

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 817

An ordinance approving the transfer of Cable Franchise from Paragon Cable to Time Warner, Inc., and declaring an emergency.

Multnomah County ordains as follows:

Section I. Findings

A. 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

B. 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

C. The Portland and Multnomah franchises were transferred in 1989 to HII and KBLCOM, dba Paragon Cable, with the approval of the

1 City of Portland (Ord. No. 161629 dated February 15, 1989) and the  
2 Multnomah Jurisdictions (Consent and Guaranty Agreement executed  
3 March 14, 1989). The transfer of the Portland franchise and the  
4 Multnomah franchise to HII, KBLCOM, et al. included various  
5 franchise revisions and modifications agreed to by HII, KBLCOM, the  
6 City of Portland, the Multnomah Jurisdictions, and all other  
7 relevant parties. The City of Portland and the Multnomah  
8 Jurisdictions agreed at that time to accept the guaranty of HII as  
9 a substitute for the guaranty of RCI under the respective  
10 franchises; and

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

18 E. Section 3.7 of the Multnomah franchise provides that a  
19 change in control renders the franchise subject to revocation  
20 unless and until the Multnomah Jurisdictions give prior written  
21 consent, and further provides that the Jurisdictions may make their  
22 approval of a change in control subject to any conditions they deem  
23 appropriate; and

24 F. The process utilized in reaching a decision on the  
25 proposed transfer of ownership of the Paragon cable system is  
26 subject to the requirements of the Cable Communications Policy Act

1 of 1992 ("1992 Cable Act"), and applicable implementing regulations  
2 of the Federal Communications Commission ("FCC"). Among other  
3 things, these requirements and regulations require that franchising  
4 authorities have a maximum of 120 days from the submission of FCC  
5 Form 394, together with all information required pursuant to  
6 applicable franchise agreements, to render a final decision on a  
7 transfer request. Unless mutually extended, the 120 day federal  
8 deadline will expire locally on June 20, 1995; or 120 days from  
9 February 21, 1995 when TWI's FCC Form 394 with accompanying  
10 exhibits was submitted to the Mt. Hood Cable Regulatory Commission  
11 ("Commission"); and

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

26 H. The Commission receives staff support from the City of

1 Portland Office of Cable Communications and Franchise Management  
2 ("Cable Office"). The Cable Office with the assistance of  
3 financial consultant KFA Services and Commission legal counsel has  
4 studied the qualifications of TWI to assume ownership and operation  
5 of the Portland and Multnomah franchises and applicable regulatory  
6 framework, as set forth in the Commission Request for  
7 Qualifications dated February 17, 1995 ("RFQ"). After studying  
8 TWI's FCC Form 394 submittal, and TWI's response to the RFQ, the  
9 Cable Office concluded that the qualifications of TWI were adequate  
10 to ensure the performance of the franchises, subject to certain  
11 conditions. The Cable Office has recommended such conditions to  
12 the Commission; and

13 I. The Commission has received an initial FCC Form 394  
14 filing with exhibits from TWI (February 21, 1995), held a public  
15 hearing (March 20, 1995), received TWI's response to the  
16 Commission's RFQ (March 29, 1995), and held a meeting of the  
17 Commission's Regulation Standing Committee which reviewed potential  
18 options and conditions in connection with the proposed transfer of  
19 control to TWI. The Commission held a work session on April 17,  
20 1995 to review this material and make a recommendation to the  
21 Jurisdictions. The Commission has recommended that the  
22 Jurisdictions approve the transfer of control subject to certain  
23 conditions; and

24 J. The County of Multnomah should approve the transfer of  
25 control of the Paragon Portland (Paragon Multnomah) franchises to  
26 TWI subject to the formal acceptance by TWI, KBLCOM Incorporated,

1 KBL Portland Cablesystems L.P./dba Paragon Cable, and KBL Multnomah  
2 Cablesystems L.P./dba Paragon Cable of the conditions set forth in  
3 this ordinance.

4 Section II. Approval

5 The County of Multnomah (hereafter: the Franchise Authority)  
6 approves the transfer of control of KBL Multnomah Cablesystems L.P.  
7 dba Paragon Cable (hereafter: the Franchisee) including its  
8 partners and parent organization KBLCOM Incorporated, to Time  
9 Warner Inc. (hereafter: the Transferee) subject to the following  
10 conditions:

11 A. Compliance with franchise. The Transferee, in its role  
12 as guarantor of franchise obligations, shall comply, and shall  
13 cause the Franchisee to comply, with the lawful requirements of the  
14 Multnomah franchise, including all applicable ordinances, orders,  
15 contracts, and regulatory actions taken pursuant thereto, including  
16 but not limited to Public, Educational, and Governmental (PEG)  
17 access support requirements and the various settlement agreements  
18 and transfer ordinances set forth in the Acceptance attached hereto  
19 as Exhibit A, in all respects and without exception.

20 B. Acknowledgment of regulatory requirements. The  
21 Transferee acknowledges that the Franchise Authority has made a  
22 good faith effort in the time available to provide the Transferee  
23 with as complete information as possible concerning the  
24 franchise(s) and all related regulatory requirements taken pursuant  
25 thereto. The Transferee acknowledges that a failure by the  
26 Franchise Authority to provide information or references to any

1 lawful Portland or Multnomah franchise requirement does not affect  
2 the ability of the Franchise Authority to fully enforce such  
3 requirement, or the Transferee's obligation to abide by such  
4 requirement.

5 C. Transferee acceptance. The Transferee shall fully  
6 accept, as guarantor, the lawful provisions of the Portland and  
7 Multnomah franchises in accordance with the applicable terms  
8 thereof. HII shall be released as guarantor when and only when  
9 Transferee's Acceptance and Guaranty has been fully executed and  
10 returned to the Franchise Authority and the acquisition of KBLCOM  
11 Incorporated by TWI has closed, subject to the provisions of  
12 Section 2, paragraph 10 and 11 hereof. The Transferee's acceptance  
13 shall be in the form attached to this ordinance as Exhibit A.

14 D. Documentation of Transferee's financing. The Transferee  
15 shall provide to the Mt. Hood Cable Regulatory Commission  
16 ("Commission") on behalf of the Franchise Authority final copies of  
17 the Transferee's loan agreements and all financing documents  
18 related to this transaction. The completeness of the documentation  
19 provided by Transferee under this Section shall be subject to  
20 reasonable review and approval by the Commission. Transferee  
21 agrees to provide further documentation upon a determination by the  
22 Commission that the documentation provided by Transferee under this  
23 section is incomplete. The Commission shall use best efforts to  
24 provide confidential treatment, to the extent lawful, of any  
25 information identified as confidential by the Transferee, and shall  
26 notify the Transferee of any request to disclose such information.

1 The Franchise Authority may terminate the approval of the transfer  
2 of the Portland or Multnomah franchise herein if the Franchise  
3 Authority finds that the structure and terms of the Transferee's  
4 financing are substantially different from the proposed financing  
5 relied upon by the Franchise Authority in analyzing this  
6 transaction, and that such difference could materially and  
7 adversely affect the interests of the Franchise Authority and  
8 Transferee's subscribers.

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

21 F. Relation of transfer to Paragon/Portland and  
22 Paragon/Multnomah renewal processes. The Transferee acknowledges  
23 that the Franchise Authority, acting through the Commission, is  
24 presently engaged in considering the proposed renewal of the  
25 Portland and Multnomah franchise agreements, pursuant to the  
26 provisions of applicable federal law and local agreements between

1 and among Paragon/Portland, Paragon/Multnomah, and the Commission.  
2 The Transferee acknowledges that the Transferee will in good faith  
3 carry forward this process, and abide by any and all lawful  
4 agreements reached prior to final effective transfer of the  
5 Portland and Multnomah franchises to Transferee.

6 G. Transferee responsible for any non-compliance by  
7 franchisee. The Transferee acknowledges that the legislative  
8 history of the 1992 Cable Act contemplates that the Franchise  
9 Authority should address any deficiencies in service, including  
10 non-compliance, at the time of transfer. The Transferee further  
11 acknowledges that a performance evaluation of the compliance of  
12 Paragon/Portland and Paragon/ Multnomah, KBLCOM, and Houston  
13 Industries Incorporated in meeting franchise requirements is to be  
14 developed as part of the renewal processes referred to in Section  
15 6 hereof, but is not complete at the date of passage of this  
16 ordinance. The Transferee agrees to assume responsibility for any  
17 and all non-compliance under the Portland or Multnomah franchises  
18 that may now exist or may later be discovered to have existed  
19 during the term of the franchise(s).

20 H. Competition issues among Transferee and US WEST  
21 Communications. The Commission has advised Transferee that US WEST  
22 Communications, Inc. ("US WEST") has filed a Section 214  
23 application with the Federal Communications Commission ("FCC") to  
24 construct a video dialtone platform to provide broadband  
25 telecommunications applications, including video programming, in  
26 substantial portions of the franchise areas which are the subject

1 of this transfer ordinance. Transferee acknowledges that US WEST's  
2 broadband video dialtone platform, if approved by the FCC and  
3 constructed by US WEST, may provide a competitive alternative to  
4 the cable services provided in the franchise areas by the  
5 Transferee following final transfer of the Portland and Multnomah  
6 franchises. Transferee further acknowledges that US WEST owns a  
7 substantial portion of Transferee's affiliate, Time Warner  
8 Entertainment Company, L.P. Transferee further acknowledges that  
9 the public record of this proceeding reflects concern that US  
10 WEST's interest in Transferee's affiliate may reduce the likelihood  
11 that customers in the franchise area could enjoy the benefits of  
12 two competitive, broadband video communications networks.  
13 Accordingly, Transferee agrees to abide by the following  
14 conditions:

15 (a) Transferee will not establish any corporate or  
16 management structure for the Portland or Multnomah franchises  
17 that involves any degree of common management or control, or  
18 structural clustering, with the cable systems of Transferee or  
19 Transferee's affiliates in which US WEST has an ownership  
20 interest;

21 (b) Any proposal by Transferee to establish such common  
22 management or control, or structural clustering with cable  
23 systems in which US WEST has an ownership interest shall make  
24 the Portland and Multnomah franchise agreements subject to  
25 revocation unless approved in advance by the Franchise  
26 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.

I. 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.

J. 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 Board, Transferee shall file in the Office of the Clerk of the Board of the County of Multnomah such written acceptance of this ordinance meeting the approval of the County Counsel for

1 the Franchise Authority.

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

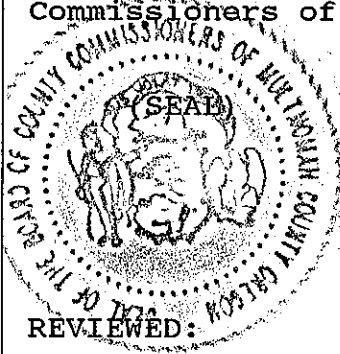
9 K. The Transferee has notified the Franchise Authority that  
10 this transaction must reach final closure not later than February  
11 29, 1996. In the event the parties are unable to reach closure by  
12 that time on the acquisition of KBLCOM Incorporated by TWI, then  
13 the parties shall so notify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

17 Section III. Declaring an Emergency

18 This Ordinance, being necessary for the health, safety, and  
19 welfare of the people of Multnomah County, an emergency is  
20 declared, and the Ordinance shall take effect upon its execution by  
21 the County Chair, pursuant to Section 5.50 of the Charter of  
22 Multnomah County.  
23  
24

25 ADOPTED this 18th day of May, 1995, being  
26

1 the date of its First reading before the Board of County  
2 Commissioners of Multnomah County, Oregon.



*Beverly Stein*  
\_\_\_\_\_  
Beverly Stein, Chair  
Multnomah County, Oregon

7 REVIEWED:

8 LAURENCE KRESSEL, COUNTY COUNSEL  
9 MULTNOMAH COUNTY, OREGON

*Katie Gaetjens*  
\_\_\_\_\_  
Katie Gaetjens  
Assistant County Counsel

EXHIBIT A  
ACCEPTANCE AND GUARANTY

Office of the Clerk of the Board of County Commissioners  
1120 SW Fifth Avenue  
Portland, OR 97204

This is to advise the County of Multnomah, Oregon, that we, the undersigned hereby accept the terms and provisions applicable to us of Ordinance No. 817, passed by the Board on May 18, 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 and resolutions 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

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 County Board, in the event Franchisee for any reason fails to perform them.

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

BY


TITLE

Senior Vice President, General Counsel and Corporate Secretary  
for KBL Cablesystems of the Southwest, Inc. - General Partner

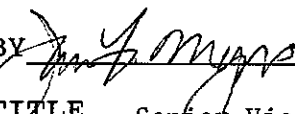
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May 25, 1995

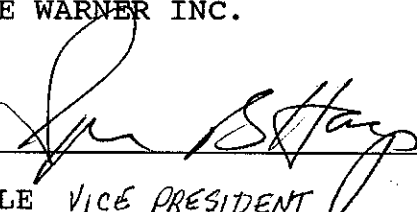
KBL MULTNOMAH CABLESYSTEMS, L.P./dba PARAGON CABLE

BY   
Senior Vice President, General Counsel and Corporate Secretary  
TITLE of KBL Cablesystems of Multnomah, Inc. - General Partner  
DATE May 25, 1995


KBLCOM INCORPORATED

BY   
TITLE Senior Vice President, General Counsel and Assistant  
Corporate Secretary  
DATE May 25, 1995

TIME WARNER INC.

BY   
TITLE VICE PRESIDENT  
DATE JUNE 6, 1995

REVIEWED:

By   
Laurence Kressel, County Counsel  
For Multnomah County, Oregon