

**A resolution removing a requirement that Time Warner Cable, Inc. ("Time Warner Cable") provide free service to schools when operating under a State-Issued Cable Franchise; and providing an effective date.**

**WHEREAS**, on August 23, 2000, by Ordinance No. 24361 (the "Cable Franchise"), the Dallas City Council granted for a term of 15 years, a cable television franchise to TCI Cablevision of Dallas, Inc. (the "Company"); and

**WHEREAS**, on May 22, 2002, by Ordinance No. 24947, the Dallas City Council consented to a transfer of control of the "Company" from AT&T to Comcast Corporation (formerly known as AT&T Comcast Corporation ); and

**WHEREAS**, on December 5, 2005, by Ordinance No. 26167, the Dallas City Council consented to transfer of control of the "Company" from Comcast Corporation to Time Warner Cable, Inc.; and

**WHEREAS**, on September 9, 2005, the Governor of the State of Texas signed into law Senate Bill 5 (SB 5), approved by the 79<sup>th</sup> legislature during its second special session; and

**WHEREAS**, SB 5 amended Subtitle C, Title 2, Utilities Code by adding Chapter 66, "State-Issued Cable and Video Franchise"; and

**WHEREAS**, Chapter 66.004 of the Utilities Code provides that an incumbent cable provider which holds a municipal franchise agreement and is serving more than 40 percent of the total cable subscribers within a municipality may not seek a State-Issued Certificate of Franchise Authority with respect to that municipality until the expiration of the existing franchise agreement; and

**WHEREAS**, the "Cable Franchise" does not expire until December 31, 2015; and

**WHEREAS**, the "Company" is an incumbent cable provider serving more than 40 percent of the total cable subscribers within the City; and

**WHEREAS**, the Texas Cable Association and Time Warner Cable, Inc. sued the State of Texas in the Federal District Court for the Western District of Texas, Austin Division (District Court) alleging that SB 5 was discriminatory and violated the cable providers' first amendment right to free speech; and

**WHEREAS**, on remand from the U.S. Court of Appeals for the Fifth Circuit the District Court issued an order on May 31, 2012, invalidating the portions of Chapter 66.004 of the Utilities Code which prohibited an incumbent cable provider from requesting a State-Issued Certificate of Franchise Authority prior to the expiration of its existing municipal franchise agreement; and

**WHEREAS**, Time Warner Cable, Inc. filed an application with the Public Utility Commission of Texas for a State-Issued Certificate of Franchise Authority with respect to the City on June 6, 2012; and

**WHEREAS**, the PUC has set a procedural schedule in this case, consistent with Chapter 66 of the Utilities Code, to either approve or dismiss Time Warner Cable, Inc.'s application for a State-Issued Certificate of Franchise Authority on or before June 27, 2012; and

**WHEREAS**, Chapter 66.006(d)(2) of the Utilities Code states that a cable provider that was furnishing free service to public schools under its municipal franchise shall continue to provide that service under a State-Issued Franchise; however, if the municipality requires the cable provider to continue to provide these services, the cable provider may deduct from franchise fees paid to the municipality the actual incremental cost of providing those services; and

**WHEREAS**, the "Cable Franchise" requires the "Company" to provide at no cost to the City one outlet of basic cable service and expanded basic service to all City owned and occupied buildings, schools and public libraries within the City; and

**WHEREAS**, the "Cable Franchise" defines schools as Texas-accredited K-12 public and private schools; and

**WHEREAS**, the reduction in franchise fees for providing these services to public and private schools would be considered a gift from the City; and

**WHEREAS**, the City is prohibited from providing gifts to public or private entities by the Texas Constitution Article III Section 52 and Article XI Section 3; **Now, Therefore,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:**

**SECTION 1.** That the declarations contained in the preambles to this ordinance are hereby repeated and incorporated herein as a part of this ordinance.

**SECTION 2.** That the "Company", Time Warner Cable and its successors to the "Cable Franchise", after terminating the "Cable Franchise", and while operating under a State-Issued Certificate of Franchise Authority, shall not be required by the City of Dallas to provide cable services to schools to the extent that they intend to charge the City of Dallas for the incremental cost of providing that service to schools or they intend to deduct from the franchise fees otherwise due the City of Dallas the incremental cost of providing that service to schools.

June 27, 2012

**SECTION 3.** That the "Company" and Time Warner Cable, Inc. are encouraged to continue to provide the services to schools that were provided at no cost under the "Cable Franchise" as a community service, even though not required by the City to do so and even though the incremental cost of providing that service shall not be deductible from the franchise fees otherwise due the City of Dallas.

**SECTION 4.** That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

APPROVED BY  
CITY COUNCIL

JUN 27 2012

  
City Secretary