

City of Egg Harbor

Ordinance No.: 16-2022

AN ORDINANCE GRANTING RENEWAL OF MUNICIPAL CONSENT TO COMCAST OF SOUTH JERSEY, LLC TO CONSTRUCT, CONNECT, OPERATE AND MAINTAIN A CABLE TELEVISION AND COMMUNICATIONS SYSTEM IN THE MUNICIPALITY OF EGG HARBOR CITY, ATLANTIC COUNTY, NEW JERSEY

BE IT ORDAINED AND ENACTED BY THE CITY OF EGG HARBOR COMMITTEE OF THE CITY OF EGG HARBOR, ATLANTIC COUNTY, NEW JERSEY, AS FOLLOWS:

SECTION 1. PURPOSE OF THE ORDINANCE.

The City 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 City, 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 City of Egg Harbor 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. “City” is the City of Egg Harbor, County of Atlantic, State of New Jersey.
- b. “Company” or “Comcast” is the grantee of rights under this Ordinance and is known as Comcast of South 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. “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 City currently served with existing plans as set forth in the map annexed to the Company's Application for Municipal Consent.

SECTION 3. STATEMENT OF FINDINGS.

Public hearing conducted by the City, 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 hearing, having been fully open to the public, and the City Committee, having received at said public hearings all comments regarding the qualifications of the Company to receive this renewal of Municipal Consent, the City 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 12 years from the date of expiration of the previous Certificate of Approval issued by the Board.

In the event that the City shall find that the Company has not substantially complied with the material terms and conditions of this Ordinance, the City 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 City shall first have 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.

SECTION 5. FRANCHISE FEE.

Pursuant to the terms and conditions of the Act, N.J.S.A. 48:5A-30, the Company shall, during each year of operation under the consent granted herein, pay to the City 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 City or any higher amount permitted by the Act or otherwise allowable by law.

SECTION 6. FRANCHISE TERRITORY.

The consent granted under this Ordinance for the renewal of the franchise shall apply to the entirety of the City 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 35 dwellings per linear mile from the nearest active trunk or feeder line from which a usable cable signal may be obtained. 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 occupied and 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 surface, sidewalk, driveway, 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. Such work shall be completed within thirty calendar days, unless the Company requests an extension of time from the City.

- 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 prior to approval of the board.
- 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. The Company agrees to provide prior notice of trimming to the City if such activity requires street or sidewalk closures or requires changes to typical vehicle and/or pedestrian traffic patterns.
- d. Temporary removal of cables: The Company shall, upon request of the City, at the company's expense, temporarily raise, lower or remove its lines in order to facilitate the moving of buildings or machinery or in other like circumstances, subject to the prior approval of the board. The Company agrees to promptly investigate and respond to all requests by City officials to secure or eliminate loose cables upon notification of unsightly cables and their locations.
- e. Installation of equipment: The Company shall install equipment in the same location and manner as existing public utilities whenever possible, in order to minimize the impact of same on surrounding property.
- f. Local Ordinances: The Company is subject to and shall be governed by all lawful and applicable provisions of federal laws, state laws, and generally applicable regulations. This Franchise is further subject to all generally applicable ordinances and resolutions of the City in the exercise of its inherent police powers. Without either party waiving any of their rights, the City and Company agree that, to the extent any term of this Municipal Consent is inconsistent with the terms of any City ordinance existing prior or subsequent to the Effective Date, this Municipal Consent Franchise shall control.

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 City upon written request of the City 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.
- d. Nothing herein shall impair the right of any subscriber or the City 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 City 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 City shall have the right to request copies of records and reports pertaining to complaints by City 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.

SECTION 12. PERFORMANCE BOND.

During the life of the franchise the Company shall give to the City 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. At the written request of the City, the Company shall provide updated information pertaining to the performance bond.

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 continue to 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 City, 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 continue to provide Expanded Basic or a similar tier of cable television service at no cost to one (1) outlet to each qualified existing and future municipal building, police, fire, emergency management facility and public library in the City or other public instrumentalities, 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 City.

c. The Company shall continue to provide free basic Internet access service, via high-speed cable modem, to one (1) non-networked personal computer in each qualified existing and future public school in the City, elementary, intermediate and secondary, at no charge provided the facility is located within two hundred (200) feet of active cable distribution plant. The Internet access service shall be installed on a computer that is accessible to the students and not for administrative use only.

d. Within six months of the issuance of a Renewal Certificate of Approval by the BPU, the Company shall provide to the City a one-time Technology Grant in the amount of \$12,000 to meet the technology and/or cable related needs of the community.

SECTION 15. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS.

a. The Company will continue to provide one (1) channel for governmental access. It will be 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 below.

b. The Company does not relinquish its ownership of or ultimate right of control over a channel by designating it for governmental access use. Any 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 shall not exercise editorial control over the use of any governmental access channel, except Company may refuse to transmit any governmental access program or portion of any governmental access program that contains obscenity, indecency, or nudity.

d. Government Access. “Government Access” shall mean non-commercial use by the governing bodies of the City for the purpose of showing the public local government at work.

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

f. Indemnification. The City 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 government access channel and from claims arising out of the rules for or administration of government access channel and its programming.

g. Within three months of the issuance of a Renewal Certificate of Approval by the BPU, the Company shall provide to the Township a one-time E/G Access Capital Grant in the amount of \$12,000 to purchase video production and other PEG related equipment.

h. 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 City or any other person, during an emergency, if for any reason the City 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 are 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 City grant municipal consent for 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. The Company agrees to simultaneously provide a courtesy copy of the petition to the City Clerk in the event that it files such a request with the BPU under this Section of the consent agreement.

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. PROPRIETARY INFORMATION

The Company shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The City agrees to treat any information disclosed by the Company as confidential and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Ordinance Agreement and who agree to maintain the confidentiality of all such information.

The Company shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Company to be competitively sensitive. The Company may make proprietary or confidential information available for inspection but not copying or removal by the Municipality’s representative. In the event that the Municipality has in its possession and receives a request under a state “sunshine,” public records, or similar law for the disclosure of information the Company has designated as confidential, trade secret or proprietary, the City shall notify the Company of such request and cooperate with Company in opposing such request.

SECTION 22. FORCE MAJEURE.

The Company shall not be liable or responsible for, in whole or in part, any delay or failure to perform any of its obligations hereunder which may result from accidents, pandemics, public health emergencies, floods, fires, earthquakes, tornadoes or other acts of God; war, acts of war (whether or not a declaration of war is made), civil disobedience; civil disturbance, sabotage or vandalism, customer tampering or interference, or act of public enemy; strikes, other labor or job actions or unavailability of materials or equipment; or other events or circumstances beyond the reasonable control of the Company.

SECTION 23. 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 24. NEW DEVELOPMENTS

The Municipality, for its part, 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 25. EFFECTIVE DATE.

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

This Ordinance shall take effect upon passage and publication.

Introduced: November 10, 2022
Publication: November 16, 2022
Public Hearing: December 15, 2022
Adoption:

ATTEST:

CITY OF EGG HARBOR

Meg Steeb, City Clerk

Lisa Jiampetti, Mayor

