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BOROUGH OF ROSELLE



ORDINANCE NUMBER 2574-17

RECEIVED
CASE MANAGEMENT

FEB 28 2018

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

**AN ORDINANCE GRANTING RENEWAL OF MUNICIPAL CONSENT TO
COMCAST TO CONSTRUCT, CONNECT, OPERATE AND MAINTAIN A CABLE
TELEVISION AND COMMUNICATIONS SYSTEM IN
THE BOROUGH OF ROSELLE, NEW JERSEY**

**BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE BOROUGH
OF ROSELLE AS FOLLOWS:**

SECTION 1. PURPOSE OF THE ORDINANCE

The municipality hereby grants to Comcast renewal of its non-exclusive Municipal Consent to place in, upon, across, above, over and under highways, streets, alleys, sidewalks, easements, public ways and public places in the municipality, poles, wires, cables, underground conduits, manholes and other television conductors, fixtures, apparatus and equipment as may be necessary for the construction, operation and maintenance in the Municipality of a cable television and communications system.

SECTION 2. DEFINITIONS

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. Such meaning or definition of terms is supplemental to those definitions of the Federal Communications Commission ("FCC") rules and regulations, 47 C.F.R. Subsection 76.1 *et seq.*, and the Cable Communications Policy Act, 47 U.S.C. Section 521 *et seq.*, as amended, and the Cable Television Act, N.J.S.A. 48:5A-1 *et seq.*, and shall in no way be construed to broaden, alter or conflict with the federal and state definitions:

- a. "Municipality" or "Borough" is the Borough of Roselle, County of Union, State of New Jersey.
- b. "Company" is the grantee of rights under this Ordinance and is known as Comcast of Comcast of New Jersey II, LLC.
- c. "Act" or "Cable Television Act" is Chapter 186 of the General Laws of New Jersey, and subsequent amendments thereto, N.J.S.A. 48:5A-1, *et seq.*
- d. "FCC" is the Federal Communications Commission.

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- e. "Board" or "BPU" is the Board of Public Utilities, State of New Jersey.
- f. "Office" or "OCTV" is the Office of Cable Television of the Board.
- g. "Basic Cable Service" means any service tier, which includes the retransmission of local television broadcast signals as defined by the FCC.
- h. "Application" is the Company's Application for Renewal of Municipal Consent.
- i. "Primary Service Area" or "PSA" consists of the area of the Municipality currently served with existing plant as set forth in the map annexed to the Company's Application for Municipal Consent.

SECTION 3. STATEMENT OF FINDINGS

Public hearings conducted by the municipality, concerning the renewal of Municipal Consent herein granted to the Company were held after proper public notice pursuant to the terms and conditions of the Act and the regulations of the Board adopted pursuant thereto. Said hearings, having been fully open to the public, and the Borough, having received at said public hearings all comments regarding the qualifications of the Company to receive this renewal of Municipal Consent, the Borough hereby finds that the Company possesses the necessary legal, technical, character, financial and other qualifications and that the Company's operating and construction arrangements are adequate and feasible.

SECTION 4. DURATION OF FRANCHISE

The non-exclusive Municipal Consent granted herein shall expire 10 years from the date of expiration of the previous Certificate of Approval issued by the Board.

In the event that the Municipality shall find that the Company has not substantially complied with the material terms and conditions of this Ordinance, the Municipality shall have the right to petition the OCTV, pursuant to N.J.S.A. 48:5A-47, for appropriate action, including modification and/or termination of the Certificate of Approval; provided however, that the Municipality shall first have given the Company written notice of all alleged

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instances of non-compliance and an opportunity to cure same within ninety (90) days of that notification.

SECTION 5. FRANCHISE FEE

Pursuant to the terms and conditions of the Act, the Company shall, during each year of operation under the consent granted herein, pay to the Municipality two percent (2%) of the gross revenues from all recurring charges in the nature of subscription fees paid by subscribers for cable television reception service in the Municipality or any higher amount required by the Act or otherwise allowable by law, whichever is greater. The current franchise fee amount paid to the Municipality is 3.5% pursuant to N.J.S.A. 48:5A-30(d).

SECTION 6. FRANCHISE TERRITORY

The consent granted under this Ordinance to the renewal of the franchise shall apply to the entirety of the Municipality and any property subsequently annexed hereto.

SECTION 7. EXTENSION OF SERVICE

The Company shall be required to proffer service to any residence or business along any public right-of-way in the Primary Service Area, as set forth in the Company's Application. The Company's Line Extension Policy, as set forth in the Company's Application, shall govern any extension of plant beyond the Primary Service Area.

SECTION 8. CONSTRUCTION REQUIREMENTS

Restoration: In the event that the Company or its agents shall disturb any pavement, street surfaces, sidewalks, driveways, or other surface in the natural topography, the Company shall, at its sole expense, restore and replace such places or things so disturbed in as good a condition as existed prior to the commencement of said work.

Relocation: If at any time during the period of this consent, the Municipality shall alter or change the grade of any street, alley or other way or place the Company, upon

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reasonable notice by the Municipality, shall remove, re-lay or relocate its equipment, at the expense of the Company.

Removal or Trimming of Trees: During the exercise of its rights and privileges under this franchise, the Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks or other public places of the municipality so as to prevent the branches of such trees from coming in contact with the wires and cable of the Company. Such trimming shall be only to the extent necessary to maintain proper clearance of the Company's wire and cables.

SECTION 9. CUSTOMER SERVICE

In providing services to its customers, the Company shall comply with N.J.A.C. 14:18-1, et seq. and all applicable state and federal statutes and regulations. The Company shall strive to meet or exceed all voluntary company and industry standards in the delivery of customer service and shall be prepared to report on it to the municipality upon written request of the Municipality Administrator or Clerk.

- a. The Company shall continue to comply fully with all applicable state and federal statutes and regulations regarding credit for outages, the reporting of same to regulatory agencies and notification of same to customers.
- b. The Company shall continue to fully comply with all applicable state and federal statutes and regulations regarding the availability of devices for the hearing impaired and the notification of same to customers.
- c. The Company shall use every reasonable effort to meet or exceed voluntary standards for telephone accessibility developed by the National Cable Television Association (NCTA).
- d. Nothing herein shall impair the right of any subscriber or the Municipality to express any comment with respect to telephone accessibility to the Complaint Officer, or impair the right of the Complaint Officer to take any action that is permitted under law.

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SECTION 10. MUNICIPAL COMPLAINT OFFICER

The Office of Cable Television is hereby designed as the Complaint Officer for the Municipality pursuant to N.J.S.A. 48:5A-26(b). All complaints shall be received and processed in accordance with N.J.A.C. 14:17-6.5. The Municipality shall have the right to request copies of records and reports pertaining to complaints by Municipality customers from the OCTV.

SECTION 11. LOCAL OFFICE

During the term of this franchise, and any renewal thereof, the Company shall maintain a business office or agent in accordance with N.J.A.C. 14:18-5.1 for the purpose of receiving, investigating and resolving all local complaints regarding the quality of service, equipment malfunctions, and similar matters. Such a business office shall have a publicly listed toll-free telephone number and be open during standard business hours, and in no event (excepting emergent circumstances) less than 9:00 A.M. to 5:00 P.M., Monday through Friday.

SECTION 12. PERFORMANCE BONDS

During the life of the franchise the Company shall give to the municipality a bond in the amount of twenty-five thousand dollars (\$25,000.00). Such bond shall be to insure the faithful performance of all undertakings of the Company as represented in its application for municipal consent incorporated herein.

SECTION 13. SUBSCRIBER RATES

The rates of the Company shall be subject to regulation as permitted by federal and state law.

SECTION 14. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

- a. The Company shall continue to provide residents with a system-wide public access channel maintained by the Company. Qualified individuals and organizations may

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utilize public access for the purpose of cablecasting non-commercial access programming in conformance with the Company's published public access rules.

- b. The Company shall continue to provide a system-wide leased access channel maintained by the Company for the purpose of cablecasting commercial access programming in conformance with the Company's guideline and applicable state and federal statutes and regulations.
- c. The Company shall continue to provide a dedicated local access channel maintained by the Company for the purpose of cablecasting non-commercial access programming in conformance with the Company's guideline and applicable state and federal statutes and regulations.
- d. The Company shall take any steps that are necessary to ensure that the signals originated on the access channels are carried without material degradation, and with a signal whose quality is equal to that of the other standard channels that the Company transmits.
- e. The Communications Act of 1934, as amended (47 U.S.C. §543(b)(4)), allows the Company to itemize and/or identify the amount on the monthly bill assessed to satisfy any requirements imposed on the Company by the cable franchise to support public, educational, and governmental channels, or the use of such channels or any other services required under the franchise. The Company reserves its external cost, pass-through rights to the extent permitted by law.

SECTION 15. COMMITMENTS BY THE COMPANY

- a. The Company shall provide standard installation and basic cable television service on one (1) outlet at no cost to each school in the Municipality, public and private, elementary, intermediate and secondary, and public library provided the school or library is within 200 feet of active cable distribution plant. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the school or

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entity requesting service. Monthly service charges shall be waived on all additional outlets except for equipment.

- b. The Company shall provide standard installation and basic cable television service at no cost on one (1) outlet to each police, fire, emergency management facility and public library in the Municipality, provided the facility is located within 200 feet of active cable distribution plant. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the Municipality. Monthly service charges shall be waived on all additional outlets except for equipment.
- c. The Company shall provide free basic Internet service, via high speed cable modem, to one (1) non-networked personal computer in each school and public library and to such school and libraries that may be constructed in the future.
- d. The Company shall continue to maintain two access channel return lines, one from the Roselle Borough Municipal Building and the other from Abraham Clark High School. The Company agrees to relocate the existing return at the Municipal Building to another location within the Municipal Building at no cost to the Borough.
- e. In the event that the current channel designations for the local access channels are changed by the Company (i.e. channels are transferred to new channel numbers), Comcast shall endeavor to give the municipality sixty (60) days advance written notice of any change in PEG channel assignments (if commercially practical), but in no event fewer than thirty (30) days written notice and in addition reimburse the municipality for reasonable administrative cost associated with notifying persons of the channel designations and rebranding content and material. The total amount to be paid by Comcast shall not exceed the sum of five thousand dollars for each instance.
- f. The Company shall build an additional access channel return line at no cost to the Borough and at a location of the Borough's choosing provided the return is located within 200 feet of existing and active cable plant, and provided that written request from the Borough is received by Comcast one (1) year prior to the scheduled construction of the return line.

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- g. Within six (6) months of the issuance of a Renewal Certificate of Approval by the Board, the Company shall provide to the Borough a one-time access related technology grant in the amount of \$60,000 (sixty thousand dollars).
- h. The Company shall provide a second grant for community programs in the total amount of \$25,000 that shall be paid in annual payments of \$2,500 over the 10-year franchise term.

SECTION 16. EMERGENCY USES

The Company will comply with the Emergency Alert System ("EAS") rules in accordance with applicable state and federal statutes and regulations.

The Company shall in no way be held liable for any injury suffered by the municipality or any other person, during an emergency, if for any reason the municipality is unable to make full use of the cable television system as contemplated herein.

SECTION 17. LIABILITY INSURANCE

The Company shall at all times maintain a comprehensive general liability insurance policy with a single limit amount of \$1,000,000 covering liability for any death, personal injury, property damages or other liability arising out of its construction and operation of the cable television system, and an excess liability (or "umbrella") policy in the amount of \$5,000,000.

SECTION 18. INCORPORATION OF THE APPLICATION

All of the statements and commitments contained in the Application or annexed thereto and incorporated therein, and any amendment thereto, except as modified herein, are binding upon the Company as terms and conditions of this consent. The Application and

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other relevant writings submitted by the Company shall be annexed hereto and made a part hereof by reference provided same do not conflict with applicable State or Federal law.

SECTION 19. COMPETITIVE EQUITY

Should the Municipality grant a franchise to construct, operate and maintain a cable television system to any other person, corporation or entity on terms materially less burdensome or more favorable than the terms contained herein, the Company may substitute such language that is more favorable or less burdensome for the comparable provision of this Ordinance subject to the provisions of N.J.A.C. 14:17-6.7.

SECTION 20. SEPARABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and its validity or unconstitutionality shall not affect the validity of the remaining portions of the Ordinance.

SECTION 21. THIRD PARTY BENEFICIARIES

Nothing in this Franchise or in any prior agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of such agreements or Franchise.

SECTION 22. EFFECTIVE DATE

This Ordinance shall take effect immediately upon issuance of a Renewal Certificate of Approval from the BPU.

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Recorded Vote on Introduction Ordinance No. 2574-17 November 8, 2017

	Motion	Second	Ayes	Nays	Abstain	Absent
Councilman Atkins			x			
Councilwoman Shaw			x			
Councilwoman Staten		x	x			
Councilwoman Walker			x			
Councilman Bishop	x		x			
Councilman Aubourg			x			

Recorded Vote on Adoption Ordinance No. 2574-17 December 13, 2017

	Motion	Second	Ayes	Nays	Abstain	Absent
Councilman Atkins		x	x			
Councilwoman Shaw	x		x			
Councilwoman Staten			x			
Councilwoman Walker						x
Councilman Bishop			x			
Councilman Aubourg			x			

Approved

_____ Vetoed and returned to the Municipal Clerk with the following statement and objections:


Christine Dansereau, Mayor DATE: _____

NOTICE is hereby given that Ordinance Number 2574-17 was passed and adopted on second and final reading at a Workshop meeting of the Mayor and Council on December 13, 2017 after 6:30 p.m., 210 Chestnut Street, Roselle, NJ.


Lydia D. Massey, Deputy Municipal Clerk