

ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: November 10, 2014
Item No.: 13.d

Department Approval

City Manager Approval



Item Description: Consider Extending the Term of Cable Television Franchise Ordinance and Agreement Held by Comcast of Minnesota, Inc

1 **BACKGROUND**

2
3 As the City Council is aware, the North Suburban Communications Commission (“NSCC”) manages
4 the City’s cable television franchise on behalf of the City. On October 10, 2014, the NSCC reached an
5 agreement with Comcast on the resolution of multiple cable franchising issues. The following are some
6 highlights of the agreement:
7

- 8 • Cable Franchise is extended through December 31, 2016.
- 9 • Memorandum of Understanding with Comcast is extended through December 31, 2016.
- 10 • Franchises and MOU will both roll-over (i.e. month-to-month) if not renewed by extension date
11 (December 31, 2016).
- 12 • The pending administrative hearing before the Office of Administrative Hearings, which is part
13 of the formal renewal process, will be suspended and all motions withdrawn.
- 14 • The formal renewal process may recommence after July 1, 2015, or the closing of the transfer
15 whichever occurs first.
- 16 • Commitment by the NSCC and Comcast to have at least monthly meetings for the informal
17 cable franchise renewal process.
- 18 • NSCC will receive 1 HD channel with provisions for channel placement and quality.
- 19 • NSCC will have access to the Electronic Programming Guide.
- 20 • Refund of approximately \$49,000 total to cable subscribers.
- 21 • Pending PEG Capacity and Rate Order Violation Notices will be withdrawn.
- 22 • I-Net will continue to operate as it currently exists, except Comcast will not be required to
23 extend it to new locations.
- 24 • The NSCC and member cities will consent to the transfer of the franchise from Comcast to
25 GreatLand Connections, the name of the new spin-off cable company that will be serving the
26 Twin Cities metro area.

27 The agreement is contingent upon the NSCC member cities (1) approving the extension of the cable
28 television franchise ordinance through December 31, 2016; and (2) approving the pending cable
29 franchise transfer application. The NSCC has recommended that the City approve both the extension
30 and the transfer application.

31 **POLICY OBJECTIVE**

32 Extending the franchise agreement with Comcast will allow for the continuation of cable TV services to
33 Roseville residents and provide the City with revenue for allowing the cable company to operate
34 facilities within the City of Roseville's right-of-way.

35 **FINANCIAL IMPACTS**

36 There are no direct financial impacts to extending the current franchise agreement. Under the
37 extension, the City will continue to receive the existing franchise fee. The City receives approximately
38 \$420,000 annually from Comcast in franchise fees. The funds are deposited into the Communications
39 Fund.

40 **STAFF RECOMMENDATION**

41
42 The NSCC has prepared a Cable Television Franchise Ordinance Amendment for the City. It extends
43 the existing Cable Television Franchise Ordinance through December 31, 2016, and it requires
44 Comcast's acceptance. The NSCC has indicated to staff that Comcast has no objection to the
45 amendment.

46
47 In addition, the NSCC has recommended approval of the cable television franchise transfer application,
48 which will transfer ownership of the ultimate parent of the cable franchise from Comcast to a new
49 company that will be called GreatLand Connections. The attached resolution was negotiated and
50 accepted by both the NSCC and Comcast/GreatLand. The resolution lists several contingencies,
51 including the actual closing of the proposed transaction, receipt of necessary federal approvals,
52 executing a guaranty of performance and executing a guaranty regarding rates.

53
54 Staff recommends approval of the Cable Television Franchise Ordinance Amendment extending the
55 existing cable franchise to December 31, 2016 and adoption of a resolution consenting to the transfer of
56 the cable franchise from Comcast to GreatLand Connections.

57 **REQUESTED COUNCIL ACTION**

58 Motion to **APPROVE** an amendment to the Cable Television Franchise Ordinance extending the existing
59 cable franchise to December 31, 2016

60 -and-

61 Motion to **APPROVE** a resolution consenting to the transfer of the cable franchise from Comcast to
62 GreatLand Connections

63 -or-

64 Motion to **DENY** an amendment to the Cable Television Franchise Ordinance extending the existing
65 cable franchise to December 31, 2016

66 -and-

67 Motion to **DENY** a resolution consenting to the transfer of the cable franchise from Comcast to
68 GreatLand Connections

69 Prepared by: Patrick Trudgeon, City Manager (651) 792-7021

Attachments: A: Excerpts from 1998 Cable Franchise Agreement

- B: Amendment to the Cable Television Franchise Ordinance
- C: Resolution consenting to the transfer of the cable franchise from Comcast to GreatLand Connections

ORDINANCE NO. 1208

AN ORDINANCE GRANTING A FRANCHISE TO MEDIAONE NORTH CENTRAL COMMUNICATIONS CORP. TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE COMMUNICATIONS SYSTEM IN THE CITY OF ROSEVILLE; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY [IN CONJUNCTION WITH THE CITY'S RIGHT-OF-WAY ORDINANCE, IF ANY, AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN:

The City Council of the City of Roseville ordains:

STATEMENT OF INTENT AND PURPOSE

The City intends, by the adoption of this Franchise, to bring about the further development of a Cable System, and the continued operation of it. Such development can contribute significantly to the communication needs and desires of the residents and citizens of the City and the public generally. Further, the City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a Cable Communication System.

Adoption of this Franchise is, in the judgment of the Council, in the best interests of the City and its residents.

FINDINGS

In the review of the request and proposal for renewal by Grantee and negotiations related thereto, and as a result of a public hearing, the City Council makes the following findings:

1. The Grantee's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;
2. Grantee's plans for constructing, upgrading, and operating the System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;
3. The Franchise granted to Grantee by the City complies with the existing applicable Minnesota Statutes, federal laws and regulations; and
4. The Franchise granted to Grantee is nonexclusive.

rights under this Franchise shall be subject to and in accordance with the requirements of Section 10, Paragraph 5.

4. **Franchise Term.** This Franchise shall be in effect for a period of fifteen (15) years from the date of acceptance by Grantee, unless sooner renewed, revoked or terminated as herein provided.
5. **Previous Franchises.** Upon acceptance by Grantee as required by Section 13 herein, this Franchise shall supersede and replace any previous Ordinance granting a Franchise to Grantee.
6. **Compliance with Applicable Laws, Resolutions and Ordinances.**
 - a. The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the System in City. However, the Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power, statutory rights, local ordinance-making authority, and eminent domain rights of City. Except as provided below, any modification or amendment to this Franchise, or the rights or obligations contained herein, must be within the lawful exercise of City's police power, in which case the provision(s) modified or amended herein shall be specifically referenced in an ordinance of the City authorizing such amendment or modification. This Franchise may also be modified or amended with the written consent of Grantee as provided in Section 13.3 herein.
 - b. Grantee shall comply with the terms of any City ordinance or regulation of general applicability which addresses usage of the Rights-of-Way within City which may have the effect of superseding, modifying or amending the terms of Section 3 and/or Section 8.5(c) herein, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.
 - c. In the event of any conflict between Section 3 and/or Section 8.5 (c) of this Franchise and any City ordinance or regulation which addresses usage of the Rights-of-Way, the conflicting terms in Section 3 and/or Section 8.5 (c) of this Franchise shall be superseded by such City ordinance or regulation, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.

Passed and adopted this 10th day of August, 1998.

ATTEST

CITY OF ROSEVILLE

By: [Signature]
Its: City Manager

By: [Signature]
Its: Mayor

ACCEPTED: This Franchise is accepted and we agree to be bound by its terms and conditions.

Dated: 11-23-98

By: [Signature]
Its: Vice-President + General Manager

City of Roseville

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CABLE TELEVISION FRANCHISE
ORDINANCE

The City of Roseville (the "City") ordains as follows:

SECTION 1. Section 2, Paragraph 4, entitled "Franchise Term" of the City's Cable Television Franchise Ordinance (Ord. No. 1208), shall be amended as follows:

4. Franchise Term. Pursuant to North Suburban Communications Commission Resolution No. 2014-05 (the "Extension Agreement"), this Franchise shall be in effect through December 31, 2016, unless sooner renewed, revoked or terminated as herein provided.

SECTION 2. This Ordinance shall be effective upon the acceptance of Comcast of Minnesota, Inc.

Passed and adopted this 10th day of November, 2014.

23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41

Attest:

CITY OF ROSEVILLE

By: _____
City Manager

By: _____
Mayor

ACCEPTED: This Cable Television Franchise Ordinance Amendment is accepted and we agree to be bound by its terms and conditions.

COMCAST OF MINNESOTA, INC.

Dated: _____

By: _____
Its: _____

**EXTRACT OF MINUTES OF MEETING
OF THE
CITY COUNCIL OF THE CITY OF ROSEVILLE**

* * * * *

Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of Roseville, County of Ramsey, Minnesota was duly held on the 10th day of November, 2014, at 6:00 p.m.

The following members were present: , , , and Mayor .
and the following were absent: .

Member introduced the following resolution and moved its adoption:

RESOLUTION NO. _____

**A RESOLUTION CONDITIONALLY GRANTING THE CONSENT
TO THE TRANSFER OF CONTROL OF THE CABLE TELEVISION FRANCHISE
AND CABLE TELEVISION SYSTEM FROM
COMCAST CORPORATION TO GREATLAND CONNECTIONS, INC.**

WHEREAS, the North Suburban Communications Commission (hereinafter the “Commission”) is a Joint Powers Commission organized pursuant to Minn. Stat. § 471.59, as amended, and includes the municipalities of Arden Hills, Falcon Heights, Lauderdale, Little Canada, Mounds View, New Brighton, North Oaks, Roseville, St. Anthony, and Shoreview, Minnesota (hereinafter, the “Member Cities”); and

WHEREAS, Comcast of Minnesota, Inc., (“Franchisee”) holds individual franchises (collectively the “Franchise”) to operate a cable television system (the “System”) in the Member Cities pursuant to separate franchise ordinances (collectively the “Franchise Ordinances”); and

WHEREAS, Section 10.5(a) of the Franchise Ordinance requires the Commission’s prior consent to a fundamental corporate change, including a merger or a change in Franchisee’s parent corporation; and

WHEREAS, the Commission’s Joint Powers Agreement includes the power to administer and enforce the Franchise on behalf of the Member Cities; and

WHEREAS, after a series of transfers, Comcast of Minnesota, Inc., was approved by the Commission as the Franchise holder, pursuant to prior transfer resolutions (the “Prior Transfer Resolutions”). The Prior Transfer Resolutions, the Franchise, the Franchise Ordinance, and the Franchise Extension Agreement together with any applicable resolutions, codes, ordinances, acceptances, acknowledgments, guarantees, amendments, memoranda of understanding, social contracts and agreements, are collectively referred to as the “Franchise Documents;” and

48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95

WHEREAS, Comcast of Minnesota, Inc., is an indirect, wholly-owned subsidiary of Comcast Corporation (“Comcast”); and

WHEREAS, Comcast, as the ultimate parent corporation of Franchisee, has agreed to divest and transfer the Franchise and Cable System to Midwest Cable, Inc., in a process described in the Transfer Application (the “Proposed Transaction”); and

WHEREAS, immediately following the closing of the Proposed Transaction, Midwest Cable, Inc., will be renamed GreatLand Connections, Inc., and, for the purposes of this Resolution, the transfer applicant will be referred to as “GreatLand” throughout; and

WHEREAS, Comcast filed a Federal Communications Commission Form 394 with the Commission on June 18, 2014, together with certain attached materials, which documents more fully describe the Proposed Transaction and which documents, with their attachments, contain certain promises, conditions, representations and warranties (the “Transfer Application”); and

WHEREAS, under the Proposed Transaction, the Franchise and Cable System will stay with Franchisee, and its ultimate parent company will be GreatLand; and

WHEREAS, under the Proposed Transaction, the ultimate ownership and control of the Franchisee and the System will change, and it requires the prior written approval of the City; and

WHEREAS, Comcast, through its subsidiaries, provided written responses to some of the data requests issued by the Commission, including directing the representatives of the Commission to publicly filed and available information, and information posted to Comcast Corporation and other websites (the “Data Request Responses”); and

WHEREAS, the Commission reviewed the Transfer Application and considered all applicable and relevant factors and has recommended conditional approval by all of the Member Cities; and

WHEREAS, in reliance upon the representations made by and on behalf of Comcast of Minnesota, Inc., Comcast, and GreatLand, to the Commission, the City is willing to grant consent to the Proposed Transaction, so long as those representations are complete and accurate; and

WHEREAS, the City’s approval of the Proposed Transaction is therefore appropriate if the Franchisee will continue to be responsible for all acts and omissions, known and unknown, under the Franchise Documents and applicable law for all purposes, including (but not limited to) franchise renewal.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF ROSEVILLE AS FOLLOWS:

Section 1. The City’s consent to and approval of the Transfer Application is hereby **GRANTED** in accordance with the Franchise Ordinances, subject to the following conditions:

- 96 1.1 Neither the Franchise, nor any control thereof, nor the System, nor any part of the System
97 located in the City's public rights-of-way or on City's property, shall be assigned or
98 transferred, in whole or in part, without filing a written application with the City and/or the
99 Commission and obtaining the City's prior written approval of such transfer or assignment,
100 but only to the extent required by applicable law.
101
- 102 1.2 The City's approval of the Transfer Application is made without prejudice to, or waiver of,
103 its and/or the Commission's right to fully investigate and consider during any future
104 franchise renewal process: (i) Franchisee's financial, technical, and legal qualifications;
105 (ii) Franchisee's compliance with the Franchise Documents, except as set forth in the
106 Franchise Extension Agreement; and (iii) any other lawful, relevant considerations.
107
- 108 1.3 The City's approval of the Transfer Application is made without prejudice to, or waiver of,
109 any right of the Commission or the Member Cities to consider or raise claims based on
110 Franchisee's defaults, any failure to provide reasonable service in light of the community's
111 needs, or any failure to comply with the terms and conditions of the Franchise Documents,
112 or with applicable law, except as set forth in the Franchise Extension Agreement.
113
- 114 1.4 The Commission and the Member Cities waive none of their rights with respect to the
115 Franchisee's compliance with the terms, conditions, requirements and obligations set forth
116 in the Franchise Documents and in applicable law. The City's approval of the Transfer
117 Application shall in no way be deemed a representation by the Commission or the Member
118 Cities that the Franchisee is in compliance with all of its obligations under the Franchise
119 Documents and applicable law.
120
- 121 1.5 After the Proposed Transaction, GreatLand and Franchisee will be bound by all the
122 commitments, duties, and obligations, present and continuing, embodied in the Franchise
123 Documents and applicable law. The Proposed Transaction will have no effect on these
124 obligations.
125
- 126 1.6 GreatLand shall provide an executed written certification in the form attached hereto within
127 thirty (30) days after consummation of the Proposed Transaction, guarantying the full
128 performance of the Franchisee. GreatLand shall provide the Commission with written
129 notification that the Proposed Transaction closed within ten (10) days after the closing;
130
- 131 1.7 GreatLand will comply with any and all conditions or requirements applicable to GreatLand
132 set forth in all approvals granted by federal agencies with respect to the Proposed
133 Transaction and Transfer Application (including any conditions with respect to
134 programming agreements), such conditions or requirements to be exclusively enforced at
135 the federal level;
136
- 137 1.8 GreatLand shall provide a written guarantee in the form attached hereto within thirty (30)
138 days of the effective date of this Resolution specifying that subscriber rates and charges in
139 the Commission area will not increase as a result of the costs of the Proposed Transaction;
140
- 141 1.9 After the Proposed Transaction is consummated, GreatLand and Franchisee will continue
142 to be responsible for all past acts and omissions, known and unknown, under the Franchise
143 Documents and applicable law for all purposes, including (but not limited to) Franchise

144 renewal to the same extent and in the same manner as before the Proposed Transaction,
145 subject to the terms of the Franchise Extension Agreement.

146
147 1.10 Nothing in this Resolution amends or alters the Franchise Documents or any requirements
148 therein in any way, and all provisions of the Franchise Documents remain in full force and
149 effect and are enforceable in accordance with their terms and with applicable law.

150
151 1.11 The Proposed Transaction shall not permit GreatLand and Franchisee to take any position
152 or exercise any right with respect to the Franchise Documents and the relationship thereby
153 established with the Member Cities and the Commission that could not have been exercised
154 prior to the Proposed Transaction.

155
156 1.12 GreatLand assures that it will cause to be made available adequate financial resources to
157 allow Franchisee to meet its current obligations under the Franchise Documents and enable
158 Franchisee to maintain through 2015 the current operational and customer service levels
159 taken as a whole.

160
161 1.13 The Commission is not waiving any rights it may have to require franchise fee payments
162 on present and future services delivered by GreatLand or its subsidiaries and affiliates via
163 the cable system;

164
165 1.14 The Commission is not waiving any right it may have related to any net neutrality, open
166 access, and information services issues;

167
168 1.15 Receipt of any and all state and federal approvals and authorizations;

169
170 1.16 Actual closing of the Proposed Transaction consistent with the transfer application; and

171
172 Section 2. If any of the conditions or requirements specified in this Resolution are not
173 satisfied, then the City's recommended consent to, and approval of, the Transfer Application and
174 Proposed Transaction is hereby DENIED and void as of the date hereof.

175
176 Section 3. Franchisee, GreatLand, or a subsidiary shall reimburse the Commission in
177 accordance with § 10.5(e) of the Franchise Ordinances in an amount not to exceed \$15,000.
178 GreatLand and its subsidiaries shall not assert its right to claim that the reimbursement made under
179 this Resolution is a franchise fee for purposes of 47 U.S.C. § 542, nor shall it be offset against or
180 deducted from franchise fee payments made under the Franchise.

181
182 Section 4. If any of the written representations made to the Commission in the Transfer
183 Application proceeding by (i) Comcast of Minnesota, Inc., (ii) Comcast or (iii) GreatLand, (iv)
184 any subsidiary or representative of the foregoing prove to be materially incomplete, untrue or
185 inaccurate in any respect, it shall be deemed a material breach of the Franchise Documents and
186 applicable law, including, without limitation, revocation or termination of the Franchises.

187
188 Section 5. This Resolution shall not be construed to grant or imply the City's consent to
189 any other transfer or assignment of the Franchises or any other transaction that may require the
190 City's consent under the Franchise Ordinances or applicable law. The Commission and the
191 Member Cities reserve all their rights with regard to any such transactions.

192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210

Section 6. This Resolution is a final decision on the Transfer Application within the meaning of 47 U.S.C. § 537.

Section 7. The transfer of control of the Franchise from Comcast to GreatLand shall not take effect until the consummation of the Proposed Transaction.

Section 8. This Resolution shall be effectively immediately upon its adoption by the City.

The motion for the adoption of the foregoing resolution was duly seconded by Member _____, and upon a vote being taken thereon, the following voted in favor thereof: _____, _____, _____, _____, and Mayor _____.

and the following voted against the same: _____.

WHEREUPON said resolution was declared duly passed and adopted.

211 STATE OF MINNESOTA)
212) SS
213 COUNTY OF RAMSEY)
214

215 I, the undersigned, being the duly qualified City Manager of the City of Roseville, County of
216 Ramsey, State of Minnesota, do hereby certify that I have carefully compared the attached and
217 foregoing extract of minutes of a regular meeting of said City Council held on the 10th day of,
218 November, 2014 with the original thereof on file in my office.

219
220 WITNESS MY HAND officially as such Manager this 10th day of November, 2014
221

222
223
224 SEAL

225
226
227 _____
228 Patrick Trudgeon, City Manager
229

230

231
232 **Attachment 1**
233 **Form of Guaranty of Performance**

234
235 **GUARANTY OF PERFORMANCE**
236

237 GreatLand Connections, Inc., as the ultimate parent entity of Comcast of Minnesota, Inc.,
238 the Franchisee, upon closing of the proposed transaction (as defined in the North Suburban
239 Communications Commission Resolution No. _____) certifies that it has sufficient
240 financial resources and will at all times make available all necessary financial resources to ensure
241 that the Franchisee has the capability to operate and maintain the System in accordance with the
242 Franchise and applicable laws, regulations codes and standards, and to fully comply at all times
243 with the Franchise, and applicable laws, regulations, codes and standards and guarantees such
244 performance. GreatLand Connections, Inc., agrees that any failure to adhere to this guaranty
245 shall be deemed a violation of the Franchise held by the Franchisee.

246
247 EXECUTED as of _____.

248
249 **GreatLand Connections, Inc.**

250
251 By: _____

252 Name: _____

253 Title: _____

254
255 Address:

Attachment 2
Form of Guaranty Regarding Rates

GUARANTY REGARDING RATES

GreatLand Connections, Inc., upon closing of the proposed transaction (as defined in the City of _____ Resolution No. _____), guarantees that rates and charges for cable service offered by _____, the Franchisee in the City of _____, will not increase as a result of the cost of the proposed transaction. GreatLand Connections, Inc., agrees that any failure to adhere to this guaranty shall be deemed a violation of the Franchise held by the Franchisee.

EXECUTED as of _____.

GreatLand Connections, Inc.,

By: _____

Name: _____

Title: _____

Address: