

ORDINANCE NO. 2024-11

**AN ORDINANCE GRANTING MUNICIPAL CONSENT TO COMCAST TO CONSTRUCT, CONNECT, OPERATE AND MAINTAIN A CABLE TELEVISION AND COMMUNICATIONS SYSTEM IN HACKETTSTOWN TOWN, COUNTY OF WARREN, NEW JERSEY.**

**WHEREAS**, Comcast of Central New Jersey II, LLC ("Comcast") filed an application for the renewal of municipal consent to construct and operate a cable television system within the Town of Hackettstown (the "Town"); and

**WHEREAS**, on or about April 13, 2023, pursuant to N.J.S.A. 48:5A-23, the Town conducted a properly noticed public hearing to consider Comcast's application.

**BE IT ORDAINED BY THE MAYOR AND COUNCIL OF HACKETTSTOWN TOWN, AS FOLLOWS:**

**SECTION 1. PURPOSE OF THE ORDINANCE**

The Town hereby grants to Comcast 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 Town 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. "Town" or "Municipality" is Hackettstown Town, County of Warren, State of New Jersey.
- b. "Company" is the grantee of rights under this Ordinance and is known as Comcast of Northwest New Jersey, 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. "Cable Service" means the one-way transmission to subscribers of (i) video programming or (ii) other programming service, and subscriber interaction, if required for the selection or use of such video programming or other programming service.
- h. "Application" is the Company's Application for 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 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, and the representations of the Company 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 Effective Date.

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 Town two percent (2%) of the gross revenues from all recurring charges in the nature of subscription fees paid by subscribers for Cable Service in the Town or any higher amount permitted by the Act or otherwise allowable by law, whichever is greater.

## **SECTION 6.                   FRANCHISE TERRITORY**

The consent granted under this Ordinance for 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 Cable 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. For purposes of this section and the Company's implementation of the LEP, a home shall only be counted as a "dwelling unit" if such home is within two hundred seventy-five (275) feet of the public right of way.

## **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. Except to the extent preempted by State or federal law, all such work shall be performed in accordance with local government requirements, as contained in municipal ordinances or as determined by the Town Engineer.
- b. Relocation: If at any time during the period of this consent, the City shall alter or change the grade of any street, alley or other way or place the Company, upon reasonable notice by the City, 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 City 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. Notice of Work: Prior to commencing any work which could have an impact upon public works within the Town or which could disrupt vehicular or pedestrian traffic within the Town, Comcast shall provide the Town Engineer with reasonable notice of such work and shall file with the Town 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 laws.

## **SECTION 9. CUSTOMER SERVICE**

In providing Cable 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 strive to meet or exceed all voluntary company and industry standards in the delivery of customer service.

- 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. Nothing herein shall impair the right of any subscriber or the Town 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.
- d. The Company shall use every reasonable effort to meet or exceed voluntary standards for telephone accessibility developed by the National Cable Television Association ("NCTA").
- e. Upon written request of the Town Mayor and Council, Company shall meet with the Town Mayor and Council or its designee to discuss customer service issues.

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

The Office of Cable Television is hereby designated as the Complaint Officer for the Town 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 Town shall have the right to request copies of records and reports pertaining to complaints by Town 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 performance bond in the amount of forty thousand dollars (\$40,000.00). 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 to fifteen (15) outlet to each qualified existing and future school in the Town, 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.
- b. The Company shall provide Expanded Basic or a similar tier of cable television service to one (1) outlet to each qualified existing and future municipal building in the Town 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 Town.
- c. 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.

#### **SECTION 15. EDUCATION AND GOVERNMENTAL ACCESS**

- a. The Company shall continue to make available to the Town one governmental access channel and one educational access channel.
- b. The Company does not relinquish its ownership of or ultimate right of control over a channel by designating it for access 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 will maintain the cable, modulators, and equipment necessary for the Town or its designee to send a signal to the Company, and to receive the return feed of the signal.
- d. 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 any educational or governmental access program that contains obscenity, indecency, or nudity.

- e. Government Access. "Government Access" shall mean noncommercial use by the Town for the purpose of showing the local government at work.
- f. Company Use of Fallow Time. Because blank or underutilized E/G channels are not in the public interest, in the event the Town or other qualified E/G access users elect not to fully program their E/G access channel, Company may program unused time on those channels subject to reclamation by the Town upon no less than 60 days written notice.
- g. Indemnification. The Town 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 rules for or administration of E/G access channel and its programming.
- h. Within six months of the issuance of a Renewal Certificate of Approval by the BPU, the Company shall provide to the Town a one-time E/G Access Capital Grant in the amount of \$45,000 for the purchase of video equipment or to be otherwise used in support of access programming or as the Town deems appropriate"
- j. 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.

## **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 \$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 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.

#### **SECTION 20. 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 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 Municipality 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 Certificate of Approval from the BPU.

## ORDINANCE 2024-11

Notice is hereby given that the aforesaid ordinance was introduced at a regular meeting of the Common Council of the Town of Hackettstown, New Jersey, held on August 8, 2024, and that a regular meeting of the same to be held on September 12, 2024 at the Municipal Building, 215 Stiger Street, Hackettstown, New Jersey, at the hour 7:00 o'clock in the evening, the said Common Council will conduct a public hearing and will consider the final passage of said ordinance.

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P.J. Reilly  
Town Clerk/Administrator