TOWNSHIP OF EVESHAM
ORDINANCE NO. 30-12-2018

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 EVESHAM, NEW JERSEY,
AND REPEALING CHAPTER 61 OF THE CODE OF THE TOWNSHIP OF EVESHAM, "CABLE TELEVISION," IN ITS ENTIRETY, AND REPLACING SAME WITH REVISED CHAPTER 61, "CABLE TELEVISION"

BE IT ORDAINED BY THE MAYOR AND TOWNSHIP COUNCIL OF EVESHAM TOWNSHIP, 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 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 Evesham, 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 the Municipality 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

A public hearing was conducted by the Township Council on April 4, 2017 concerning the renewal of Municipal Consent herein granted to the Company, 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 Council, having received at said public hearings all comments regarding the qualifications of the Company to receive this renewal of Municipal Consent, the Township Council 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 10 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. 48:5A-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 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 Municipality 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 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. Any restoration shall commence as expeditiously as practical.

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. 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.

d. Local Ordinances: The Company is subject to and shall be governed by all lawful and applicable provisions of federal, state laws and regulations. This Franchise is further subject to all generally-applicable ordinances and resolutions of the Township in the exercise of its inherent police powers. Without waiving any of its rights, the Township agrees that, to the extent any term of this Municipal Consent is inconsistent with the terms of any Township ordinance existing prior or subsequent to the Effective Date, this Municipal Consent shall control.

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 Council upon written request of the Township Manager or Clerk, as required by applicable law.

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 applicable 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 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 municipality 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 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.

b. The Company shall continue to provide Expanded Basic or a similar tier of cable television service at no cost on one (1) outlet to each qualified existing police, fire, emergency management facility, public works and public library in the Township, provided the facility is located within 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 Township. Comcast shall provide the above referenced services to any future such facility upon written request.

c. The Company shall continue to provide free basic residential 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 175 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. Comcast shall provide the above referenced services to any future such facility upon written request.

d. 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 shall continue to make available one shared educational access channel and one dedicated government access channel. The educational access channel is currently maintained and administered by the Lenape Regional High School District for the purpose of cablecasting non-commercial educational access programming in conformance with the Lenape School District's published access rules. The

government access channel is maintained by the Township 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 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, but not "home schools," community colleges, and universities.

e. Government Access. "Government Access" shall mean noncommercial use by the Township 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.

g. Indemnification. The Township 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 Township's rules for or administration of EG access channel and its programming.

h. Within ninety (90) days of receipt of a Renewal Certificate of Approval, the Company shall provide the Township with a one-time grant in the amount of thirty thousand dollars ($30,000) for the purchase and upgrade of video production equipment, cameras, and other equipment required to operate the government access channel.

SECTION 15. 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 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 16. 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 17. 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 applicable State or Federal law.

SECTION 18. COMPETITIVE EQUITY

Should the Municipality grant a franchise or other authorization 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. The Company agrees to simultaneously provide a courtesy copy of the petition to the Township Manager in the event that it files such a request with the BPU under this Section of the consent agreement.

SECTION 19. SEPARABILITY

If any section, subsection, sentence, clause, phrase, or other portion of this Ordinance is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

SECTION 20. 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 Township 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. The Company agrees to reimburse the Township for all reasonable costs and legal fees associated with opposing such a public records request, which may include litigation before the Government Records Council and/or a court of competent jurisdiction.

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. NEW DEVELOPMENTS

The Township, 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.

SECTION 23. EFFECTIVE DATE

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

ROLE CALL VOTE *Upon Introduction* 11/20/18						
Council Member	INTRODUCED	SECONDED	AYE	NAY	ABSTAIN	ABSENT
D'ANDREA			✓			
DIENNA		✓	✓			
HACKMAN	✓		✓			
ZEULI			✓			
MAYOR BROWN			✓			

ROLE CALL VOTE *Upon Adoption* 12/4/18						
Council Member	INTRODUCED	SECONDED	AYE	NAY	ABSTAIN	ABSENT
D'ANDREA						✓
DIENNA		✓	✓			
HACKMAN	✓		✓			
ZEULI			✓			
MAYOR BROWN			✓			

Adopted on second and final reading on 12/4/18

Mayor

ATTEST:

Mary Lou Bergh

Township Clerk

4836-4548-6198, v. 1

Ordinance No. 30-12-2018