

**BOROUGH OF CHESTER
COUNTY OF MORRIS**

ORDINANCE NO. 2022-10

AN ORDINANCE GRANTING RENEWAL OF MUNICIPAL CONSENT TO COMCAST OF CENTRAL NEW JERSEY II, TO CONSTRUCT, CONNECT, OPERATE AND MAINTAIN A CABLE TELEVISION AND COMMUNICATIONS SYSTEM IN THE BOROUGH OF CHESTER, COUNTY OF MORRIS, STATE OF NEW JERSEY.

WHEREAS, the Borough of Chester previously approved municipal consent for a nonexclusive franchise to Comcast of Central New Jersey II, LLC to construct, own, operate, extend and maintain a cable television and cable communications system within the Borough of Chester, County of Morris, State of New Jersey; and

WHEREAS, Comcast of Central New Jersey II, LLC ("Comcast" or the "Company"), pursuant to authorization provided by the New Jersey Board of Public Utilities, acquired the assets of Patriot, including its cable system in the Borough of Chester as well as authorization to provide cable television service to residents thereof; and

WHEREAS, by Application for Renewal of Municipal Consent filed with the Borough of Chester (the "Application"), Comcast sought renewal of the Borough's Municipal Consent for the renewal of said franchise; and

WHEREAS, the Borough Council of the Borough of Chester has considered such Application and has conducted a public hearing on March 1, 2022, after proper public notice pursuant to the terms and conditions of the New Jersey Cable Television Act (as defined herein) and the regulations adopted by the Board of Public Utilities.

NOW THEREFORE, BE IT ORDAINED, by the Council of the Borough of Chester, in the County of Morris, and State of New Jersey, that an Ordinance of this Borough (of which the foregoing is the title) be adopted and that thereby a prior ordinance of this Borough, being Ordinance No. 85-13 and entitled "An Ordinance Granting Municipal Consent to the Renewal of a Franchise to Patriot Media & Communications CNJ, LLC to Construct, Own, Operate, Extend and Maintain a Cable Television and Cable Communications System in the Borough of Chester, County of Morris, State of New Jersey," be, and the same is hereby, amended in its entirety to read as follows:

SECTION 1. PURPOSE OF THE ORDINANCE. The Borough hereby grants to Comcast of Central New Jersey II, LLC a 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 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. "Borough" is the Borough of Chester, County of Morris, State of New Jersey.
- b. "Company" or "Comcast" is the grantee of rights under this Ordinance and is known as Comcast of Central 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 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 the Borough 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 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 ten (10) years from the date of expiration of the previous Certificate of Approval issued by the Board. In the event that the Borough shall find that the Company has not substantially complied with the material terms and conditions of this Ordinance, the Borough 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 Borough 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, and, except as where higher payment is otherwise required by the applicable law and regulations (including N.J.S.A. 48:5A-30), 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.

SECTION 6. FRANCHISE TERRITORY. The consent granted under this Ordinance for 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 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 an HPM ("homes-per-mile") of 35 dwellings per linear mile from the nearest active trunk or feeder line.

SECTION 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 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 Borough shall alter or change the grade of any street, alley or other way or place the Company, upon reasonable notice by the Borough, shall remove, re-lay or relocate its equipment, at the expense of the Company prior to approval of the board.

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 Borough 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.

d. Temporary Removal of Cables: The Company shall, upon request of the Borough, 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, subject to the prior approval of the board.

e. Installation of Equipment: The Company shall install equipment in the same location and manner as existing public utilities whenever possible, in order to minimize the impact of same on surrounding property.

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 Borough upon written request of the Borough Administrator.

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 Borough 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 Borough 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 Borough 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 BOND. During the life of the franchise the Company shall give to the Borough 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.

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 to one (1) outlet to each qualified existing and future school in the Borough, public and private, elementary, intermediate and secondary, provided the school building 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 labor basis by the school requesting service.

b. The Company shall provide Expanded Basic or a similar tier of cable television service to one (1) outlet to every Borough building and each qualified existing and future municipal owned building in the Borough, provided the facility is located 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 labor basis by the Borough.

c. Within six months of the issuance of a Renewal Certificate of Approval by the BPU, the Company shall provide will all required payments required pursuant to the BPU approval.

d. The Company shall comply with all applicable requirements of 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; and

(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, including the services set forth in subsections (a) and (b) above which may be recovered at the fair market value as a pass-through in addition to the 2.0% franchise fee provided hereinabove.

SECTION 15. GOVERNMENTAL ACCESS.

a. The Company shall continue to make available one educational access channel and one government access channel. These channels may be shared with other communities. The educational access channel is for the purpose of cablecasting non-commercial educational access programming. The government access channel is for the purpose of cablecasting non-commercial government access programming.

b. The Company does not relinquish its ownership of or ultimate right of control over a channel by designating it for Educational / Government (“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 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. Educational Access. “Educational Access” shall mean noncommercial use by educational institutions such as public or private schools or a municipal educational program, but not “home schools,” community colleges, and universities.

e. Government Access. “Government Access” shall mean noncommercial use by the Borough for the purpose of showing the local government at work.

f. Company Use of Fallow Time. Because blank or underutilized 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 subject to reclamation by the Municipality upon no less than 60 days written notice.

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 Borough or any other person, during an emergency, if for any reason the Borough 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 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).

SECTION 18. 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.

SECTION 19. COMPETITIVE EQUITY. Should the Borough 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.

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.

SECTION 23: If any Chapter, Article, Section or Subsection, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid by any court of competent jurisdiction such decisions shall not affect the remaining portions of this Ordinance.

SECTION 24: All ordinances or rules or regulations of the Borough of Chester, which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

Dated: November 22, 2022

Janet Hoven, Mayor

Attest:

Robin Ghebreal
RMC, Municipal Clerk

LEGAL NOTICE OF PENDING ORDINANCE

Notice is hereby given that the Ordinance published herewith was introduced and passed upon first reading at a meeting of the Mayor and Council of the Borough of Chester, in the County of Morris, New Jersey, held on November 22, 2022. It will be further considered for final passage after public hearing thereon, at a meeting of said Mayor and Council to be held in the Chester Borough Hall, 50 North Road, in said Borough, on December 20, 2022 at 7:00 p.m., and during the week prior and up to and including the date of such meeting, copies of said Ordinance will be made available at the Clerk's office in said Borough Hall building to members of the general public who shall request the same.

Robin Ghebreal
RMC, Municipal Clerk