

**BOROUGH OF NEW PROVIDENCE**  
ORDINANCE 2009 - 12

**“AN ORDINANCE GRANTING RENEWAL OF MUNICIPAL CONSENT TO COMCAST OF NEW JERSEY II, LLC TO CONSTRUCT, CONNECT, OPERATE AND MAINTAIN A CABLE TELEVISION AND COMMUNICATIONS SYSTEM IN THE BOROUGH OF NEW PROVIDENCE, UNION COUNTY, NEW JERSEY”**

**BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE BOROUGH OF NEW PROVIDENCE, AS FOLLOWS:**

**SECTION 1. PURPOSE OF THE ORDINANCE**

The Municipality 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 Municipality 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 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. "Town" or "Municipality" is the Borough of New Providence, County of Union, State of New Jersey.
- b. "Company" is the grantee of rights under this Ordinance and is known as Comcast of 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 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**

Public hearings conducted by the municipality, 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 municipality, having received at said public hearings all comments regarding the qualifications of the Company to receive this renewal of Municipal Consent, the Municipality 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.

The Municipality may conduct a review of the Company's compliance under this Ordinance. Said review shall commence on the fifth (5<sup>th</sup>) anniversary of the issuance of the Renewal Certificate of Approval by the BPU and shall be completed no later than six (6) months from that date. The Municipality shall notify the Company and the BPU in writing of the commencement of said review and shall also notify the Company and the BPU upon completion of said review. Said notification shall present the Municipality's complete findings in this matter.

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, the Company shall, during each year of operation under the consent granted herein, pay to the Municipality 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 Municipality or any higher amount required by the Act or otherwise allowable by law, whichever is greater.

### **SECTION 6. FRANCHISE TERRITORY**

The consent granted under this Ordinance to 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. The Company's Line Extension Policy, as set forth in the Company's Application, shall govern any extension of plant beyond the Primary Service Area.

## **SECTION 8. CONSTRUCTION REQUIREMENTS**

**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. Except to the extent preempted by state or federal law, all such work shall be performed in accordance with local governmental requirements, as contained in municipal ordinances or as determined by the Borough Engineer

**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.

**Temporary Removal of Cables:** Upon the request of the Municipality, the Company, at its sole expense, shall temporarily raise, lower or remove its lines in order to facilitate the moving of buildings or machinery, or in other like circumstances.

**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.

**Notice of Work:** Prior to commencing any work which could have an impact upon public works within the Municipality or which could disrupt vehicular or pedestrian traffic within the Municipality, Comcast shall provide the Borough Engineer with reasonable notice of such work and shall file with the Borough Engineer all construction plans relating to such work. Nothing contained herein shall create any rights on the part of Comcast with respect to work which is inconsistent with requirements of the OCTV or the Board, or is otherwise inconsistent with applicable law.

## **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 municipality upon written request of the Municipality Administrator or 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 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 permitted under law.
- e. Upon written request of the Borough Council or its designee, the Company shall meet with the Borough Council or its designee to discuss customer service issues.

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

The Office of Cable Television is hereby designed as the Complaint Officer for the Municipality 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 Municipality shall have the right to request copies of records and reports pertaining to complaints by Municipality 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, and in no event (excepting emergent circumstances) less than 9:00 A.M. to 5:00 P.M., Monday through Friday.

#### **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 (\$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.

#### **SECTION 13. SUBSCRIBER RATES**

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

**SECTION 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 non-commercial 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 continue to provide a shared local access channel to be maintained by the Company and operated by the municipality's access or PEG designee (so long as that organization or its successor continues to be the City's access or PEG designee), for the purpose of local governmental and educational access programming in conformance with the Company's guidelines and applicable state and federal statutes and regulations. If the shared local access channel goes black or is devoid of all programming and ceases to be used for a period of ten (10) consecutive weeks, the municipality shall therewith forego its right to use the shared local access channel and, thereafter, Comcast, in its full discretion, shall be entitled to utilize the channel without restriction.
- d. The Company shall continue to provide a dedicated local access channel to be maintained by the Company and operated by the municipality for the purpose of local government and educational access programming in conformance with Company's guidelines and applicable state and federal statutes and regulations. The Company shall continue to provide and maintain the existing channel return lines and switching capabilities at high school and municipal building. The company shall provide an additional return feed for this channel at high school football field or other location of the city's choosing, provided that such location is within 200 feet of active cable plant.
- e. 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.

**SECTION 15. COMMITMENTS BY THE COMPANY**

- a. The Company shall continue to provide standard installation and basic cable television service on a total of 50 outlets to the four existing public schools in the municipality, 10 outlets each for future schools constructed in the municipality, and on 10 outlets to each private school at no cost, provided the school is within 200 feet of active cable distribution plant. Provision of digital equipment (converter boxes, DTAs, etc.) for all outlets shall be in accordance with Company policy. Each additional outlet installed, if any, shall be paid for on a materials/equipment and plus labor basis by the school requesting service.

Monthly service charges shall be waived on all additional outlets, except for equipment. Conversion of non-Company authorized outlets to Company standards, including wiring, equipment and installation charges shall also be charged on a material plus labor basis.

- b. The Company shall provide standard installation and basic cable television service at no cost, on one (1) outlet to the Municipal Center, Police Station, Fire House, EMS Station, Municipal Center Maintenance (lower level), DPW, WWTP, Board of Education (Municipal Center), Public Library, Senior Citizen Center, Board of Education Maintenance Facility (rear of Salt Brook School), Community Pool, and William Paca Club, provided the facility is located within 200 feet of active cable distribution plant. Each additional outlet installed, if any, shall be paid for on a materials/equipment plus labor basis by the Municipality. Monthly service charges shall be waived on all additional outlets, except for equipment. Conversion of non-Company authorized outlets to Company standards, including wiring, equipment and installation charges shall be paid by the Municipality.
- c. The Company shall continue to provide one free non-networked high speed Internet connection and service (one outlet at each location) at public library buildings and all public and private schools. Connections are to be located in areas accessible to student and community use, and cannot be restricted to administrative use. All facilities must be located within 200 feet of active cable plant.
- d. The Company shall provide a dedicated digital local access channel and return line maintained by the Company for the purpose of cablecasting non-commercial access programming in conformance with the Company's guidelines and applicable state and federal statutes and regulations, provided that programming on the current dedicated local access channel exceeds 40 hours of original programming per week over a 13 consecutive week period. Origination site must be located within 200 feet of active cable plant. A digital converter or cable card is required to view this channel.
- e. The Company shall continue to make available to the Municipality a mobile production vehicle for the purpose of producing non-commercial community, governmental or educational access programming, consistent with the Company's written rules and regulations on the use of said vehicle. The Company shall continue to provide basic training to all users of said vehicle.
- f. In the event that the current channel designation for TV 35 is changed by the Company (i.e. the channel is transferred to a new channel number) the Company shall reimburse the Municipality and TV 35 for reasonable administrative costs associated with notifying residents of the channel re-designation and re-branding of the TV 35 content and materials. The total amount to be paid by Comcast for such occurrence shall not exceed the sum five thousand dollars (\$5,000).
- g. Within six (6) months of the issuance of a renewal Certificate of Approval (COA) by the Board, the Company shall provide the Municipality a one-time grant for local access related needs in the amount of fifty-five thousand dollars (\$55,000).

## **SECTION 16. EMERGENCY USES**

The Company will comply with the Emergency Alert System ("EAS") rules in accordance with applicable state and federal statutes and regulations.

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 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 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 Municipality 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 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.

Introduced: August 10, 2009  
Public Hearing: August 24, 2009  
Adopted: August 24, 2009

Borough of New Providence  
County Of Union  
State Of New Jersey

By: \_\_\_\_\_  
John A. Thoms, Mayor

Attest:

\_\_\_\_\_  
Wendi B. Barry, Clerk