

BOROUGH OF FREEHOLD
COUNTY OF MONMOUTH
NO. 2015/15

AN ORDINANCE OF THE BOROUGH OF FREEHOLD, COUNTY OF MONMOUTH, NEW JERSEY AMENDING IN PART ORDINANCE #2014/15 FOR RENEWAL OF MUNICIPAL CONSENT TO COMCAST OF MONMOUTH COUNTY. TO CONSTRUCT, CONNECT, OPERATE AND MAINTAIN A CABLE TELEVISION AND COMMUNICATIONS SYSTEM IN THE BOROUGH OF FREEHOLD, MONMOUTH COUNTY, NEW JERSEY.

BE IT ORDAINED BY THE MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF FREEHOLD, MONMOUTH COUNTY, as follows:

SECTION 1. PURPOSE OF THE ORDINANCE

The Borough hereby grants to Comcast Cablevision of Monmouth County, Inc. 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 Borough, 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 Borough 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 Freehold, County of Monmouth, State of New Jersey.
- b. "Company" is the grantee of rights under this Ordinance and is known as Comcast of Monmouth County.

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.

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.

SECTION 3. STATEMENT OF FINDINGS

Public hearings conducted by the Borough, 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 fifteen (15) years from the date of expiration of the previous Certificate of Approval issued by the Board (with a ten (10) year automatic renewal as provided by N.J.S.A. 48:5A-19 and N.J.A.C. 14:18-13.6).

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 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 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 Borough 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 Borough or any higher amount permitted by the Act or otherwise allowable by law, whichever is greater.

SECTION 6. FRANCHISE TERRITORY

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

SECTION 7. EXTENSION OF SERVICE

The Company shall be required to proffer service along any public right-of-way in the Primary Service Area as set forth in the Company's Application. Any extension of plant beyond the Primary Service Area shall be governed by the Company's Line Extension Policy, as set forth in the Company's Application, with a HPM ("homes-per-mile") of 35 dwellings per linear mile from the nearest active trunk or feeder line.

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 nature 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 reasonable notice by the Municipality, shall remove,

re-lay or relocate its equipment, at the expense of the Company.

Temporary Removal of Cables: The Company shall, upon request of the Municipality at the Company's expense, temporarily raise, lower, or remove its lines in order to facilitate the moving of buildings or machinery or in other like circumstances. Whenever the request is made by, for, or on behalf of private parties, the cost will be borne by those same parties.

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 and upon notice to the municipality.

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 community upon written request of the Borough Administrator or Clerk.

a. The Company shall continue to comply fully with all applicable state and federal statutes and regulations regarding credits 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 effort to meet or exceed voluntary standards for telephone accessibility developed by the National Cable

Television Association (NCTA). Those standards shall include, but not be limited to, the goal of answering eighty (80%) percent of incoming telephone calls within thirty (30) seconds.

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 appropriate under law.

e. The Company is permitted, but is not required to, charge a late fee consistent with applicable state and federal statutes and regulations.

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 Borough 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.

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 (\$25,000.00) dollars. 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. COMMITMENTS BY THE COMPANY

a. Company representatives shall appear at least once annually, upon reasonable written request of the Borough, at a public hearing of the Governing Body or before the Borough's Cable Television Advisory Committee, to discuss matters pertaining to the provision of cable service to residents of the Borough and other related issues as the Borough and Company may see fit.

b. The Company shall provide Expanded Basic or a similar tier of cable television service to one (1) outlet at no cost to each qualified existing and future school in the Municipality, public and private, elementary, intermediate and secondary, provided the school building is within one hundred seventy-five (175) 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 requesting service.

c. The Company shall provide Expanded Basic or a similar tier of cable television service at no cost to one (1) outlet to each qualified existing and future police, fire, emergency management facility and public library in the Municipality, provided the facility is located within one hundred seventy-five (175) 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.

d. Within six (6) months of the issuance of a Certificate of Approval (COA) by the Office of Cable Television, the Company shall provide to the Municipality a one-time grant of thirty thousand dollars (\$30,000) for technology support.

e. The Communications Act of 1934, as amended [47 U.S.C. § 543 (b)], allows the Company to itemize

and/or identify: (1.) the amount on the subscriber bill assessed as a franchise fee and the identity of the governmental authority to which the fee is paid; (2.) the amount on the bill assessed to satisfy any requirements imposed on the Company by the cable franchise to support public, education, and/or governmental access channels or the use of such channels; and (3.) any grants or other fees on the bill or any tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber. The Company reserves its external cost, pass-through rights to the full extent permitted by law.

SECTION 15. EDUCATIONAL AND GOVERNMENTAL ACCESS.

a. The Company will continue to provide one (1) channel for governmental ("EG") access for the use by Municipality on the most basic tier of service offered by the Company in accordance with the Cable Act, Section 611 [47 U.S.C. § 531], and as further set forth below.

b. The Company does not relinquish its ownership of or ultimate right of control over a channel by designating it for EG use. An EG access user - whether an educational or government user - acquires no property or other interest by virtue of the use of a channel so designated, and may not rely on the continued use of a particular channel number, no matter how long the same channel may have been designated for such use.

c. The Company shall not exercise editorial control over the use of any educational or governmental channel capacity, except Company may refuse to transmit any educational or governmental access program or portion of an educational or governmental access program that contains obscenity, indecency, or nudity.

d. Government Access. "Government Access" shall mean non-commercial use by the governing bodies of the Municipality for the purpose of showing the public local government at work.

f. Fallow Time. Because blank or underutilized EG channels are not in the public interest, in the event the Municipality or other EG access users elect not to fully program the EG access channel, Company may program unused

time on those channels subject to reclamation by the Municipality upon no less than sixty (60) days' written notice.

g. Indemnification. The Municipality shall indemnify Company for any liability, loss, or damage it may suffer due to violation of the intellectual property rights of third parties on the EG channel and from claims arising out of the Municipalities' rules for or administration of access.

SECTION 16. EMERGENCY USES

The Company shall be required to fully comply with all applicable federal and state statutes and regulations rules and regulations governing the implementation, operation and testing of the Emergency Alert System (EAS)

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 \$3,000,000.

SECTION 18. INCORPORATION OF THE APPLICATION

All of the commitments and statements contained in the application and any amendment thereto submitted in writing to the Municipality by the Company, except as modified herein, are binding upon the Company as terms and conditions of this Municipal Consent. The application and any other relevant writings submitted by the Company shall be considered a part of this Ordinance and made a part hereof by reference as long as it does not conflict with state or federal law. All ordinances or parts of ordinances or other agreements between the Borough and the

Company that are in conflict with the provisions of this agreement are hereby declared invalid and superseded.

SECTION 19. COMPETITIVE EQUITY

Should the Borough 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. EFFECTIVE DATE

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

SECTION 22.

Any Ordinance or portions thereof which are inconsistent with the provisions of this Ordinance are hereby repealed and superseded.

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NO. 2015/15**

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MONMOUTH, NEW JERSEY AMENDING IN PART ORDINANCE #2014/15
FOR RENEWAL OF MUNICIPAL CONSENT TO COMCAST OF MONMOUTH
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OF FREEHOLD, MONMOUTH COUNTY, NEW JERSEY**

NOTICE IS HEREBY GIVEN that the forgoing Ordinance was approved for final adoption by the Mayor and Council of the Borough of Freehold at a meeting held on September 21, 2015.



**TRACI L. DI BENEDETTO
BOROUGH CLERK**