

TOWNSHIP OF MOORESTOWN

ORDINANCE NO. 39-2008

AN ORDINANCE OF THE TOWNSHIP OF MOORESTOWN AMENDING CHAPTER A220 GRANTING MUNICIPAL CONSENT TO THE RENEWAL OF THE FRANCHISE OF COMCAST OF GARDEN STATE L.P. TO CONSTRUCT, CONNECT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE TOWNSHIP OF MOORESTOWN

WHEREAS, the Township Council (“Council”) had awarded a non-exclusive franchise (“Franchise”) in 1990 to the predecessor of Comcast of Garden State L.P. (“Comcast” or the “Company”), to construct, operate and maintain a cable television system in the Township of Moorestown (“Township”); and

WHEREAS, the Franchise expired on December 31, 2003 and by application for renewal of municipal consent filed with the Township and the State of New Jersey Board of Public Utilities (“Board”) on April 2, 2003, Comcast has sought a renewal of the Franchise; and

WHEREAS, said Franchise, embodied in Chapter A220 of the Township Code, was extended, but as of December 31, 2003 had not been renewed; and

WHEREAS, the Council upon the recommendation of the Telecommunication and Technology Committee has determined 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; and

WHEREAS, the Council upon the advice of the Telecommunication and Technology Committee has determined that the Company remains in substantial compliance with the terms of the Franchise as set forth in Chapter A220 of the Code of the Township of Moorestown; and

WHEREAS, the Council upon the recommendation of the Telecommunication and Technology Committee has accordingly concluded that the Franchise should be renewed, subject to the requirements set forth below, and that, subject to the commitments set forth below, the Township’s municipal consent to the renewal of the Franchise should be given.

BE IT ORDAINED by the Township Council of the Township of Moorestown in the County of Burlington that:

SECTION ONE. Chapter A220 of the Moorestown Code is hereby amended in its entirety as follows:

A220-1. Definitions.

As used in this ordinance the following terms shall have the meanings indicated:

ACT or CABLE TELEVISION ACT - Chapter 186 of the General Law of New Jersey 1972, and subsequent amendments thereto, *N.J.S.A. 48:5A-1, et seq.*

APPLICATION - the Company's Application for Renewal of Municipal Consent.

BOARD - the Board of Public Utilities of the State of New Jersey.

CABLE OFFICE - the Office of Cable Television of the Board of Public Utilities.

COMPANY -the grantee of rights under this Ordinance, known as Comcast of Garden State L.P., its servants, employees, agents, officers, directors, contractors, successors and assigns.

CONSTRUCTION - the construction, installation and completion of a cable television system facilities, fixtures and other things described and/or referred to in the Company's Application and all correspondence, commitments, representations and other statements in connection therewith. Construction shall not pertain to small extensions of plant or the installation of services to residences, businesses, or institutions.

FCC - the Federal Communications Commission.

LINE EXTENSION - the construction or installation of cable television service lines along public rights-of-way not previously served by the Company.

LOCAL BUSINESS OFFICE - an office, open to the public as further described and defined in Section A220-11 hereof.

NONSTANDARD INSTALLATION - any Service Drop where the distance exceeds that of a Standard Installation.

SCRAMBLED SERVICE - those channels requiring a descrambling devise or decoder.

SERVICE DROP - the service connection between the public right-of-way or the main service line and the building being served.

STANDARD INSTALLATION - any Service Drop the length of which is equal to or less than 150 feet underground or aerial.

TOWNSHIP - the Township of Moorestown in the County of Burlington, State of New Jersey.

A220-2. Municipal Consent.

A. The Council hereby consents, subject to the terms, conditions and provisions of this Ordinance, to the Company's placing in, upon, along, across, above, under and over the highways, streets, alleys, sidewalks, easements and rights of way of the Township poles, wires, cables, underground conduits, manholes and other incidental television conductors and fixtures necessary for the operation and maintenance within the Township of a cable television system.

B. No easement, right-of-way, title in fee simple, leasehold or other interest in real estate nor any other interest in property of the Township is hereby granted.

C. The foregoing consent is and shall at all times also be subject to full and detailed compliance with the Township's Zoning Ordinance, Land Subdivision Ordinance, all other Township ordinances and resolutions and all rules, regulations and laws of all applicable jurisdictions ("Requirements") as to all aspects of locations, operations, maintenance and to all facilities and equipment, movable or fixed, except as such Requirements may be preempted under State or federal law.

A220-3. Statement of findings.

Public hearings conducted by the Council 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 Council having received at said public hearings all comments regarding the qualifications of the Company to receive this renewal of Municipal Consent, the Council herein finds:

A. That the Company has substantially complied with its obligations under the Franchise and applicable law, and has provided generally satisfactory service, and the Township has no reason to believe that in the future the Company would fail to comply with its obligations under a renewal of the Franchise and under applicable law; and

B. That if the Company undertakes the commitments herein, and performs thereunder, such shall provide a reasonable assurance of meeting the Township's future cable-related needs.

A220-4. Duration of Franchise.

A. The non-exclusive Municipal Consent granted herein shall expire fifteen (15) years from the date of the expiration of the previous Certificate of Approval, with a ten (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 previous Certificate of Approval expired on December 31, 2003.

B. In the event that the Council shall find that the Company has not substantially complied with the material terms and conditions of this ordinance, the Township 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 Township 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.

A220-5. 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 Township a sum equal to two percent (2%) of the gross revenues from all recurring charges in the nature of subscription fees paid by subscribers to the Company's cable television reception service within the franchise territory referred to under A220-6, or any higher amount permitted by the Act or otherwise allowable by law, whichever is greater.

Comcast shall report gross revenues in accordance with regulations set forth by the Board of Public Utilities. Comcast agrees that such information shall be available to the Township from the Board of Public Utilities upon request.

A220-6. Franchise Territory.

The Consent granted herein to the Company shall apply to the entirety of the Township and to any property subsequently annexed thereto. Any questions or clarifications sought as to boundary locations or rights or interests in property shall be resolved by the Company at its own cost and expense.

A220-7. Extension of Service.

A. The Company shall, during the franchise period, offer cable television reception service to every present or future dwelling unit, school, institution and business located and to be located in the primary service area of the franchise territory, as reflected on the map included in the Company's Application. The Company shall provide that connection not later than three (3) months following the date of the issuance of a certificate of occupancy for a new dwelling unit, provided that reasonable advance notice is given by the new owner or resident to the Company concerning his or her desire for service.

B. No Line Extension charge shall be levied by the Company within the franchise territory on existing streets and roads. Streets and roads constructed after franchise adoption, or extensions of existing streets and roads, will be governed by the Company's Line Extension Policy, HPM (houses per mile) of 35.

C. Standard Installation charges shall apply to all installations of 150 feet or less measured from the main service line or right-of-way line, whichever is less or as same shall be modified by the Company's tariff.

A220-8. 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 and things so disturbed to and in not less than as good condition as existed prior to each such disturbance. In so doing, the Company shall comply with all applicable ordinances, resolutions, laws, rulings and regulations.

B. Relocation. If, at any time during the period of this consent, the Township shall alter or change the grade of any public street, alley or other way or place or alter or change the location or grade of any public water or sewer facility or other utility facility, the Company, upon reasonable notice by the Township, shall, at its own expense, remove, relay and relocate its cables, equipment or other facilities.

C. Temporary removal of cables. The Company shall, upon request of the Township, at the Company's expense, temporarily raise, lower or remove its cables and associated facilities in order to facilitate the moving of Township owned buildings, equipment, vehicles and machinery and to accommodate other like circumstances. In light of a temporary removal request by other than the Township for non-Township owned buildings, equipment, vehicles and machinery, the cost of such temporary removal shall be the responsibility of the requesting party.

D. Removal and/or trimming of trees. The Company shall, subject to the following conditions, have the authority to trim trees overhanging streets, alleys, sidewalks or other public places of the Township so as to prevent the branches of such trees from coming in contact with the wires and cables of the Company. Such trimming shall be only to the extent necessary to maintain proper clearance of the Company's wire and cables.

1. The Company will not, without the prior consent of the Township's Tree Superintendent or his designee, trim or remove trees in the public rights-of-way or parks in the Township, except in an emergency. The Tree Superintendent will respond to a request for authorization within 48 hours, Monday through Friday. If requested, the Company will perform any trimming under the direct supervision of the Tree Superintendent or his designee.

2. The Company and the Township will cooperate in mitigating any potential damage to Company owned underground cable and trees on Township property. The Company will cooperate closely with the Township in the planting and/or removal of trees in the curb strip where underground cable has been determined to be present. On any weekday, the Company will respond to a request from the Township to mark its underground lines within 24 hours, and will provide a special telephone number for this purpose. (This refers only to the Company's

lines; the Company cannot locate and shall not be responsible for other utilities.) If requested on a case-by-case basis, and on 48 hours notice, the Company will be on standby for a tree removal that includes uprooting of a tree and potential cable damage.

3. The Company shall not trim a privately owned tree until the Company has provided the owner of the tree with reasonable notice, and complies with all laws respecting any approval to be secured from the owner of privately owned trees.

A220-9. 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 Council upon written request of the Township Clerk or Township Manager.

1. The Company shall continue to comply fully with all applicable State and federal regulations regarding credit for outages, the reporting of same to regulatory agencies and notification of the same to customers.
2. The Company shall continue to comply fully 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.
3. The Company shall use every reasonable effort to meet or exceed voluntary standards for telephone accessibility developed by the National Cable Television Association (“NCTA”).
4. 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 the law.

A220-10. Municipal Complaint Officer.

The Office of Cable Television (“OCTV”) 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, although the Township recognizes the Company’s obligation to abide by appropriate laws and requirements regarding the protection of confidential customer information.

A220-11. Local Office, Repair and Maintenance.

A. 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 officer 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 AM to 5:00 PM, Monday through Friday.

B. The Company shall remove the telephone complaints number that is, under the previous franchise, currently answered by the Township from the Company's Channel Line-Up and the Rates and Charges Card when next printed, and shall instead list the OCTV as the complaint office.

C. The Company shall comply with the recommended Cable Industry Service Standards of the National Cable Television Association.

A220-12. Performance Bond.

During the life of the franchise the Company shall give to the Township 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.

A220-13. Subscriber Rates.

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

A220-14. Commitments by the Company.

A. The Company shall provide Total Preferred Cable Television service on one (1) outlet at no cost to each school in the Township, public and private, elementary, intermediate and secondary, provided the school is within 175 feet of an active cable distribution plant. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the entity requesting service. Monthly service charges shall be waived on all additional outlets.

B. The Company shall provide Total Preferred Cable Television service on one (1) outlet at no cost to each fire station, police station, emergency management facility and public library in the Township, and to the Town Hall and the Public Works Center, provided the facility is within 175 feet of an active cable distribution plant. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the entity requesting service. Monthly service charges shall be waived on all additional outlets.

C. The Company shall provide free basic Internet service, via high-speed cable modem, to one (1) non-networked personal computer in each qualified existing and future elementary, intermediate and secondary school, both public and private in the Township, provided the school is within 175 feet of an active cable distribution plant. The Internet service shall be installed on a personal computer that is accessible to the students and not for administrative use only.

D. The Company shall provide free basic Internet service, via high-speed cable modem, to one (1) non-networked personal computer in each qualified existing and future public library provided the facility is within 175 feet of an active cable distribution plant. The Internet service shall be installed on a personal computer that is accessible to library patrons and not for administrative use only.

E. The Company shall provide to the Township, for any purpose the Township deems appropriate, a one-time technology grant in the amount of \$40,000.00 within twelve (12) months of the issuance of a renewal Certificate of Approval.

A220-15. Emergency Uses.

A. The Company shall provide, at its sole expense, an Emergency Alert System (“EAS”) in compliance with applicable State and federal statutes and regulations.

B. The Company shall in no way be held liable for any injury suffered by the Township or any other person, during an emergency, if for any reason the Township is unable to make full use of the cable television system as contemplated herein.

A220-16. E/G Channel and Return Lines.

A. Company will provide one channel for educational and governmental (“EG”) access for use by the residents of Moorestown Township on the most basic tier of service offered by the Company in accordance with the Cable Act, Section 611, and as further set forth below. Unused capacity may be utilized by the Company subject to the provisions for “fallow time” below.

B. Within twelve (12) months of the issuance of a written request from the Township and after at least twelve (12) months after the receipt of a Renewal Certificate of Approval, the Company shall construct, at no cost to the Township, a dedicated fiber optic return line, to be located at within 250 feet of existing company plant, for the purpose of cablecasting live and/or recorded programming on the shared E/G channel. Within twelve (12) months of the issuance of a written request from the Township and at least twelve (12) months after the receipt of a Renewal Certificate of Approval, the Company shall isolate Township transmission points to provide for Township-only programming. The Company shall undertake all necessary work and expense to isolate and convert the channel to broadcast solely within the franchise area.

C. The Company shall provide and maintain the cable, modulators and equipment necessary for the Township E/G channel to send a signal to the Company, and to receive the return feed of signal. The Company will not be responsible for the maintenance of any studio equipment used for the E/G channel, including but not limited to cameras, editing decks, monitors, character generators, etc.

1. 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 governmental user – acquired 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.

2. 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.

3. The Township Council shall be responsible for developing, implementing, and enforcing rules for EG Access Channel use which shall insure that the EG Access Channel and the EG Access Equipment, which shall be provided by the Township, will be available on a first-come, first served, non-discriminatory basis.

4. 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.

5. Government Access. “Government Access” shall mean noncommercial use by the Township Council.

6. Company Use of Fallow Time. Because blank and under utilized EG channels are not in the public interest, in the event the Township elects not to fully program their EG access channel, Company may program unused time on those channels subject to reclamation by the Township upon no less than 60 days written notice.

7. Indemnification. The Township shall indemnify Company for any liability, loss, or damage it may suffer resulting from actions over which the Township exercises control 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 access.

A220-17. Competitive Equity.

Should the Township 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*:

A. A petition for the approval or amendment of the terms or conditions of a municipal consent upon which a certificate of approval is based shall conform to the provisions of *N.J.A.C. 14:17-4* and *N.J.A.C. 14:17-6.1* through 6.4 to the extent applicable, and shall in the body thereof or attached exhibits, also provide the following information:

1. A certified copy of the existing municipal consent including the terms and conditions related thereto;

2. A statement describing the proposed modification or amendments to said terms or conditions with reasons for the changes proposed;

3. Proof of service of notice to all cable television companies operating in the areas either contiguous to or in the same franchise territory to that served by the petitioners;

4. A copy of the agreement between the municipality and the petitioner stating that the changes are acceptable.

B. For the purposes of this section, proof of service of notice shall include a copy of the notice and service of notice upon the indicated party.

C. The petitioner shall provide copies of the petition to noticed parties upon request.

A220-18. Telecommunication and Technology Committee.

The Telecommunications & Technology Committee or such other committee as Council may designate shall:

A. Oversee programming on the educational and governmental access channel.

B. Arbitrate disputes among persons requesting the use of educational access and/or governmental access channel for initiation of programming.

C. Serve as liaison between the Council and schools on the one hand and the Company on the other hand.

D. Furnish such information and advice to the Council as may be required by this ordinance or as the Council may from time to time request.

A220-19. Meeting with Council or Designee.

Company representatives shall not be required to appear more than once per year, upon written notice of at least thirty (30) days, before the Council or such other committee as Council may designate, to discuss matters pertaining to the provision of cable service to residents of the Township and other cable related issues, if such a meeting is needed. The necessity of such meetings shall be determined solely by the Township. Notwithstanding, in an emergency situation, the Township may dispense with the notice requirement and call an immediate meeting with the Company representatives.

A220-20. Notices and Meetings.

A. The Company shall give notice, as required under FCC or Board regulations, of all proposed or contemplated changes and requests and applications for changes in rates, fees and charges of all kinds, and in the type and configuration of channels and/or subscriber equipment used and/or sought or intended to be used.

1. The Company shall, not later than thirty (30) days in advance of events referred to in Subsections A of this section, give notice of those events to the Township and the public.

B. The Council may choose to conduct a public hearing on the proposed changes. If the Township chooses to conduct said public hearing then the Company shall attend said hearing, upon reasonable notice, and may respond to questions on the changes.

A220-21. Liability Insurance.

The Company shall at all times maintain a comprehensive general liability 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. The Company shall assure that no such policy of insurance may be cancelled without a minimum of thirty (30) days notice to the Township. The Company shall deliver to the Township certificates of insurance naming the Township as an additional insured for every such policy immediately upon or prior to the effective date of each.

A220-22. Indemnity.

A. The Company shall hold and save the Township harmless from and indemnify and defend the Township against every claim, loss and liability of every kind arising in any and every way, directly and indirectly, immediately and consequentially, (“Loss”) from:

1. The grant or use of this municipal contract;

2. The construction, operation and/or maintenance of a cable television system and/or incidental fixtures or facilities within or without the Township.

3. Any act or omission of the Company or any of its officers, directors, employees, agents, contractors, suppliers, materialmen or affiliated companies.

4. The exercise or implementation, whether or not proper or lawful, of any right or privilege, express or implied hereunder, by law or otherwise arising out of this municipal consent or in any other way caused, directly or indirectly, by the Company's action, inaction, franchise, operation, maintenance, construction, installation or the like, except that this section shall not apply to any Loss caused by or attributable to the Township's actions or inactions.

B. "Loss" shall include all actual legal fees and court costs.

C. Notwithstanding the foregoing, this Section (A220-22) shall not apply to any Loss caused by or attributable to the Township's actions or inactions.

A220-23. Incorporation of Application.

Except as modified by this ordinance, the following are hereby incorporated by reference and are and shall continue to be binding upon the Company as the terms and conditions of this consent to the same extent as if set forth verbatim herein:

1. All correspondence and other writings and documents submitted by the Company in connection with its application.

2. The written application of the Company and all commitments, representations and other statements contained therein. The Company's application, which has been filed with the Township Clerk and is available for public inspection, shall, upon final adoption of this ordinance, be annexed hereto and made a part hereof.

A220-24. Effect of changes in controlling regulations.

In the event of any change in controlling law or any change in any controlling regulations or ruling of any federal, State or other governmental body or agency, each such change shall be incorporated into this consent effective on and after the applicable date of each such change.

A220-25. Third Party Beneficiaries.

Nothing in this consent, in the franchise renewal 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.

A220-26. Severability.

If any section, paragraph, sentence, clause, phrase, term, provision or part of this ordinance shall be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined to its operation to the section paragraph, sentence, clause, phrase, term, provision or part thereof directly involved in the controversy in which such judgment shall have been rendered.

A220-27. Effective date of ordinance.

This municipal consent shall take effect immediately upon issuance of a Renewal Certificate of Approval from the Board of Public Utilities.

NOTICE

The ordinance published herewith was introduced and passed upon first reading at a meeting of the Township Council of the Township of Moorestown, County of Burlington, State of New Jersey, held on December 1, 2008. This ordinance will be further considered for final passage by the Township Council at a meeting to be held in the Auditorium of the William Allen Middle School, 801 North Stanwick Road, NJ on December 15, 2008 at 7:30 pm or at any time and place to which such meeting may be adjourned. All persons interested will be given the opportunity to be heard concerning such ordinance. During the week prior to and including the date of such further consideration, copies will be made available at the Municipal Clerk's Office in said Municipal Building to any member of the general public who shall request such copies.

Patricia L. Hunt, RMC
Township Clerk

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