



Township of Hillsborough

COUNTY OF SOMERSET
THE PETER J. BIONDI BUILDING
379 SOUTH BRANCH ROAD
HILLSBOROUGH, NJ 08844
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ORDINANCE NO. 2018-16

AN ORDINANCE GRANTING RENEWAL OF MUNICIPAL CONSENT TO COMCAST OF CENTRAL NEW JERSEY II, LLC, TO CONSTRUCT, CONNECT, OPERATE AND MAINTAIN A CABLE TELEVISION AND COMMUNICATIONS SYSTEM IN THE TOWNSHIP OF HILLSBOROUGH, SOMERSET COUNTY, NEW JERSEY

Now, Therefore, Be It Ordained by The Township Committee of the Township of Hillsborough, County of Somerset, State of New Jersey, 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. "Township" or "Municipality" is the Township of Hillsborough, County of Somerset, State of New Jersey.
- b. "Company" or "Comcast" is the grantee of rights under this Ordinance and is known as Comcast of Central New Jersey II, LLC.
- c. "Act" or "Cable Television Act" is Chapter 186 of the General Laws of New Jersey, and subsequent amendments thereto, N.J.S.A. § 48:5A-1, et seq.
- d. "FCC" is the Federal Communications Commission.
- e. "Board" or "BPU" is the Board of Public Utilities, State of New Jersey.

- f. “Office” or “OCTV” is the Office of Cable Television of the Board.
- g. “Basic Cable Service” means any service tier, which includes the retransmission of local television broadcast signals as defined by the FCC.
- h. “Application” is the Company’s Application for Renewal of Municipal Consent.
- i. “Primary Service Area” or “PSA” consists of the area of the 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 ten (10) years from the date of expiration of the previous Certificate of Approval issued by the Board. In the event the Municipality shall find 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 permitted by the Act or otherwise allowable by law, whichever is greater. The current franchise fee amount for the Municipality is 3.5% of the gross revenues pursuant to N.J.S.A. 48:5A-30(d).

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, with a HPM ("homes-per-mile") of 25 dwellings per linear mile from the nearest active trunk or feeder line.

SECTION 8. CONSTRUCTION REQUIREMENTS.

a. Restoration: In the event that the Company or its agents shall disturb any pavement, street surfaces, sidewalks, driveways, or other surface in the natural topography, the Company shall, at its sole expense, restore and replace such places or things so disturbed in as good a condition as existed prior to the commencement of said work.

b. Relocation: If at any time during the period of this consent, the 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. Temporary Removal of Cables: The Company shall temporarily move or remove appropriate parts of its lines and facilities to allow for the moving of buildings or 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.

d. 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.

e. Installation of Equipment: The Company shall install lines, equipment and facilities underground to the extent practicable and otherwise in the same location and manner as existing public utilities to minimize the impact on the public right of way.

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.

SECTION 10. 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 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, within the Township or within ten (10) miles of the Township’s border, for the purposes of receiving, investigating and resolving all local complaints regarding the quality of service, equipment malfunctions, and similar matters. Such business office shall be open during standard business hours.

SECTION 12. PERFORMANCE BOND.

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). Such bond shall be to insure the faithful performance of all undertakings of the Company as represented in its application for municipal consent incorporated herein.

SECTION 13. SUBSCRIBER RATES.

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

SECTION 14. COMMITMENTS BY THE COMPANY.

a. The Company shall provide Expanded Basic or a similar tier of cable television service to one (1) outlet at no cost to each qualified existing and future school in the Municipality, public

and private, elementary, intermediate and secondary, provided the school building is within two hundred (200) feet of active cable distribution plant or through customer owned conduit. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the school requesting service. Company shall provide Expanded Basic or a similar tier of cable television service to all outlets at no cost.

b. The Company shall provide Expanded Basic or a similar tier of cable television service to one (1) outlet at no cost to each qualified existing and future public building in the Municipality provided the facility is located within two hundred (200) feet of active cable distribution plant or through customer owned conduit. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the Municipality. Company shall provide Expanded Basic or similar tier of cable television service to all outlets at no cost.

c. The Company shall provide Expanded Basic or similar tier of cable service to one (1) outlet at no cost to each qualified existing and future police station, office of emergency management, public works facility, fire district, fire company, rescue squad and public library in the Municipality provided the facility is located within two hundred (200) feet of active cable distribution plant or through customer owned conduit. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the Municipality. Company shall provide Expanded Basic or similar tier of cable television service to all outlets at no cost.

d. Within six months of the issuance of a Renewal Certificate of Approval by the BPU, the Company shall provide to the Municipality a one-time Technology Grant in the amount of seventy five thousand (\$75,000) dollars to meet the technology and/or cable related needs of the Municipality.

e. 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, education, and/or governmental access channels or the use of such channels; and (3) any grants or other fees on the bill or any tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber. The Company reserves its external cost, pass-through rights to the full extent permitted by law.

f. The Company agrees to provide the additional services and comply with the additional requirements outlined in the letter agreement attached hereto as Exhibit A.

SECTION 15. EDUCATIONAL AND GOVERNMENTAL ACCESS.

a. The Company shall provide channels for public, educational and governmental (“PEG”) access as requested by the Municipality on the most basic tier of service offered by the Company in accordance with the Cable Act, Section 611 [47 U.S.C. § 531], and as further set forth herein.

b. The Company does not relinquish its ownership of or ultimate right of control over a channel by designating it for PEG use. A PEG access 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 the use of any public, educational or governmental channel capacity, except Company may refuse to transmit any public, educational or governmental access program or portion of such program that contains obscenity, indecency or nudity.

d. Public Access. "Public Access" shall mean non-commercial use by the public.

e. Educational Access. "Educational Access" shall mean non-commercial use by educational institutions such as public or private schools, but not "home schools," community colleges and/or universities.

f. Government Access. "Government Access" shall mean non-commercial use by the governing bodies of the Municipality for the purpose of showing the public local government at work.

g. Fallow Time. Because blank or underutilized PEG channels are not in the public interest, in the event the Municipality or other PEG access users elect not to fully program the PEG access channel, Company may program unused time on those channels subject to reclamation by the Municipality upon no less than sixty (60) days written notice.

SECTION 16. EMERGENCY USES.

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

b. The Company shall in no way be held liable for any injury suffered by the 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 One Million Dollars (\$1,000,000) covering liability for any death, personal injury, property damages or other liability arising out of its construction and operation of the cable television system, and an excess liability (or "umbrella") policy in the amount of Five Million Dollars (\$5,000,000).

SECTION 18. INCORPORATION OF THE APPLICATION.

All of the statements and commitments contained in the Application or annexed thereto and incorporated therein, and any amendments 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 this 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.

Attest

Township of Hillsborough

Pamela Borek, Township Clerk

Gloria McCauley, Mayor

Introduced: August 14, 2018
Published: August 24, 2018
Public Hearing: September 11, 2018
Adopted:
Published: