

City of Philadelphia



(Bill No. 070793)

AN ORDINANCE

Authorizing the Commissioner of Public Property to enter into the amendment of four cable television franchises operated by subsidiaries of Comcast Corporation in order to modify certain of the terms and conditions governing the franchisees' provision of channels, financial support, and other support for public access television programming in the City of Philadelphia, including amendment of Franchise Renewal Agreements of Comcast of Philadelphia, Inc. for Franchise Areas I, III and IV, and of Comcast of Philadelphia, LLC for Franchise Area II, all under certain terms and conditions.

WHEREAS, four cable television systems in the City of Philadelphia are operated by wholly owned subsidiaries of Comcast Corporation, a Pennsylvania corporation, pursuant to four franchises and Franchise Renewal Agreements with the City which have been granted or assigned with City approval to such subsidiaries of Comcast Corporation, including the following:

- 1) an Area I franchise initially granted to Greater Philadelphia Cablevision, Inc. a.k.a. Greater Media Cable, renewed by Franchise Renewal Agreement dated June 15, 1999, and effective for a period of fifteen years commencing October 8, 2000, which was transferred to Comcast GPCI, Inc., with approval of the City granted by Bill No. 990357 which became law on July 1, 1999, and which franchise is currently held by Comcast of Philadelphia, Inc., a Pennsylvania corporation;
- 2) an Area II franchise initially granted to Wade Communications Partnership d/b/a Wade Cablevision, renewed by Franchise Renewal Agreement dated December 21, 1999, and effective for a period of fifteen years commencing August 12, 2000, which was transferred to Cable Holdco Exchange VI LLC, a Delaware limited liability company and indirect wholly owned subsidiary of Comcast Corporation, with approval of the City granted by Bill No. 060440 which became law on July 5, 2006, and which franchisee is now named Comcast of Philadelphia, LLC;
- 3) an Area III franchise granted to Comcast Cablevision of Philadelphia, Inc., renewed by Franchise Renewal Agreement dated July 13, 1998, and effective for a period of fifteen years commencing September 28, 2000, as approved by Bill No. 960882 which became law June 25, 1998, and which franchisee is now named Comcast of Philadelphia, Inc., a Pennsylvania corporation; and
- 4) an Area IV franchise granted to Comcast Cablevision of Philadelphia, Inc., renewed by Franchise Renewal Agreement dated July 13, 1998, and effective for a period of fifteen years commencing September 12, 2000, as approved by Bill

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No. 960882 which became law June 25, 1998, and which franchisee is now named Comcast of Philadelphia, Inc., a Pennsylvania corporation;

(Comcast of Philadelphia, Inc. and Comcast of Philadelphia, LLC are hereinafter referred to collectively as “Comcast”; the above-referenced Franchise Renewal Agreements are hereinafter referred to collectively as the “Franchise Renewal Agreements”); and

WHEREAS, each of the above-referenced Franchise Renewal Agreements set forth terms and conditions governing the franchisee’s provision of channels and financial and other support for public access television programming, as set forth in Article II, Section 3.b (“Access Service”) and in Appendix E (“Access Channels and Facilities”) of each Franchise Renewal Agreement; and

WHEREAS, Comcast and the City seek to modify certain such terms and conditions, as set forth below in this Ordinance, in order to facilitate the implementation of public access programming in the City; now, therefore,

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. City Council hereby authorizes the Commissioner of Public Property to enter into an amendment of each of the Franchise Agreements for Franchise Areas I, II, III, and IV, pursuant to which Appendix E to each such Franchise Renewal Agreement, titled “Appendix E Access Channels and Facilities,” shall be deleted in its entirety and replaced with a new Appendix E containing provisions substantially in the form set forth below:

APPENDIX E

ACCESS CHANNELS AND FACILITIES

1. ACCESS CHANNELS

(a) In order that the City-wide access channels identified in this Section 1 may be provided on the same cable channels on all cable systems in the City, the Franchisee warrants and represents (i) that it shall negotiate in good faith with the Commissioner to establish such City-wide access channel allocations and to maintain existing City-wide access channel locations, and (ii) will provide the same channel positions for all such access channels on all cable systems in the city for which it is the franchisee, such channel positions being as set forth in Section 2, *Access Channel Positions*, of this Appendix E.

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(b) The Franchisee shall provide the following public, educational and government access channels and leased access channels (collectively, "Access Channels"), except as may be agreed otherwise by the Commissioner in writing: Five (5) public access channels; five (5) educational access channels; two (2) City government access channels; and leased access channels provided in accordance with applicable law and regulations.

The educational access channels and City government access channels shall be delivered on the Franchisee's basic service tier, provided to all subscribers on the Area System. One (1) public access channel shall be delivered on the Franchisee's basic service tier provided to all subscribers on the Area system. Four (4) public access channels shall be digital channels available to all subscribers receiving digital service, on the most basic digital service tier provided to all digital subscribers on the Area System. The channel positions (numbers) of the education access, City government access, and public access channels shall be as provided in Section 2, *Access Channel Positions*.

The Franchisee further warrants and agrees that the foregoing Access Channel allocations shall be maintained throughout the term of this Renewal Agreement unless a change in such Access Channel allocations is specifically authorized by the Commissioner in writing or expressly set forth in this Appendix E; provided, however, that the positions (numbers) of the public access channels may be changed by the Franchisee in accordance with Section 6, *Change in Public Access Channel Positions*. The Franchisee further warrants and represents that it will reasonably cooperate with the City in making any change in or additions to the negotiated Access Channel allocations as may be requested by the Commissioner to further facilitate the objective of maintaining an adequate number of common Access Channel allocations throughout the City; provided, however, that the Franchisee shall not be required to allocate more common access channels than the total number of Access Channels set forth above.

(c) All Access Channels shall be provided by the Franchisee at no cost to the Access Corporation or the City, for non-commercial purposes, except that leased access channels shall be provided at rates and for purposes determined by the Franchisee in accordance with applicable law and regulations.

(d) Notwithstanding anything to the contrary that may be contained in this Section 1., the Franchisee and the City agree as follows:

(1) The City shall loan to the Franchisee one (1) city government access channel, Channel 63, effective upon Certification of the Upgrade Plan. Such channel shall be returned to the City for its use as a City government access channel within twelve (12) months of the Commissioner's written request; provided, however, that the City agrees that no such request for return of the

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channel shall be prior to Certification of Completion of the Upgrade. Upon written request by the Franchisee, the Commissioner will consider, but shall not be obligated to accept, a notice period longer than twelve (12) months.

(2) The City authorizes the Franchisee to use Channel 51, an analog channel presently designated as an educational access channel through the term of this Renewal Agreement.

In consideration of such authorization, the Franchisee shall provide to the City bandwidth up to 7.6 mbps for use by the City to provide up to three digital channels (two closed channels and one open channel) for such non-commercial use as the City, in its discretion, may determine.

a. City Hall will be the origination point for all programming to be carried on the closed digital channel(s). The Franchisee agrees to pick up the City's programming at the origination point, transport such programming to the Torresdale Avenue headend (or such other Franchisee facility determined by the Franchisee), and to insert such programming into the Franchisee channel lineup on channels designated by the Franchisee. The City may provide such programming in either analog format (in which case the Franchisee will encode the programming for digital distribution) or digital format (provided such digital format is technically compatible with the Franchisee's system).

b. The digital channels will be provided on the Area System (and on the other Area Systems for which the Franchisee is franchised) on a schedule to be agreed by the Franchisee and the City, but will in any case be provided within ninety (90) days after written request by the City, unless agreed otherwise by the Franchisee and the City.

c. The Franchisee will provide digital set top boxes to the City, programmed to ensure that access to the closed digital channel(s) will be restricted as determined by the City. The number of such set top boxes will not be less than the number of set top boxes that would have been required to provide the closed digital channel(s) to each school operated by the Philadelphia School District, but in no event shall the number of digital set top boxes exceed one hundred and twenty-five (125). Upon request, the Franchisee will furnish additional digital set top boxes to the City at Franchisee's cost for such set top boxes and such additional set top boxes will be programmed as set forth in the first sentence of this subsection c.

2. ACCESS CHANNEL POSITIONS

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(a) The following channel positions shall be assigned to the Access Channels. (Certain Access Channels are subject to loans or grants of use by the City to the Franchisee, as set forth in Section 1(d) of this Appendix E):

- City government access channels: Channels 63 and 64.
- Educational access channels: Channels 51-54, Channel 56.
- Public access channels: Channel 66, Channels 866 through 869.

(b) Subject to Section 6, *Change in Public Access Channel Positions*, analog Channel 66 shall remain a public access channel, and digital Channels 866 through 869 shall remain public access channels, in the event that all channels on the Area System are converted to digital channels.

(c) The Franchisee shall not change the position (number) of any access channel, whether pursuant to Section 6, *Change in Public Access Channel Positions*, or otherwise, unless the change is first approved by the City in writing, which approval will not be unreasonably withheld.

3. ACCESS CORPORATION

The Access Corporation or its City-approved designee shall be responsible for the management, operation and maintenance of all public access studios, facilities, equipment and services funded or provided by the Franchisee pursuant to this Renewal Agreement for the purpose of providing public access programming.

4. DELIVERY OF PUBLIC ACCESS CHANNELS

(a) The Franchisee shall make available analog Channel 66 and digital Channel 866 to the Access Corporation within sixty (60) calendar days following written notice from the City requesting the channels.

(b) The Franchisee shall make available digital channels 867 through 869 to the Access Corporation upon the Access Corporation complying with the following programming thresholds. Provided the applicable threshold has been met, the Franchisee shall make available each such channel to the Access Corporation within ninety (90) calendar days following the City's written notice requesting the channel.

(1) Threshold for Channel 867 delivery: Twenty (20) hrs per week of "Local Programming," as defined below, is broadcast on Channels 66 and 866 combined (i.e. the Local Programming on the two channels taken together totals twenty (20) hours per week), for a period of sixty (60) continuous calendar days prior to the date of the City's written notice.

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(2) Threshold for Channel 868 delivery: Fifteen (15) hrs per week of Local Programming is broadcast on Channel 867 for sixty (60) continuous calendar days prior the date of the City's written notice, and the Channel 867 delivery threshold is maintained throughout that period.

(3) Threshold for Channel 869 delivery: Fifteen (15) hrs per week of Local Programming is broadcast on Channel 868 for 60 continuous days prior to the date of the City's written notice, and the Channel 867 and 868 delivery thresholds are maintained throughout that period.

(c) "Local Programming" means locally produced, original, non-repetitive, non-text generated video programming, where "locally produced" means programming that is produced by individuals or entities maintaining a residence, office, or place of business in the City and County of Philadelphia and is reasonably determined by the Access Corporation to be of interest to Philadelphia residents, whether or not the programming is produced by the Access Corporation, or by using Access Corporation facilities or equipment, or under Access Corporation supervision.

(d) Comcast shall have the right to petition the City for the return of Channels 867, 868, or 869 in the event the programming threshold applicable to the channel is not met for a period of one hundred and eighty (180) consecutive calendar days prior to the date of the petition. The City, in its discretion, shall determine whether a channel shall be returned to Franchisee on account of failure to meet a programming threshold, after investigating in good faith whether the threshold has been met and discussing the results of its investigation with the Franchisee. Channels 66 and 866 shall not be subject to any programming threshold or other programming requirement under this Renewal Agreement, and shall be available to the Access Corporation without condition, throughout the term of the Renewal Agreement.

5. HIGH DEFINITION PROGRAMMING; VIDEO ON DEMAND

(a) If requested by the City in writing, the Franchisee shall increase the bandwidth of one (1) digital public access channel designated by the City sufficiently to permit the broadcast of high definition video programming, equivalent in quality to the highest quality commercial high definition programming available on the Franchisee's system. Such obligation shall become effective on the earlier of (i) the twenty-fourth (24th) month following the first delivery of video programming on a public access channel, or (ii) the first date on which all of Franchisee's cable systems in the city are converted to all digital service. The City shall not make such request unless it has reasonably determined that the Access Corporation is ready to broadcast in high definition on the channel requested. The Access Corporation shall be responsible, at its cost, for purchasing and installing the equipment necessary to deliver high definition programming.

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(b) If the Franchisee converts any of its cable systems in the City to provide only high definition video programming, the Franchisee shall, at its cost, convert one or more public access channels, as requested by the City in writing, to high definition programming, including the provision of all transmission equipment required for delivery of high definition programming to Franchisee's headend.

(c) If requested by the Access Corporation, the Franchisee shall carry public access programming on its video-on-demand ("VOD") service, at no cost to the Access Corporation, as follows: up to four (4) hours of VOD programming capacity in the first year of operation; up to eight (8) hours of VOD programming capacity in the second year of operation through the end of the term of this Renewal Agreement; up to fifty percent (50%) of the programming hours on VOD may be changed each month; the content of all VOD programming will be determined by the Access Corporation.

6. CHANGE IN PUBLIC ACCESS CHANNEL POSITIONS

The Franchisee may change the channel positions of the public access channels if, but only if, the Franchisee complies with all of the following conditions:

(a) The change must be required (i) as part of a substantial rearrangement of the digital tier of channels for the entire Franchisee system in all City franchise areas for which the Franchisee is franchised, and (ii) to preserve existing blocks of the Franchisee's channels that each comprise a programming genre (e.g. sports channels, pay-per-view channels, cartoon channels).

(b) No public access channel position may be changed in the first two (2) years following the date on which the first public access channel carries programming; no public access channel position may be changed more than once in the third through fifth years following such date; and no public access channel may be changed more than once in any three year period thereafter.

(c) The Franchisee shall provide a minimum of ninety (90) calendar days written notice to the City and to the Access Corporation prior to implementing any change in public access channel positions under this Section 6.

(d) In the event the Franchisee changes public access channel positions under this Section 6:

(1) All five public access channels shall be re-positioned as a single block of consecutively numbered channels, in the lowest priced service tier available to all subscribers on the Area System at the time of the position change; except that if only analog channels are available to all subscribers on the

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system at the time of the position change, then at least one of the new channels shall be an analog channel and that channel shall have a number that is mnemonically linked to the other four channels (e.g. channel 66, 866, 867, 868, 869).

(2) The Franchisee shall exercise its best efforts to place the block of public access channels low in its channel lineup.

(3) In addition to any other marketing support to be provided to the Access Corporation, the Franchisee shall broadcast, at no cost to the Access Corporation, up to one hundred (100) public service announcements (“PSAs”) per month for the first year following the channel change, as requested by the Access Corporation. The PSAs will be broadcast on the expanded basic tier of the system, and will be distributed as to channels and times of showing in the same manner as PSAs on the system generally. The content of the PSAs will be provided by the Access Corporation.

(4) The Franchisee will make a one-time grant of Five Thousand Dollars (\$5,000) to the Access Corporation for expenses occasioned on account of the change in channel positions.

7. ACCESS CORPORATION FUNDING COMMITMENTS

(a) The Franchisee warrants and represents that it will provide to the Access Corporation the one-time monetary grants and annual monetary support set forth below for the purpose of supporting the Access Corporation’s program for the production and distribution of public access television programming (collectively, “Public Access Support”). Subject to (1)-(3) below, the one-time grants and annual support shall be paid to the Access Corporation when and as directed by the City in writing, after consultation with the Access Corporation, and within thirty (30) days following the City’s written notice requesting the payment. The Access Corporation shall determine the specific uses for the Public Access Support, with such direction from the City as the City may require; provided, that such uses shall include establishing and operating a citywide public access center to support the production and distribution of public access television programming. The City and the Franchisee acknowledge and agree that the one-time grants and annual support provided below are the Franchisee’s Access Corporation Funding Commitments for this Area Franchise, and that the Franchisee shall be obligated to provide one-time grants and annual support in the same number and dollar amounts, but not more than the same number and dollar amounts, for each City Franchise Area for which it holds a franchise.

(1) Initial one-time grant: Four Hundred and Fifty Thousand Dollars (\$450,000).

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(2) Second one-time grant: Two Hundred and Twenty-Five Thousand Dollars (\$225,000), which shall not be due or owing earlier than two (2) years after the date of the City's written request for the initial one-time grant.

(3) Annual Support: One Hundred and Twenty-Five Thousand Dollars (\$125,000) per year, commencing on the date specified in the City's written notice requesting payment.

(b) Notwithstanding anything to the contrary in this Renewal Agreement, the Franchisee warrants and represents that it shall in no event deduct any part of the Public Access Support from the franchise fee provided in Article I, Section 9, *Franchise Fee*, of this Renewal Agreement, whether or not the Franchisee is entitled to make such a deduction under applicable law or regulation. The Franchisee shall comply with the terms of this subsection 7(b) notwithstanding any change in applicable law or regulation, unless the terms of this subsection are expressly prohibited by such change.

(c) If requested by the Franchisee in writing, the City shall require the Access Corporation to provide to the City once in each year an audited financial statement setting forth the prior year's expenditures of all funds received from the Franchisee under this Renewal Agreement, and shall make such audited financial statement available to the Franchisee.

(d) The Franchisee may, in its discretion, pass through any or all Public Access Support paid to the Access Corporation to its customers as a line item on customer bills.

8. MARKETING SUPPORT; PURCHASING

(a) The Franchisee shall carry, at no cost to the Access Corporation, up to one hundred (100) public service announcements ("PSAs") per month for the first year in which public access programming is delivered, and up to fifty (50) PSAs per month thereafter, through the term of this Renewal Agreement, as requested by the Access Corporation. The PSAs shall be carried on the expanded basic tier of the Area System, and shall be distributed as to channels and times of showing in the same manner as PSAs on the system generally. The content of the PSAs, up to the limits specified, will be provided by the Access Corporation. Notwithstanding the foregoing, in the event of a change in the positions of public access channels pursuant to Section 6, the Franchisee shall carry up to one hundred (100) PSAs per month for the first year following the change, on the terms provided in Section 6(d)(3).

(b) The Franchisee will make equipment available to the Access Corporation for purchase or lease, at the Access Corporation's cost, for the most favorable prices that are available to the Franchisee from its suppliers.

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9. GOVERNMENT ACCESS CENTER

Except as provided below, the Franchisee, in cooperation with other Area franchisees and the City, shall purchase and install all equipment and facilities (or at the City's option, make monetary grants to the City) for purposes of replacement, upgrade and maintenance of existing City-wide Government Access Center facilities. The dollar amount of such support, or equivalent value in equipment/facilities, shall be as follows for each of the City Franchise Area(s) for which the franchisee holds a franchise:

Access Center Location: City Hall; Main Studio/Control Room

Franchisee's Capital Contribution:

Area I: \$250,000

Area II: \$250,000, payable as follows:

\$125,000 available as of January 1, 2004, to be paid in such amounts, up to \$125,000, as the City may thereafter request from time to time;

\$125,000 available as of January 1, 2009, to be paid in such amounts, up to \$125,000, as the City may thereafter request from time to time;

Franchisee shall propose to the City the amounts to be paid by Franchisee to the City in any calendar year for which payment is due. Such proposal shall be in writing and shall be delivered not later than July 1 of the preceding year. Not later than October 1 of the preceding year, the City shall accept or reject the proposal, in writing, and if rejected, shall state the alternative amount that the city requires to be paid.

Area III: N/A - \$0

Area IV: N/A - \$0

10. EDUCATIONAL ACCESS GRANT

Within 120 days after Certification and approval of the Upgrade Plan by the Commissioner, the Franchisee shall make a one-time grant to the Philadelphia School District (or to such matching-grant fund as the Philadelphia School District may

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designate) in the amount of \$250,000 for use by the School District to fund its communications needs, as determined by the School District.

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on October 25, 2007. The Bill was Signed by the Mayor on November 9, 2007.



Patricia Rafferty
Chief Clerk of the City Council