

**TOWNSHIP OF CHESTERFIELD**

**ORDINANCE 2017 – 15**

**AN ORDINANCE GRANTING RENEWAL OF MUNICIPAL CONSENT TO COMCAST TO CONSTRUCT, CONNECT, OPERATE AND MAINTAIN A CABLE TELEVISION AND COMMUNICATIONS SYSTEM IN THE TOWNSHIP OF CHESTERFIELD, NEW JERSEY**

**BE IT ORDAINED BY THE MAYOR AND TOWNSHIP COMMITTEE OF CHESTERFIELD, as follows:**

**SECTION 1. PURPOSE OF THE ORDINANCE**

The Township hereby grants to Comcast 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 municipality, 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 Township of a cable television and communications system. This consent is subject to the terms and conditions of this Ordinance and upon the condition that the Company accepts the provisions of this Ordinance, and confirms in writing that it shall comply with the commitments contained herein.

**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. "Township" or "Municipality" is the Township of Chesterfield, County of Burlington, State of New Jersey.
- b. "Company" is the grantee of rights under this Ordinance and is known as Comcast of Garden State, L.P.
- 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.
- h. "Application" is the Company's Application for Renewal of Municipal Consent.
- i. "Primary Service Area" or "PSA" consists of the area of Chesterfield Township currently served with existing plant as set forth in the map annexed to the Company's Application for Municipal Consent.

### **SECTION 3. STATEMENT OF FINDINGS**

Public hearings conducted by the Township, 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 Township, having received at said public hearings all comments regarding the qualifications of the Company to receive this renewal of Municipal Consent, the Township 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 15 years from the date of expiration of the previous Certificate of Approval issued by the Board.

In the event that the Township shall find that the Company has not substantially complied with the material terms and conditions of this Ordinance, the Township shall have the right to petition the OCTV, pursuant to N.J.S.A. 48:5A-47, for appropriate action, including modification and/or termination of the Certificate of Approval; provided however, that the Township 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, N.J.S.A. 48:5A-30, the Company shall, during each year of operation under the consent granted herein, pay to the Township 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 Township or any higher amount permitted by the Act or otherwise allowable by law, whichever is greater. The current fee is three and one-half percent (3.5%) of the Company's gross revenues, as defined under N.J.S.A. 48:5A-3(x), due to the fact that the Board has certified another cable television company as being capable of serving 60% or more of the households within the Township, as set forth under N.J.S.A. 48:5A-30(d). The Company agrees to continue paying the Township the current franchise fee for the duration of this consent, so long as the terms of N.J.S.A. 48:5A-30 or any other applicable statute so require.

## **SECTION 6. FRANCHISE TERRITORY**

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

## **SECTION 7. EXTENSION OF SERVICE**

The Company shall be required to proffer service to any residence or business 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.

## **SECTION 8. CONSTRUCTION REQUIREMENTS**

- a. Restoration: In the event that the Company or its agents shall disturb any public or private pavement, street surfaces, sidewalks, driveways, curbs, gutters, trees, shrubs, landscaping, or other surface in the natural 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.
- b. Relocation: If at any time during the period of this consent, the Township shall alter or change the grade of any street, alley or other way or place the Company, upon reasonable notice by the Township, shall remove, re-lay or relocate its equipment, at the expense of the Company.
- c. 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 Township 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.

## **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 Township upon written request of the Township Clerk.

- a. The Company shall continue to comply fully with all applicable state and federal statutes and regulations regarding credit 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 reasonable effort to meet or exceed voluntary standards for telephone accessibility developed by the National Cable Television Association (NCTA).
- d. Nothing herein shall impair the right of any subscriber or the Township 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 permitted under law.

#### **SECTION 10. MUNICIPAL COMPLAINT OFFICER**

The Office of Cable Television is hereby designated as the Complaint Officer for the Township 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 Township shall have the right to request copies of records and reports pertaining to complaints by Township customers from the OCTV.

#### **SECTION 11. LOCAL OFFICE**

During the term of this franchise, and any renewal thereof, the Company shall maintain a local business office or agent in accordance with N.J.A.C. 14:18-5.1 for the purpose of receiving, investigating and resolving local complaints regarding the quality of service, equipment malfunctions, and similar matters.

#### **SECTION 12. PERFORMANCE BONDS**

During the life of the franchise the Company shall give to the Township a bond in the amount of twenty-five thousand dollars (\$25,000.00). 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. The Company shall provide Expanded Basic or a similar tier of cable television service on one (1) outlet at no cost to each qualified existing and future school in the Township, public and private, elementary, intermediate and secondary, provided the school is within 250 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.

- b. The Company shall provide Expanded Basic or a similar tier of cable television service at no cost on one (1) outlet to the Township's new town hall facility located at 295 Bordentown-Chesterfield Road, provided the facility is located within 500 feet of active cable distribution plant. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the Township.
- c. The Company shall provide Expanded Basic or a similar tier of cable television service at no cost on one (1) outlet to the Township's new recreation building at 16 Fenton Lane, and each qualified existing and future police, fire, emergency squad, fire house, and public library in the Township, provided the facility is located within 250 feet of active cable distribution plant. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the Township.
- d. The Company shall provide free basic Internet access service, via high-speed cable modem, to one (1) non-networked personal computer in each qualified existing and future public school in the Township, elementary, intermediate and secondary, at no charge provided the facility is located within 250 feet of active cable distribution plant. The Internet access service shall be installed on a personal computer that is accessible to the students and not for administrative use only.
- e. Within six (6) months of receipt of a Renewal Certificate of Approval, the Company shall provide the Township with a one-time technology grant in the amount of ten thousand (\$10,000) dollars for the Township's cable and technology related needs.
- f. 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, educational, 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 these external cost, pass-through rights to the extent permitted by law.

#### **SECTION 15. EDUCATIONAL AND GOVERNMENTAL ACCESS**

- a. The Company will continue to provide one channel for educational and governmental ("EG") access for the shared use by Chesterfield Township, Mansfield Township, North Hanover Township and Springfield Township (collectively, "Municipalities").
- 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 any educational or governmental use of channel capacity, except the 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. The Municipalities shall be responsible for developing, implementing, and enforcing rules for EG Access Channel use which shall ensure that the EG Access Channel and the EG Access Equipment, which shall be provided by the Municipalities, will be available on a first-come, first served, non-discriminatory basis.
- e. Educational Access. "Educational Access" shall mean noncommercial use by educational institutions such as public or private schools, but not "home schools," community colleges, and universities.
- f. Government Access. "Government Access" shall mean noncommercial use by the governing bodies of Chesterfield Township, Mansfield Township, North Hanover Township and Springfield Township, for showing the public local government at work.
- g. Company Use of Fallow Time. Because blank or under-utilized EG channels are not in the public interest, in the event the Municipalities or other EG access users elect not to fully program their EG access channel, Company may program unused time on those channels (at its discretion and for any purpose), subject to reclamation by the Municipality upon no less than 60 days written notice.
- h. Indemnification. The Municipalities 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**

- a. The Company will comply with the Emergency Alert System ("EAS") rules in accordance with applicable state and federal statutes and regulations.
- b. The Company shall in no way be held liable for any injury suffered by the Township or any other person, during an emergency, if for any reason the Township 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 \$5,000,000.

## **SECTION 18. INCORPORATION OF THE APPLICATION**

All of the statements and commitments contained in the Application filed with the Township or annexed thereto and incorporated therein, and any amendment thereto, except as modified herein, are binding upon the Company as terms and conditions of this consent. The Application and other relevant writings submitted by the Company shall be annexed hereto and made a part hereof by reference provided same do not conflict with applicable State or Federal law.

## **SECTION 19. COMPETITIVE EQUITY**

Should the Township 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, with the Township's written consent, may petition the Office of Cable Television for its approval to 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. THIRD PARTY BENEFICIARIES**

Nothing in this Franchise or in any prior agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of such agreements or Franchise.

## **SECTION 22. EFFECTIVE DATE**

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

**CHESTERFIELD TOWNSHIP COMMITTEE**

Introduced: November 9, 2017

Adopted:

