

SPECIAL MEETING OF THE MAYOR AND COUNCIL OF THE BOROUGH OF KENILWORTH FOR COMCAST HEARING HELD ON TUESDAY EVENING, NOVEMBER 26, 2013. COUNCIL PRESIDENT BRIAN JOHO PRESIDED.

Councilman Brian Joho read the requirements of the Open Public Meetings Act.

The Salute to the Flag was led by Councilman Brian Joho.

ROLL CALL

Roll Call at 8:00 P.M. showed the following Council Members present: Peter Corvelli, Toni Giordano, Brian Joho, Scott Klinder, Fred Pugliese. Anthony DeLuca arrived at 8:05.

COMCAST RENEWAL HEARING

Councilman Joho said this meeting is being held for the purpose of evaluating the application of Comcast Cablevision of New Jersey, Inc. for the renewal of its municipal consent to own, operate, extend and maintain cable television and cable communication system within the Borough of Kenilworth. The meeting is held in accordance with New Jersey NJSA 48:5A-23 and NJAC 14:18-11.6 and all the applicable statutory and regulatory provisions.

Comcast Hearing Opened to The Public

Councilman Joho asked if anyone from the public wished to make any comments in regards to this application.

Robert Ordway, CFO for the Borough of Kenilworth asked if there was a discount package or some other programs for our Senior Citizens.

Charles L. Smith III, Director Government & Regulatory Affairs for Comcast Cable Mr. Smith thanked the Council for convening this public hearing on their renewal application. He said he has a brief presentation that he would like to read into the record and then he will be open to answer questions from the Council or members of the public.

Mr. Smith said we are in the final stages of the cable television franchise renewal process which is governed by both federal and state statutes and regulations. Comcast began the renewal process on or about June 23, 2011 by sending a letter to the Borough indicating our intention to seek renewal of our non-exclusive franchise under section 626A of the Cable Communications Policy Act of 1996. This was followed by an optional ascertainment period during which the Borough had the opportunity to review our performance, assess community needs and issue a report. Following the State's timeline, Comcast filed an application for Renewal of Municipal Consent on or about August 21, 2013. That application has been available for public inspection in the Clerk's Office. Tonight's hearing is on that application but no action of the Council is required this evening, tonight's hearing is just an opportunity to hear from both the Governing Body and members of the public. He said if your attorney has not yet discussed this with you, he should tell you that the Governing Body must base it's franchise renewal decision on the answers to four questions: 1) Has the cable operator substantially complied with the material terms of the existing franchise and applicable laws? 2) Has the quality of the operation service, including signal quality, response to consumer complaints and billing practices been reasonable in light of

community needs? 3) Does the operator have the financial, legal and technical ability to provide facilities and equipment that it is proposing to provide which is included in the application? 4) Is the cable operators franchise renewal proposal reasonable to meet the future cable related needs of the community, taking into account the interest and needs of the community and the cost of meeting those needs?

Two areas the Governing Body may not consider when deciding whether or not to renew the franchise are:

Rates - Rates are governed by State and Federal Statutes and are outside the Municipalities authority.

Programming – The channel lineup is protected under the first amendment just as is the content of a newspaper.

Nothing precludes the public or the council from commenting on rates and programing but such commentary cannot be factored into the municipality's decision to renew the franchise or not renew the franchise.

Councilman Joho said there is the public question on whether there is discounting packaging for seniors.

Mr. Smith said they offer a discount rate for people who are eligible for the PAD discount that is provided by the State, whether you are a senior or disabled. If you qualify for the PAD assistance from the State of New Jersey then you would qualify for the discount that Comcast offers. That is the only discount that Comcast offers as is provided for in State law. He said that is currently available in the municipality and anyone who would be interested in that would call the Comcast number and they will send an application to them. Upon the review of the application the discount would be applied to those customers.

Mr. Fruchter asked what that discount was and Mr. Smith said 10% off the basic charge.

Mr. Pugliese asked if the municipality receives a discount?

Mr. Smith said the Municipality receives free services from Comcast or can receive free video and schools and libraries are eligible for free video and internet services.

Councilman Corvelli asked if there were any upgrades on the poles or is all the hardware in place?

Mr. Smith said all the upgrades and hardware is in place. Kenilworth is what they consider a complete rebuilt "built out" so unless there are some land maps that the municipality acquires that isn't "built out" then we would service that to under the provisions of the renewal. He said

basically the municipality is completely “built out”, meaning that they probably have plant within 200 ft. of every place that we provide service.

Councilwoman Giordano asked if there were any plans to do any other type of work that may involve installing other poles or opening streets with any upgrades that you may have to do or plan to do in the next years that would impact the Borough?

Mr. Smith said the plan is already upgraded to the point that we can offer all the services that we have and the plan is capable of delivering more services so, in general right now, there is no plan to do any further massive upgrading of the system. The system is fully digitized, meaning that we can offer more channels and pack more stuff into the pipeline but certainly if there was some maintenance or repair work that would be required and we would need to open up streets we would request proper permits from the municipality. He said those things do happen from time to time.

Councilwoman Giordano said that she is of the understanding that everything is just “status quo” and you will continue operating for another year as is and it’s really not going to affect or create any change, it’s just renewing your application to operate within the Borough of Kenilworth.

Mr. Smith said they will, over the years, as new services become available, make them available to the municipality. It is in the company’s interest to be on the cutting edge of new technology and services and when they become available they will be made available to the municipality.

Mr. Fruchter said can you make available to the municipality in their renewal, under the Federal EAS Emergency Override System, a plan for the Police Department or Fire Department to override your signal completely to all the households that have Comcast?

Mr. Smith said that is already provided for.

Mr. Fruchter asked if the Police Chief could make a phone call and override all the signals in order to notify all the households that has Comcast?

Mr. Smith said that would have to through the State hierarchy but the Emergency Broadcast System is in place.

Mr. Fruchter asked if we could gain access in a local emergency, whether it’s flooding or some other emergency, can the Fire Chief or the Police Chief or the Emergency Coordinator within the Municipality can gain access and do an override almost instantaneously.

Mr. Smith said that would have to go through the State Emergency Management.

Mr. Fruchter asked if we could get that as one of the features?

Mr. Smith said he would be willing to look into that but he is not prepared to give a definitive answer but certainly he can look into that in more detail.

Councilman Joho asked what is the term of the renewal?

Mr. Smith said that has yet to be determined.

Mr. Fruchter said that is up to the Borough.

Councilwoman Giordano asked what was the prior one?

Mr. Smith replied 15 years. The average renewals in New Jersey is 17 years and we also have a lot of 25 year franchises.

Councilman Pugliese asked which services does Comcast currently offer to the Borough Municipal building? He said he knows we have a television channel that operates in the school and the Borough. Councilman Joho said no, just the school.

Mr. Ordway said Verizon gives us the second channel, Comcast has the one channel the school operates.

Councilman Pugliese asked if Comcast can give us that second channel like Verizon does? Mr. Smith said that can be negotiated.

Councilman Pugliese asked if Comcast provides video services like covering our Council Meetings? Mr. Smith said no we don't provide those services, if the municipality did have its own access channel then it would be up to the municipality to program it with anything it wants to within the guidelines of Public Access Programming, which could include Council Meetings.

Barbara Macecsko, 15 South 17th Street – Mrs. Macecsko said during Hurricane Sandy a lot of people had their internet out for a long time and she asked if Comcast was planning on putting any kind of battery pack or disaster recovery in place so that we can get Comcast back after the electricity at least?

Mr. Smith said that typically Comcast services, whether cable or internet, follows the restoration of the electric services. PSE&G has to restore electricity in order for our service to operate. We do have battery packs on our telephone services that operate by extended batteries.

Harvey Fruchter asked right now what is the response time for responses to complaints from our residents and do you have any statistics on the response time for recovery when an outage occurs to one of our residents.

Mr. Smith said he could look into providing that type of information but he does not have an average restoration time right now and it also depends on the circumstances. Mr. Smith said they maintain a log of their restoration activity.

Councilwoman Giordano asked what would happen if we chose not to renew your application?

Mr. Smith said you would have to have a very good reason not to do that and we would have had to have had some egregious mistakes or did not comply with one of the four things I spoke about in the beginning of the meeting. The Municipality would have to demonstrate that to the BPU. You can't arbitrarily choose to not renew. The State of New Jersey Board of Public Utilities is actually the legal franchise authority in the State of New Jersey and they approve all municipal consent ordinances. He said there would be an appeal process that Comcast could do to be certified directly by the State if the municipality arbitrarily refused to renew the franchise.

Mr. Fruchter asked if Comcast could supply the Council with the number of complaints that have been received in the last 12 months, by the nature of the complaint and who the complaining subscriber was? Mr. Smith said you can obtain that from the BPU, they have the statistics. Mr. Fruchter said you could not supply that information directly? Or are you refusing to? Mr. Smith said you have to look at how you are defining complaints because our call center receives millions of calls a year and any call can be determined to be a complaint but complaints that go through the resolution process go through the BPU. Mr. Fruchter said those are the severe ones but he is talking about the ones that you can address and hopefully resolve before they get to the BPU. Mr. Smith said we don't provide those types of statistics. Mr. Fruchter asked if Comcast maintained those statistics for internal quality control? Mr. Smith said yes. Mr. Fruchter said he is making a request, and you can obviously deny, that you provide that to us by the next meeting. Mr. Smith said he would probably not be able to produce that level of material. Mr. Fruchter asked if he is saying he won't be able to or are you selecting not to? Mr. Smith said if it was available in some form that would be usable. Mr. Fruchter asked Mr. Smith to let him know. Mr. Fruchter asked if Mr. Smith could provide a timetable for an answer. Mr. Smith said he would have an answer by next week.

Mr. Fruchter said NJSA 40A:5A 11.1 is the section for the senior discounts or for the discounts for anyone on Medicare and goes far beyond the PAD discount. He asked if Comcast is willing to comply with the statutory requirements so that there would be a discount available far greater than just those who are available to PAD? Mr. Smith said no because the statute does not go beyond PAD. Mr. Fruchter said it goes to Medicare and is 11.9 of 48.5A statute. Mr. Smith said he would have to review that but as far as our offering it is limited to those who are eligible for

PAD. Mr. Fruchter asked if he was willing to comply with the State Statute and Mr. Smith said they believe that they do comply with the State Statute.

Councilman Pugliese asked Mr. Ordway if there is anything that we left out, any requests that should be made of Comcast that you may know about?

Mr. Ordway said when you say requests, he does not think that is the purpose of the hearing right now, that would be part of the negotiations, after this public hearing. He said if you are asking what questions we should be asking of Comcast, Mr. Fruchter has already asked questions about upgrading the system, responses, getting the system back on line quicker, those type of questions are for this forum but as far as negotiating, this is not the forum for that. This is more of a public hearing to hear what the concerns of the citizens are as far as service and what's been going on for the last 15 years.

Mr. Smith said typically the Governing Body would appoint a committee to negotiate the terms of the franchise.

Barbara Macecsko – Mrs. Macecsko said she comes from a IT environment and when she outsources something we have service level agreements and she asked if Comcast has service level agreements that you can share with us that talk about how many calls are answered with an X amount of minutes, how many problems are resolved within 24 hours or whatever, as opposed to complaints? She said she understands that complaints don't tell the answer but service levels do. She asked if the State requires Comcast to have service level agreements and do you publish them?

Mr. Smith said that would fall under the category of proprietary information. He said he would have to look into that because he has never been asked. Mrs. Macecsko said that tells the whole picture of the services that Comcast provides.

Mr. Fruchter said if that was provided, he would assure Comcast that if given that information, it would be viewed only by the committee and not in the normal public domain and would be returned to you.

Councilman Joho closed the Hearing on the Comcast Renewal.

Motion was made by Scott Klinder, seconded by Toni Giordano that the meeting be adjourned. All in favor.

Respectfully submitted,

Hedy Lipke, Borough Clerk

