OFFICE OF THE CITY CLERK
2008 JUL -3 PM 6:12

INTRODUCED BY COUNCILMEMBER _____

APPROVED AS TO FORM AND LEGALITY

_____
CITY ATTORNEY

ORDINANCE NO. 12861 C.M.S.

AN ORDINANCE AMENDING ORDINANCE NO. 10399 C.M.S. TO EXTEND FOR TEN YEARS THE CABLE FRANCHISE HELD BY COMCAST OF CALIFORNIA/COLORADO, LLC TO CONSTRUCT AND OPERATE A CABLE SYSTEM TO PROVIDE CABLE SERVICE WITHIN THE CITY OF OAKLAND; AMENDING THE TERMS AND CONDITIONS OF THE FRANCHISE; AND ESTABLISHING CERTAIN REMEDIES FOR THE VIOLATION OF THE FRANCHISE

WHEREAS, the original fifteen year cable franchise issued by the City of Oakland in 1983 has been continued and extended by acknowledgement of the parties until negotiation and acceptance of a new franchise; and

WHEREAS, Comcast of California/Colorado, LLC ("Franchisee") which at the time of this Ordinance is under the ultimate ownership and control of Comcast corporation, has been operating under the cable franchise in Oakland since 2002, when the franchise was transferred to Comcast from AT&T Cable pursuant to the process established under federal law for the change of control of a cable franchise; and

WHEREAS, the City has sued Comcast Corporation, a subsidiary and the franchisee which have counter sued the City over matters related to the franchise; and

WHEREAS, the City and Comcast have developed an opportunity providing for the continuation of the franchise and the settlement of the lawsuit; and

WHEREAS, the Oakland City Council, having considered the interests proposed and advanced has found that extending the grant of the Franchise requested by Comcast, subject to certain conditions and settlement of the Comcast litigation are in the public interest; and

WHEREAS, the Council finds this ordinance is subject to exemptions from the California Environmental Quality Act (CEQA), including without limitation, CEQA Guidelines sections 15301; 15302; and 15305, and

WHEREAS, pursuant to the authorization of the City Council and instructions to the City Administrator, announced on December 18, 2007, the franchisee, and defendant in the

lawsuit, and the City Administrator have signed the franchise agreement approved by the Council on December 18, 2007; now therefore,

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

The City Council hereby adopts this ordinance reflecting the terms of the extended cable franchise to Franchisee as follows:

CITY OF OAKLAND, CALIFORNIA
VIDEO FRANCHISE CERTIFICATE[1]

1) Franchise Holder:

Comcast of California/Colorado, LLC
12647 Alcosta Blvd., #200
San Ramon, CA 94583

2) Certificate Date and Franchise Effective Date: December 18, 2007

3) Franchise Expiration Date: December 18, 2017 (10 years)

4) Franchisor: City of Oakland, CA

Grant of Franchise and Terms: The City of Oakland by action of the City Council hereby grants this franchise to Comcast of California/Colorado, LLC ("Comcast" or "franchisee") as an extension, amendment and complete restatement of the franchise originally granted by city Ordinance No. 10399 as a citywide video service franchise, and subject to and under the terms and conditions of the following specified provisions of the California Digital Infrastructure and Video Competition Act of 2006 ("DIVCA"), as may be amended from time to time, which are incorporated herein by this reference as solely local franchise terms: Sections 5840 (Grant), 5850 (Term), 5860 (5% Franchise Fee), 5870 (PEG Channels and 1% PEG Capital Funding), 5880 (Emergency Alert System), 5885 (Right of Way), 5890 (Non-Discrimination), 5900 (Customer Service and Privacy) and 5970 (Assignment); and the franchisee accepts and shall comply with those provisions within the city limits.

Insurance and Security Bond: The franchisee shall maintain or cause to be maintained, commercial general liability insurance of not less than $3 million combined single limit or the equivalent, and workers compensation insurance at the statutory level, and shall deliver a certificate or evidence thereof to the city within thirty (30) days of the effective date of this franchise. The franchisee shall provide a security bond in the City's favor in an amount not less than Fifty Thousand Dollars ($50,000) to secure the faithful performance of this franchise.

[1] This Certificate constitutes the City's grant of authority to provide cable television/video service in the City of Oakland, including but not limited to authority to use the public rights-of-way in exchange for the 5% franchise fee payable to the City on gross revenues from the cable system's provision of cable service, and subject to the laws of this state.

Institutional Network: The franchisee agrees that the City's 1% PEG Capital funding may be used in whole or part, at the City's discretion, for capital costs related to Institutional Network ("I-Net") facilities as described below, provided that the I-Net is constructed, operated and maintained by the franchisee. The franchisee will provide backbone transmission capacity of up to a maximum of two (2) optical fibers for the I-Net, at or below market usage rates, to connect public safety facilities located in the City. Additional capacity for network redundancy to such sites, if desired, may be obtained by the City at market rates as negotiated in a separate written agreement. The City may also use funds from the 1% PEG Capital funding for capital costs associated with construction of service laterals to connect public safety facilities to the I-Net backbone.

Subject to the City and franchisee developing a mutually satisfactory final I-Net design and entering into a mutually satisfactory construction agreement (or at the City's option a managed services arrangement whereby franchisee would provide integrated facilities, usage and maintenance), the franchisee will construct the I-Net at the City's expense. The construction agreement shall provide for the City's recovery of such capital expenditures from the 1% PEG Capital funding. The City will provide the franchisee with its list of public facilities to be connected to the I-Net by April 30, 2008, together with a description of the capacity needed for each site, and the franchisee will then propose a design. 150 Frank H. Ogawa Plaza will be the central aggregation point for the I-Net. The I-Net design and construction agreement must be completed and signed by both parties by June 15 of 2008, for construction to commence in 2009. If the I-Net construction agreement is completed and signed by both parties after June 15, 2008 construction will commence in 2010. If the I-Net construction agreement is not completed and signed by both parties by December 31, 2008, all of the franchisee's obligations with respect to the I-Net shall lapse.

Comcast hereby agrees to credit the City with $200,000 to be applied against charges for use of the franchisee's backbone capacity on the City's I-Net account. The City will be responsible for costs associated with the maintenance of the I-Net, provided that Comcast will apply maintenance charges only on an incremental basis over and above Comcast's own maintenance expenses for its existing network. The City's I-Net use shall be solely for municipal and public safety related purposes and not for service, usage or facilities exchange or resale. The City may continue use of the I-Net for so long as Comcast or any successor is operating a cable communications system in the City, whether under a state or local franchise, and such terms of usage may be further detailed in a separate written agreement between the City and the franchisee.

Customer Service: The franchisee shall comply with all applicable state and federal customer service and consumer protection provisions, consistent with California Public Utilities Code Section 5900.

Service Availability: The City acknowledges and certifies that the franchisee's cable communications system construction and update has been completed as certified by Comcast to the City, effective September 30, 2004, and that the City has no outstanding claims with respect to the franchisee's completion of its construction obligations under any prior franchise or related

agreement. The franchisee's cable communications system shall make service connections available to all demonstrably lawful residential dwelling units within the City existing as of September 30, 2004, without charge for any line extensions that may be required. For lawful dwelling units constructed or first permitted for occupancy after September 30, 2004, franchisee reserves the right to assess the subscriber for any line extension. Service drops for lawful residential dwelling units shall be at franchisee's expense up to the first 150 feet, and franchisee may assess to the subscriber the cost of any aerial or underground drop to the extent exceeding 150 feet.

Enforcement: The City is empowered to enforce this franchise, and all applicable state and federal customer service and consumer protection requirements, as set forth in California Public Utilities Code Section 5900 (except that as a local City franchise, sections 5900 (g) and (k) will not apply).

Cable Service to City and School Buildings: The franchisee shall continue to provide free cable service connections at the existing level of cable service or its equivalent currently provided to each City building and school. Upon the City's request, the franchisee shall provide one (1) free cable connection with basic cable service, for each newly constructed or unserved City building and school within City limits, including line extension up to 150 feet at franchisee's cost, if needed for connection. Jail and prison facilities are not entitled to such free cable connections and service. As such time as all channels on franchisee's cable television system are offered only in digital format, the franchisee shall provide any special equipment (including but not limited to decoder boxes) needed to receive such channels to existing connections for which free cable service is then being provided, at no cost to the City; provided that the franchisee is not required to provide amplifiers, internal wiring, or other equipment necessary to deliver or process the signal beyond the single service connection outlet per building.

Sole and Exclusive Franchise Document: This Franchise supersedes and replaces any and all other agreed or alleged franchises, agreements, franchise and cable ordinances of the City, with or applicable to the franchisee, and is the sole and exclusive instrument, agreement and document with the City. This Franchise and all rights granted under the Franchise are subject to the City's police powers to adopt and enforce general ordinances necessary to the health, safety and welfare of the public. However, this Franchise is a contract and except as to those changes which are the result of the City's legitimate exercise of its police powers, neither party may take any unilateral action which materially changes the explicit mutual promises in this Franchise.

City Franchise and Settlement of Litigation: The City hereby agrees to enter into a separate settlement agreement whereby the City shall dismiss forthwith the lawsuit known as City of Oakland v. Comcast of California/Colorado, LLC, et al., U.S. District Court (N.D. Cal.) No. CO65380CW, and the franchisee hereby agrees to concurrently dismiss its counter-complaint in the same suit; in each case, without prejudice, subject to the right to re-file the same claims if and only if, prior to the expiration of the stated term of this franchise, the franchisee applies for and is granted a California state video franchise by which this local direct franchise with the City is abrogated and the City's benefits are thereby lost. The City and the franchisee hereby agree to toll the applicable statutes of limitation on their respective asserted causes of action in the foregoing litigation during the stated term of this Franchise.

CITY OF OAKLAND:

_____
Deborah Edgerly
City Administrator

COMCAST OF CALIFORNIA/COLORADO, LLC:

_____
Its

IN COUNCIL, OAKLAND, CALIFORNIA, FEB 19 2008, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE – 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST: LaTonda Simmons
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

Introduction Date: JAN 5 2008

DATE OF ATTESTATION: February 25, 2008