

Ordinance #:	23-3293
Introduction Date:	9/5/23
Hearing Date:	9/19/23
Passage Date:	9/19/23

AN ORDINANCE GRANTING RENEWAL OF MUNICIPAL CONSENT TO COMCAST OF NEW JERSEY II, LLC, TO CONSTRUCT, CONNECT, OPERATE, AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF SUMMIT, UNION COUNTY, NEW JERSEY [Comcast Cable Franchise Renewal]

Ordinance Summary: This ordinance grants renewal of municipal consent to Comcast of New Jersey II to construct, connect, operate, and maintain a cable television system in the City of Summit.

WHEREAS, the Common Council of the City of Summit (the “City”) by Resolution No. 19668, dated October 19, 1976, determined that Suburban Cablevision of 43 Prospect Street, East Orange, New Jersey 07017 (“Suburban”), had the technical competence and general fitness to operate a cable television system in the City, and by Ordinance No. 1668, dated July 19, 1977 (the “Initial Term Consent Ordinance”), thereafter granted its municipal consent for Suburban to obtain authority for a ten (10) year term, to construct, connect, operate, and maintain a cable television system in the City, and

WHEREAS, following and pursuant to such municipal consent, Suburban obtained a Certificate of Approval from the State of New Jersey Board of Public Utilities (the “Board”), and thereafter constructed and operated a television system pursuant thereto, and

WHEREAS, by Ordinance No. 1979, dated June 23, 1987, (the “First Renewal Consent Ordinance”) the City granted its municipal consent for Suburban to extend its authorization to provide services in the City for a period of ten (10) years commencing January 5, 1988, and

WHEREAS, in 1994 Suburban was acquired by Comcast Cablevision of New Jersey Inc., now known as Comcast of New Jersey II, LLC. (“Comcast” or the “Company”), succeeded to Suburban’s rights and obligations under the Franchise approved based on the First Renewal Consent Ordinance, and

WHEREAS, by Ordinance No. 2396, dated June 15, 1999, (the “Second Renewal Consent Ordinance”) the City granted its municipal consent for Comcast to extend its consent to provide cable service for a period of ten (10) years commencing January 5, 1998, and

WHEREAS, in Docket No. CE 99070454, on or about September 2, 1999, the Board issued an order renewing the certificate of approval (herein the “Existing Certificate of Approval”) to Comcast, and

WHEREAS, by Ordinance No. 08-2797, dated May 20, 2008, (the “Third Renewal Consent Ordinance”) the City granted its municipal consent for Comcast to extend its consent to provide cable service for a period of ten (10) years with an automatic renewal term of five (5) years, and

WHEREAS, by Application for Renewal of Municipal Consent filed with the City and the New Jersey Office of Cable Television (the “OCTV”) on or about April 15, 2022 (the “Application”), Comcast has sought renewal of the Franchise, and

WHEREAS, the City has concluded that the municipal consent should be renewed, subject to the requirements set forth below and the representations set forth in Comcast’s application for renewal of municipal consent.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF SUMMIT as follows:

ARTICLE ONE – 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”) regulations, 47 C.F.R. § 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” is the City of Summit, a municipal corporation of the State of New Jersey, having its City Hall located at 512 Springfield Avenue, Summit, in the County of Union and the State of New Jersey.

(b) “Company” 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 Board of Public Utilities, State of New Jersey.

(f) “OCTV” is the Office of Cable Television of the Board.

(g) “Application” is the Company’s Application for Renewal of Municipal Consent.

(h) “Primary Service Area” 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.

(i) “Commitments” shall mean the commitments, terms and undertakings on the part of the Company, set forth in this Ordinance, and in the documents incorporated herewith by reference, pursuant to Article Fourteen.

ARTICLE TWO – 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, 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.

ARTICLE THREE – DURATION OF FRANCHISE, AUTOMATIC RENEWAL TERM & COMPLIANCE REVIEW

The Municipality hereby grants to the company its non-exclusive consent to place in, upon, along, across, above, over and under the highways, streets, alleys, sidewalks, public ways, and public places in the municipality poles, wires, cables, and fixtures necessary for the maintenance and operation in the municipality of a cable television system. The non-exclusive

municipal consent granted herein shall expire 10 years from the date of the expiration of the Existing Certificate of Approval issued by the Board.

In the event that the Municipality finds 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. 58:5A-47, for appropriate action, including modification and/or termination of the Certificate of Approval, provided, however, that the Municipality shall first give the Company written notice of all alleged instances of non-compliance and an opportunity to cure same within ninety (90) days of that notification.

ARTICLE FOUR – FRANCHISE FEES

Pursuant to the terms and conditions of the Act, N.J.S.A. 48:5A-30(d), the Company shall, during each year of operation under the consent granted herein, pay to the Municipality no later than the last day of January of each calendar year, 3 and one-half percent (3.5%) of the gross revenues, as defined in N.J.S.A. 48:5A-3x, derived from cable television charges and fees paid by subscribers for cable television service in the Municipality or any higher amount required by the Act or otherwise allowable by law.

ARTICLE FIVE – FRANCHISE TERRITORY

The consent granted under this Ordinance for the issuance of the Franchise shall apply to the entirety of the Municipality and any property hereafter annexed.

ARTICLE SIX – 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 physical plant beyond the Primary Service Area shall be governed by the Company's Line Extension Policy, as set forth in the Company's Application.

ARTICLE SEVEN - CONSTRUCTION REQUIREMENTS

Restoration: In the event that the Company or any of its agents disturbs any pavement, street surface, sidewalk, 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 or better a condition as existed prior to the commencement of said work.

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 sole expense of the Company.

Temporary Removal of Cables: The Company shall temporarily move or remove appropriate parts of its facilities to allow for the moving of buildings and machinery, or in other similar circumstances. The expense shall be borne by the party requesting such action, except when requested by the municipality, in which case the Company shall bear the cost.

Trimming of Trees: During the exercise of its rights and privileges under this consent ordinance, the Company shall have 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.

ARTICLE EIGHT – CUSTOMER SERVICE

In providing service 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 additionally strive to meet or exceed all voluntary and industry standards in the delivery of customer service and shall be prepared to report on same to the Municipality upon written request of a duly authorized representative of the municipality.

(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 the Board and the 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.

(d) The company shall use every reasonable effort to meet or exceed applicable FCC customer service regulations.

ARTICLE NINE – MUNICIPAL COMPLAINT OFFICER

The Office of Cable Television is hereby designated 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 municipal customers from the OCTV.

ARTICLE TEN – LOCAL OFFICE

During the term of the Franchise, and any renewal thereof, the Company shall maintain a local 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 business office shall have a publicly listed toll-free telephone number and remain 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.

ARTICLE ELEVEN – PERFORMANCE BOND

During the term of the Franchise, the Company shall provide to the Municipality a bond in the amount of twenty-five thousand (\$25,000) dollars. Such bond shall be to ensure the faithful performance of all undertakings of the Company as represented in its Application, incorporated herein.

ARTICLE TWELVE – SUBSCRIBER CHARGES

The rates and charges of the Company shall remain subject to regulation to the extent permitted by State and Federal law.

ARTICLE THIRTEEN – LOCAL ACCESS

(a) The Company shall continue to provide 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 (currently channel 36) to be maintained by the Company and operated by the City'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. This shared access channel shall be made available by the Company as long as programming content is made available for the channel. In the event that the channel is abandoned and is not used for any access programming, the Company's obligation to continue to provide the channel to the City shall cease.

ARTICLE FOURTEEN – COMMITMENTS BY THE COMPANY

(a) In transmitting its television signals to subscribers in the Municipality, the Company shall employ a state of the art system and introduce reasonable upgrades and enhancements to provide signal quality that is at least as good as that customarily provided under prevailing industry standards, and the Company shall comply with all requirements imposed by Federal Regulations, and (to the extent not preempted by federal law) all State regulations relating to technical standards for the transmission of television signals, transmission quality, or facilities and equipment.

(b) The Company shall keep the Municipality informed of, and shall notify the Municipality of alterations in channel allocation for public, educational, and/or governmental access channels in accordance with N.J.A.C. 14:18-3.17(c).

(c) The Company shall continue to provide two digital local access channels dedicated to City for the City's exclusive use to provide either public, educational, or governmental ("PEG") access programming. A digital converter or cable card is required to view these channels.

(d) The foregoing digital PEG access channels shall be transmitted without material signal degradation and shall be transmitted with a signal quality that is at least equal to that of other channels that the Company transmits on the same programming tier. Additionally, the

Company shall designate a representative responsible for receiving and addressing comments or complaints with respect to the quality of PEG channel transmissions.

(e) The Company shall maintain a return line from Summit High School that will enable programming content which is originated at the high school to then be transmitted by the Company for cablecast on one of the access channels.

(f) The Company shall maintain the return line currently installed at the City municipal building so that, throughout the term of the Franchise, the City shall have the ability to originate access programming content from the City municipal building. In the event that the current TV 36 studio is relocated, and such relocation affects the City's ability to continue to originate programming from the City municipal building, the Company shall be responsible for modifying the return line so that programming may continue to be originated from the City municipal building.

(g) In the event the current TV-36 studio facility is moved/relocated to another location within the City, the Company shall, at its own cost and expense, relocate or install and maintain facilities necessary to enable TV-36 to transmit programming from its new location.

(h) The Company shall continue to provide standard installation and basic cable television service at no cost to one outlet in each municipal building, including but not limited to the police station, fire station(s), emergency management facility, public library, schools (including private schools), municipal golf course, community pool, and Department of Public Works buildings, 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 and plus labor basis by the Municipality or school. Monthly basic service charges shall be waived on all additional outlets. Conversion of non-Company authorized outlets to Company standards, including wiring, equipment and installation charges shall be paid by the Municipality or school.

(i) 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.

(j) During the term of the Franchise, the Company shall continue to make available to Overlook Hospital signals transmitting the PEG access content that is carried on each of the public access channels referred to above. If Overlook Hospital determines that it wants to carry

the PEG signals on its internal television system, Comcast will not be responsible for any equipment or system modifications that may be required by Overlook Hospital. Comcast's sole responsibility under this paragraph is to make the signal available as it does currently.

(k) The Company recognizes that the Municipality has made a significant investment to upgrade the audio-visual equipment in the Common Council Chamber. These upgrades are compatible with high-definition technology. Council meetings are currently broadcast on Channel 36. The Company agrees that within two (2) years of NJBPU's adoption of the Certificate of approval and by written request of the municipality, the Company shall make the necessary upgrades to its infrastructure so that Channel 36 may be broadcast in high definition.

(l) In the event that the current channel designation for TV-36 is changed by the Company (i.e., the channel is transferred to a new channel number), the Company shall reimburse the Municipality and TV-36 for reasonable administrative costs associated with notifying persons of the channel re-designation and the re-branding of TV-36 content and materials. The total amount to be paid by Comcast shall not to exceed the sum of five thousand dollars (\$5,000).

(m) Although Comcast shall not be required to adhere to service quality standards in excess of those required by State and federal laws, in response to specific and reasonable requests from the Municipality regarding signal quality issues in particular areas of the Municipality, Comcast shall evaluate the signal quality issues and advise the Municipality of the results of its evaluation.

(n) The Company shall cause any and all construction plans relating to work on any extension of plant or work which could have a significant impact on public works within the Municipality to be filed with the Municipality. Nothing herein shall create any right or obligation with respect to construction work that is inconsistent with any regulation or with the Board's regulatory authority.

(o) A Company representative shall meet at least annually with the Municipality's advisory committee, or other designee, upon reasonable written request, to review all matters relating to cable television in the Municipality, including, but not limited to, customer service standards.

ARTICLE FIFTEEN – EMERGENCY USES

The Company shall comply with the Emergency Alert System (“EAS”) rules in accordance with applicable State and Federal law.

ARTICLE SIXTEEN – 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.

ARTICLE SEVENTEEN – 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.

ARTICLE EIGHTEEN – SEVERABILITY

If any article, section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or 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.

ARTICLE NINETEEN – THIRD PARTY BENEFICIARIES

Nothing in this Ordinance or in any prior document is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of such Ordinance or document.

ARTICLE TWENTY – EFFECTIVE DATE

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

ARTICLE TWENTY-ONE

All Ordinances or parts thereof that are inconsistent with the provisions of this Ordinance shall be and the same are hereby repealed.

Dated: September 19, 2023

I, Rosalia M. Licatase, City Clerk of the City of Summit, do hereby certify that the foregoing ordinance was duly passed by the Common Council of said City at a regular meeting held on Tuesday evening, September 19, 2023.

Approved:

Mayor

City Clerk