the Commission. The Transferee

acknowledges that the Transferee will in good faith carry forward this process, and abide by any and all lawful agreements reached prior to final effective transfer of the Portland and Multnomah franchises to Transferee.

7. Transferee responsible for any non-compliance by franchisee. The Transferee acknowledges that the legislative history of the 1992 Cable Act contemplates that the Franchise Authority should address any deficiencies in service, including non-compliance, at the time of transfer. The Transferee further acknowledges that a performance evaluation of the compliance of Paragon/Portland and Paragon/Multnomah, KBLCOM, and Houston Industries Incorporated in meeting franchise requirements is to be developed as part of the renewal processes referred to in Section 6 hereof, but is not complete at the date of passage of this ordinance. The Transferee agrees to assume responsibility for any and all non-compliance under the Portland or Multnomah franchises that may now exist or may later be discovered to have existed during the term of the franchise(s).

8. Competition issues among Transferee and US WEST Communications. The Commission has advised Transferee that US WEST Communications, Inc. ("US WEST") has filed a Section 214 application with the Federal Communications Commission ("FCC") to construct a video dialtone platform to provide broadband telecommunications applications, including video programming, in substantial portions of the franchise areas which are the subject of this transfer ordinance. Transferee acknowledges that US WEST's broadband video dialtone platform, if approved by the FCC and constructed by US WEST, may provide a competitive alternative to the cable services provided in the franchise areas by the Transferee following final transfer of the Portland and Multnomah franchises. Transferee further acknowledges that US WEST owns a substantial portion of Transferee's affiliate, Time Warner Entertainment Company, L.P. Transferee further acknowledges that the public record of this proceeding reflects concern that US WEST's interest in Transferee's affiliate may reduce the likelihood that customers in the franchise area could enjoy the benefits of two competitive, broadband video communications networks. Accordingly, Transferee agrees to abide by the following conditions:
 - (a) Transferee will not establish any corporate or management structure for the Portland or Multnomah franchises that involves any degree of common management or control, or structural clustering, with the cable systems of Transferee or Transferee's affiliates in which US WEST has an ownership interest;
 - (b) Any proposal by Transferee to establish such common management or control, or structural clustering with cable systems in which US WEST has an ownership interest shall make the Portland and Multnomah franchise agreements

subject to revocation unless approved in advance by the Franchise Authority.

(c) Transferee will not refrain from providing any services authorized by the terms of the Portland and Multnomah franchises due to any affiliations or common interests of Transferee and US WEST.

Nothing in this section is intended to require the Transferee to initiate or maintain structural or management arrangements that exceed the requirements of applicable federal and state law.

9. Anti-trafficking provisions. Transferee acknowledges that to the extent applicable this transaction is subject to the anti-trafficking provisions of the Cable Television Consumer Protection and Competition Act of 1992, and that the Transferee will fully comply with these requirements and applicable FCC implementing regulations.

10. Written acceptance. (a) This ordinance shall not be effective until accepted in writing by Transferee, KBLCOM Incorporated, KBL Portland Cablesystems L.P./dba Paragon Cable, and KBL Multnomah Cablesystems L.P./dba Paragon Cable. The acceptance, which shall be contingent upon final closing of the transaction described in Section 1, paragraph 1 hereof, shall be substantially similar in form to that attached hereto as Exhibit A.

(b) Within thirty days after passage of this ordinance by the Council, Transferee shall file in the Office of the Recorder of the City of Troutdale such written acceptance of this ordinance meeting the approval of the City Attorney for the Franchise Authority.

(c) A failure on the part of Transferee to file such written acceptance within such time shall be deemed an abandonment and rejection of the rights and privileges conferred hereby and this ordinance shall thereupon be null and void. Such acceptance shall be unqualified and shall be construed to be an acceptance of all the terms, conditions and restrictions contained in this ordinance.

11. The Transferee has notified the Franchise Authority that this transaction must reach final closure not later than February 29, 1996. In the event the parties are unable to reach closure by that time on the acquisition of KBLCOM Incorporated by TWI, then the parties shall so notify the Franchise Authority. Upon receipt of such notification, this ordinance, together with the written acceptance required under Section 2, paragraph 10 hereof, shall be null and void.

Section 2. Federal regulations require the City of Troutdale to render a final decision on this transfer request by June 20, 1995. To meet this deadline, it is necessary that this ordinance take effect earlier than thirty (30) days after its passage. Therefore, an emergency exists and this ordinance goes into effect immediately upon its passage by the City Council and attestation by the Mayor.

YEAS: 7
NAYS: 0
ABSTAINED: 0


PAUL THALHOFER, MAYOR

DATED: MAY 25, 1995


GEORGE MARTINEZ, CITY RECORDER

ADOPTED: 5-23-95

**EXHIBIT A
ACCEPTANCE AND GUARANTY**

**City Recorder
104 SE Kibling Avenue
Troutdale, Oregon 97060-2099**

This is to advise the City of Troutdale, Oregon that we, the undersigned hereby accept the terms and provisions applicable to us of Ordinance No. 625, passed by the Council on May 23, 1995, consenting to change in control of KBL Portland Cablesystems, L.P. and KBL Multnomah Cablesystems, L.P., dba Paragon Cable, to Time Warner Inc., with conditions. Subject to final closure of the acquisition of KBLCOM Incorporated by Time Warner, Inc., we accept the terms and provisions applicable to us of:

I. Paragon/Multnomah

- (1) The Cable Communications Service Franchise Agreement (including attachments, variances and policies) adopted in ordinances passed by each of the Jurisdictions in 1983, and as amended from time to time.**
- (2) The Intergovernmental Agreement among Fairview, Gresham, Wood Village, Troutdale and Multnomah County creating the Multnomah Cable Regulatory Commission, as ratified on September 30, 1982 and amended on May 16, 1983.**
- (3) The agreement between Multnomah Cable Access Corporation and Rogers Cablesystems Multnomah East signed October 17, 1984.**
- (4) The Agreement on Settlement of Certain Cable Franchise Obligations, including Amendments to Cable Communication Service Franchise Agreement (Attachment A); Cable Franchise Consent and Guaranty Agreement; and related letters of agreement between and among the Multnomah Cable Regulatory Commission, Rogers Cablesystems, and Houston Industries, Incorporated (February and March, 1989).**

- (5) All applicable orders and contracts adopted and regulatory actions taken pursuant to the above-cited items.

II. Paragon/Portland

- (1) The Paragon/Portland Franchise granted by Ordinance No. 151208 (passed by the Portland City Council March 4, 1981);
- (2) the Charter and general ordinance provisions of the City of Portland; and specifically Title 3, Chapter 3.114 and Chapter 3.115 of the Portland City Code, setting forth the authority and duties of the Office of Cable Communications and Franchise Management (Cable Office), and the Cable Communications Regulatory Commission (PCRC);
- (3) the Community Access Operating Agreement, dated January 16, 1984, authorized by Ordinance No. 155226 (passed by the Council October 20, 1983);
- (4) "Agreement on Settlement of Certain Cable Television Obligations" (City of Portland/Rogers) (March 13, 1989);
- (5) consent to change in control of Rogers-Portland Cablesystems to KBL Cable, Inc. with conditions (Ordinance No. 161629, passed by the Portland City Council February 15, 1989); and
- (6) all applicable ordinances, orders, contracts, and regulatory actions taken, passed, entered into, or adopted by the City of Portland, the Portland Cable Regulatory Commission, or the Mt. Hood Cable Regulatory Commission pursuant to the above-cited items.

III. Mt. Hood Cable Regulatory Commission

- (1) Intergovernmental Agreement (dated 12/24/92) among the City of Fairview, Gresham, Portland, Troutdale, Wood Village and the County of Multnomah;
- (2) all applicable orders, contracts, and regulatory actions ~~applicable to me~~ taken, passed, entered into, or adopted by the Mt. Hood Cable Regulatory Commission, including, without limitation, the Agreement on Franchise Renewal Costs and Franchise Modifications (Paragon/MHCRC) effective June 21, 1994.

and in consideration of the benefits to be received thereunder, the undersigned hereby agree to guarantee performance by KBL Portland Cablesystems, L.P. and KBL Multnomah Cablesystems, L.P., dba Paragon Cable ("Franchisee") and its successors of all of Franchisee's obligations, and to abide by each and every term of the franchises and related documents specified herein, and to guarantee individually and severally performance by Franchisee of all of Franchisee's obligations under the franchises and related documents, and to perform those obligations on Franchisee's behalf, if so ordered by Mt. Hood Cable Regulatory Commission or this (City Council or County Commission), in the event Franchisee for any reason fails to perform them.

KBL PORTLAND CABLESYSTEMS, L.P./dba PARAGON CABLE

KBL Cablesystems of the Southwest, Inc. - General Parnter

BY *[Signature]*
TITLE Senior Vice President
DATE June 17, 1998

KBL MULTNOMAH CABLESYSTEMS, L.P./dba PARAGON CABLE

KBL Cablesystems of Multnomah, Inc., - General Parnter

BY *[Signature]*
TITLE Senior Vice President
DATE June 17, 1998

KBLCOM INCORPORATED

BY *[Signature]*
TITLE Senior Vice President, General Counsel & Asst. Corporate Secretary
DATE June 17, 1998

TIME WARNER INC.

BY *[Signature]*
TITLE Vice President
DATE June 20, 1998