

## **RESOLUTION NO. 2890-2005**

### **RESOLUTION OF THE FORT BRAGG CITY COUNCIL ACCEPTING, FOR PURPOSES OF REVIEW, THE FCC FORM 394 SUBMITTED BY COMCAST CABLE COMMUNICATIONS, LLC, RELATING TO A FRANCHISE TRANSFER AND AUTHORIZING THE CITY MANAGER THE AUTHORITY TO DENY THE TRANSFER APPLICATION WITHOUT PREJUDICE AND AGREE TO EXTEND THE APPLICATION REVIEW PERIOD**

**WHEREAS**, the City of Fort Bragg (the "City") has entered into an agreement granting a nonexclusive franchise to Adelphia Communications Corp. (the "Operator") to operate a cable television system in the City and setting forth conditions accompanying the granting of the franchise (the "Franchise"); and

**WHEREAS**, the Operator filed an FCC Form 394, dated June 10, 2005, seeking approval of a transfer of the Franchise to CAC Exchange I, LLC, (the "New Franchisee"); and

**WHEREAS**, the City has not, at the time of the adoption of this resolution, approved or denied the request to transfer the Franchise to the CAC Exchange I, LLC, and reserves its rights as outlined in the Franchise Agreement and other applicable Federal, State and local laws; and

**WHEREAS**, pursuant to the Franchise Ordinance and the Franchise Agreement between the City and the Operator, neither the Franchise nor control of the Operator may be changed, transferred or assigned without the consent of the City Council; and

**WHEREAS**, this proposed merger will result in a change in control of the Operator and requires the City's consent; and

**WHEREAS**, the City Council of the City of Fort Bragg now desires to acknowledge receipt of said FCC Form 394 and prescribe procedures for its review and consideration by the City.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Fort Bragg does hereby:

**SECTION 1.** The FCC Form 394, dated June 10, 2005 is hereby deemed accepted for the purposes of review, analysis, and consideration. Said review shall not constitute a waiver of the City's rights to determine compliance with the existing Cable Franchise and to take appropriate action therewith.

**SECTION 2.** Since receipt of the FCC Form 394 on June 15, 2005, the City Manager, City Attorney, City Staff, and outside consultants designated by the City, and their designees have been reviewing and analyzing the FCC Form 394 and have requested additional information deemed necessary to properly analyze and make recommendations upon the FCC Form 394.

**SECTION 3.** The City Manager or his designee is hereby authorized, without further action by this Council, to reject the FCC Form 394 without prejudice, and the approvals requested therein, for the following reasons and upon the following bases:

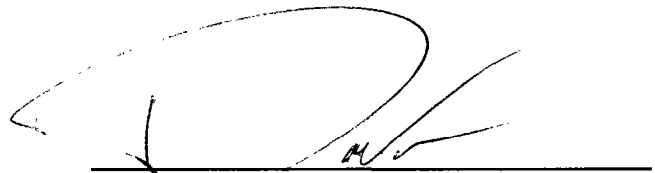
- A. Failure or refusal to file a proper or complete FCC Form 394 with all information required therein.
- B. Failure or refusal to provide all documents and information requested by City Staff, Special Counsel, and outside consultants retained by the City.
- C. Failure or refusal to reasonably cooperate with City Staff, City Attorney, Special Counsel and outside consultants retained by the City in undertaking due diligence investigations including, but not limited to, physical inspections of the cable television system and inspection of records relating thereto.
- D. Failure or refusal to demonstrate compliance with the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"), any and all implementing regulations of the Federal Communications Commission, or any other applicable local, state or federal law.
- E. Refusal of any assignee or transferee to accept, without condition of reservation, the terms and conditions of the existing Franchise or to require as a condition of consent or approval the amendment, modification, extension or alteration of the terms and conditions of the Franchise.
- F. An announced or actual change in control of the Transferee, or any limited or general partner thereof, which occurred subsequent to the date of the FCC Form 394.

**SECTION 4.** The City Manager or his designee, without further action by this Council, shall be empowered to seek Operator's consent to a sufficient extension of the 120-day deadline for approval of the proposed transfer so that the City may complete its due diligence review of the franchise transfer application material submitted by Operator.


**SECTION 5.** Any decision made by the City Manager pursuant to the authority granted in this Resolution shall be deemed a decision of the City Council for the purposes of Section 617 of the 1992 Cable Act and the implementing regulations of the Federal Communications Commission.

**The above and foregoing Resolution was introduced by Councilmember Baltierra, seconded by Councilmember Turner, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 12<sup>th</sup> day of September, 2005, by the following vote:**

**AYES:** Councilmembers Gjerde, Baltierra, Hammerstrom, Melo, and Mayor Turner.  
**NOES:** None.  
**ABSENT:** None.  
**ABSTAIN:** None.



**DAVE TURNER,  
Mayor**

**ATTEST:**  
  
 Cynthia M. VanWormer, CMC  
 City Clerk