

CHAPTER XVIII

CABLE TELEVISION AND COMMUNICATIONS SYSTEM

18-1 PURPOSE OF THE CHAPTER.

The borough hereby grants to Comcast of Monmouth County, LLC renewal of its nonexclusive 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. (Ord. # 562-03, § 1)

18-2 DEFINITIONS.

For the purpose of this chapter, 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* shall mean the Borough of Little Silver, County of Monmouth, State of New Jersey.
- b. *Company* shall mean the grantee of rights under this chapter and is known as Comcast of Monmouth County, LLC.
- c. *Act or Cable Television Act* shall mean Chapter 186 of the General Laws of New Jersey, and subsequent amendments thereto, N.J.S.A. 48:5A-1, et seq.

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- d. *FCC* shall mean the Federal Communications Commission.
- e. *Board* or *BPU* shall mean the Board of Public Utilities, State of New Jersey.
- f. *Office* or *OCTV* shall mean the Office of Cable Television of the Board.
- g. *Basic cable service* shall mean any service tier, which includes the retransmission of local television broadcast signals as defined by the FCC.
(Ord. # 562-03 § 2)

18-3 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. (Ord. # 562-03, § 3)

18-4 DURATION OF FRANCHISE.

The nonexclusive 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 municipality shall find that the Company has not substantially complied with the material terms and conditions of this chapter, the municipality 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 municipality shall first have given the Company written notice of all alleged instances of noncompliance and an opportunity to cure same within 90 days of that notification. (Ord. # 562-03, § 4)

18-5 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 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. (Ord. # 562-03, § 5)

18-6 FRANCHISE TERRITORY.

The consent granted under this chapter to the renewal of the franchise shall apply to the entirety of the borough and any property subsequently annexed hereto. (Ord. # 562-03, § 6)

18-7 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, at tariffed rates for standard and nonstandard installations. 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 as described herein. (Ord. # 562-03, § 7)

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18-8 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 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.
- b. *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.
- c. *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.
- d. *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 the Company shall comply with the requirements of the Two River Municipal Shade Tree Administration.
(Ord. # 562-03 § 8)

18-9 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 80 percent of incoming telephone calls within 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.
(Ord. # 562-03, § 9)

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18-10 MUNICIPAL COMPLAINT OFFICER.

The borough administrator is hereby designated as the complaint officer for the municipality pursuant to N.J.S.A. 48:5A-26(a). All complaints shall be in writing, and received and processed by the complaint officer. Upon receipt of such written complaint, the complaint officer shall investigate the complaint without formal hearing and provide a determination to all interested parties within 30 days of the receipt of the complaint. The municipality shall have the right to request copies of records and reports pertaining to complaints by borough customers from the OCTV. (Ord. # 562-03, § 10)

18-11 LOCAL OFFICE.

During the term of this franchise, and any renewal thereof, the Company shall maintain a local business office or agent for the purpose of receiving, investigating and resolving all complaints regarding the quality of service, equipment malfunctions and similar matters. Such local business office shall be open during normal business hours and in no event less than 9:00 a.m. to 5:00 p.m., Monday through Friday. Telephone response for such purposes as mentioned herein will be provided by the Company's employees, representatives or agents 24 hours per day.

The telephone number and address of the local office shall be listed in applicable telephone directories and in correspondence from the Company to the customer. The telephone number for the local office shall utilize an exchange that is a non-toll call for borough residents. (Ord. # 562-03, § 11)

18-12 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.
(Ord. # 562-03, § 12)

18-13 SUBSCRIBER RATES.

The rates of the Company shall be subject to regulation as permitted by Federal and State law. (Ord. #562-03, § 13)

18-14 PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS.

- a. The Company shall continue to provide residents with a system-wide public access channel maintained by the Company. Qualified individuals and organizations may utilize public access for the purpose of cablecasting noncommercial access programming in conformance with the Company's published public access rules.
- b. The Company shall continue to provide a system-wide leased access channel maintained by the Company for the purpose of cablecasting commercial access programming in conformance with the Company's guideline and applicable State and Federal Statutes and regulations.
- c. The Company shall take any steps that are necessary to ensure that the signals originated on the access channels are carried without material degradation, and with a signal whose quality is equal to that of the other standard channels that the Company transmits.
(Ord. # 562-03, § 14)

18-15 COMMITMENTS BY THE COMPANY.

- a. The Company shall continue to provide free basic television service on one outlet in each public and private elementary and secondary school that may be constructed in the borough, and on one outlet in the

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municipal building, fire department, first aid squad, library, and public works building that is located in or may be constructed within the borough, provided the facility is located within 200 feet of active cable distribution plant.

- b. Within 12 months of the issuance of a renewal certificate of approval (COA) by the BPU, the Company shall provide to the municipality a one-time grant for cable- and technology-related needs in the amount of twenty thousand (\$20,000.00) dollars.
- c. The Company shall provide a one-time grant to the Red Bank Regional High School for television production equipment in the name of the Boroughs of Red Bank, Little Silver, and Shrewsbury within 12 months of the issuance of a renewal certificate of approval (COA) by the BPU to the third of the three named municipalities. The amount of the grant shall be determined by the criteria outlined in Schedule A (attached).*
- d. The Company shall provide additional services as outlined in the separate letter of agreement.
(Ord. # 562-03, § 15)

18-16 TWO-WAY SERVICES AND INTERCONNECTION.

In the event that the borough determines that it is necessary and feasible for it to contract with the Company for the purpose of providing two-way or interconnection services, the Company shall be required to apply to the BPU for approval to enter into and establish the terms and conditions of such contract. All costs for such application to the BPU shall be borne by the borough. (Ord. # 562-03, § 16)

*Editor's Note: Schedule A, referred to herein, may be found at the end of this chapter.

18-17 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. (Ord. # 562-03, § 17)

18-18 LIABILITY INSURANCE.

The Company shall at all times maintain a comprehensive general liability insurance policy with a single limit amount of one million (\$1,000,000.00) dollars 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 three million (\$3,000,000.00) dollars. (Ord. # 562-03, § 18)

18-19 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 chapter 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. (Ord. # 562-03, § 19)

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18-20 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 chapter subject to the provisions of N.J.A.C. 14:17-6.7. (Ord. # 562-03, § 20)

18-21 SEPARABILITY.

If any section, subsection, sentence, clause, phrase or portion of this chapter 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 chapter.

18-22 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. (Ord. # 562-03, § 22)

18-23 EFFECTIVE DATE.

This chapter shall take effect immediately upon issuance of a renewal certificate of approval by the BPU. (Ord. # 562-03, § 23)

SCHEDULE A

The Company agrees to provide a one-time grant for the purchase of television production equipment to the Red Bank Regional High School in the names of the Borough of Little Silver, Red Bank, and Shrewsbury within twelve months of the issuance of a Renewal Certificate of Approval to the third of the three municipalities. The amount of the grant is contingent upon the duration of the franchises adopted by each of the three municipalities in their respective Municipal Consent Ordinances, as follows:

Should all three municipalities adopt a term of ten years, the grant will be \$30,000.

Should all three municipalities adopt a term of fifteen years, the grant will be \$50,000. In addition, the company will construct and maintain, at its own expense, a dedicated return from the High School to the company's head end, and will provide all equipment necessary for the transmission of a cable television signal from the High School, to the company's head end, and from there to cable television subscribers in the three municipalities on a dedicated governmental/educational access channel to be provided and maintained by the Company in place of the system-wide public access channel. The Company will endeavor to provide the dedicated access channel to all cable subscribers living within the three municipalities, but the municipalities recognize that, because of technical constraints, there may be limited areas where residents will continue to receive the system-wide access channel.

Should all three municipalities adopt a term of fifteen years, with a 10-year automatic renewal as provided by N.J.S.A. 48:5A-19 and 25, and N.J.A.C. 14:18-13.6, the grant will be \$75,000. In addition, the company will construct and maintain, at its own expense, a dedicated return from the High School to the company's head end, and will provide all equipment necessary for the transmission of a cable television signal from the High School, to the company's head

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end, and from there to cable television subscribers in the three municipalities on a dedicated governmental/educational access channel to be provided and maintained by the Company in place of the system-wide public access channel. The Company will endeavor to provide the dedicated access channel to all cable subscribers living within the three municipalities, but the municipalities recognize that, because of technical constraints, there may be limited areas where residents will continue to receive the system-wide access channel.

If any one of the three municipalities adopts a lesser term than those outlined above or fails to grant a renewal, the amount of the grant will be reduced to the next-lower level.

Note: If the towns decide to forgo the dedicated access channel, Comcast proposes to increase the 15-year grant to \$75,000 and the 15 + 10 year grant to \$90,000.