

AN ORDINANCE GRANTING RENEWAL OF MUNICIPAL CONSENT TO COMCAST OF NEW JERSEY, LLC TO CONSTRUCT, CONNECT, OPERATE AND MAINTAIN A CABLE TELEVISION AND COMMUNICATIONS SYSTEM IN THE MUNICIPALITY OF WEST ORANGE, ESSEX COUNTY, NEW JERSEY

BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF WEST ORANGE, NEW JERSEY as follows:

I. PURPOSE OF THE ORDINANCE.

The purpose of this ordinance is to grant 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 Township of West Orange, 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 West Orange of a cable television and communications system..

II. 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 in 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 West Orange, County of Essex, State of New Jersey.
- b. "Company" or "Comcast" is the grantee of rights under this Ordinance and is known as Comcast of New Jersey II, LLC.
- 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 New Jersey Board of Public Utilities.
- 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 the Township currently served with existing plant as set forth in the map annexed to the Company's Application for Municipal Consent.

III. STATEMENT OF FINDINGS.

A public hearing concerning the consent herein granted to the Company was held after proper public notice pursuant to the terms and conditions of the Act. Said hearing having been held and fully open to the public, and the municipality having received all comments regarding the qualifications of the Company to receive this consent, and the representations of the Company 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.

IV. DURATION OF FRANCHISE.

The non-exclusive Municipal Consent granted herein shall expire ten years from the date of expiration of the previous Certificate of Approval issued by the Board.

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, pursuant to N.J.S.A. 48:SA-47, 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.

V. FRANCHISE FEE.

Pursuant to the terms and conditions of the Act, and, except as where higher payment is otherwise required by the applicable law and regulations (including N.J.S.A. 48:SA-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.

VI. 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.

VII. EXTENSION OF SERVICE.

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

VIII. CONSTRUCTION REQUIREMENTS.

- a. Restoration: In the event that the Company or its agents shall disturb any pavement, street surfaces, sidewalks, driveways, 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 reasonably 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.

IX. 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.

- 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 applicable FCC customer service regulations.
- 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 applicable law.

X. 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.

XI. 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.

XII. PERFORMANCE BOND.

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). 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.

XIII. SUBSCRIBER RATES.

The rates of the Company shall be subject to regulation as permitted by federal and state law.

XIV. 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.

XV. COMMITMENTS BY THE COMPANY.

- a. Upon request the Company shall provide standard installation and basic cable television service, at no charge, on one (1) outlet to Township facilities including the Township Hall building, each police, fire, emergency management facilities, provided they are located within 200 feet of active cable distribution plant. Each additional outlet installed, if any, shall be paid for on a materials plus basis by the Township.
- b. Upon request the Company shall provide standard installation and basic cable television service, at no charge, on one (1) outlet to each qualified existing school and library in the Township, public and private, elementary, intermediate and secondary, provided the facility is within two hundred (200) feet of active cable distribution plant or through customer owned conduit. Each additional outlet installed, if any, shall be paid for on a materials plus basis by the Township.
- c. 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.

- d. Within six months of the issuance of a Renewal Certificate of Approval by the BPU, the company shall provide to the Township a one-time E/G Access capitol Grant in the amount of \$75,000 (seventy-five thousand dollars) to meet the capitol needs of the community.

XVI. LIABILITY INSURANCE.

The Company shall at all times maintain a comprehensive general liability insurance policy with a single limit amount of One Million Dollars (\$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 Five Million Dollars (\$5,000,000).

XVII. INCORPORATION OF THE APPLICATION.

All of the statements and commitments contained in the Application 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 application State or Federal law.

XVIII. COMPETITIVE EQUITY.

Should the Township grant municipal consent for 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.

XIX. PROPRIETARY INFORMATION.

The Company shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Township agrees to treat any information disclosed by the Company as confidential and only to disclose it to those employees, representatives, and agents of the Township that have a need to know in order to enforce this Ordinance Agreement and who agree to maintain the confidentiality of all such information.

The Company shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Company to be competitively sensitive. The Company may make proprietary or confidential information available for inspection but not copying or removal by the Municipality's representative. In the event that the Municipality has in its possession and receives a request under a state "sunshine," public records, or similar law for the disclosure of information the Company has designated as confidential, trade secret or proprietary, the Township shall notify the Company of such request and cooperate with Company in opposing such request.

XX. FORCE MAJEURE.

The Company shall not be liable or responsible for, in whole or in part, any delay or failure to perform any of its obligations hereunder which may result from accidents, pandemics, floods, fires, earthquakes, tornadoes or other acts of God; war, acts of war (whether or not a declaration of war is made), civil disobedience; civil disturbance, sabotage or vandalism, customer tampering or interference, or act of public enemy; strikes, other labor or job actions or unavailability of materials or equipment; or other events or circumstances beyond the reasonable control of the Company.

XXI. 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.

XXII. NEW DEVELOPMENTS.

The Municipality, for its part, shall endeavor to exercise reasonable efforts to require developers and utility companies to provide the Company with at least fifteen (15) days advance notice of an available open trench for the placement of necessary cable.

XXIII. SEVERABILITY

If any part of this Ordinance shall be deemed invalid, such parts shall be severed and the invalidity thereof shall not affect the remaining parts of this Ordinance.

XXIV. EFFECTIVE DATE

This Ordinance shall take effect upon final passage and publication in accordance with the law.

SUSAN MCCARTNEY, MAYOR

**BILL RUTHERFORD,
COUNCIL PRESIDENT**

**KAREN J. CARNEVALE, R.M.C.
MUNICIPAL CLERK**

INTRODUCED: November 25, 2024

ADOPTED: December 10, 2024

Legislative History

The purpose of this ordinance is to grant 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 Township of West Orange, 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 West Orange of a cable television and communications system..