

**CRANBURY TOWNSHIP ORDINANCE # 08-09-15**

**AN ORDINANCE GRANTING RENEWAL OF MUNICIPAL CONSENT TO COMCAST TO CONSTRUCT, CONNECT, OPERATE AND MAINTAIN A CABLE TELEVISION AND COMMUNICATIONS SYSTEM IN THE TOWNSHIP OF CRANBURY, NEW JERSEY.**

**BE IT ORDAINED BY THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF CRANBURY, as follows:**

**SECTION 1. PURPOSE OF THE ORDINANCE**

The Township 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 Township, 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 Township 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 Cranbury, County of Middlesex, 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.
- 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 all of Cranbury Township.
- j. "Non-exclusive" means that Cranbury Township residents, businesses, public and private schools, and Cranbury Township reserve the right to obtain television programming from other sources including, but not necessarily limited to, direct broadcast satellites, telephone companies and other cable companies.

### **SECTION 3. STATEMENT OF FINDINGS**

Public hearings conducted by the Township, 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 Township, having received at said public hearings all comments regarding the qualifications of the Company to receive this renewal of Municipal Consent, the Township 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 AND PERIODIC REVIEW**

The non-exclusive Municipal Consent granted herein shall expire 15 years from the date of expiration of the previous Certificate of Approval issued by the Board.

The Township's Cable Television Advisory Committee ("Advisory Committee") shall review the Company's compliance with the terms and conditions of the Municipal Consent on an annual basis.

In the event that the Township 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.

### **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 Township 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 Township 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 to the renewal of the franchise shall apply to the entirety of the Township and any property subsequently annexed hereto.

**SECTION 7. EXTENSION OF SERVICE**

The Company shall be required to provide service along the public right-of-way to any person's residence or business located in all areas of the franchise territory as described herein at tariffed rates for standard or non-standard installation without any line extension charge. Notice shall be provided by the Company to the Township Administrator when expansion takes place into new parts of the primary service areas and the estimated timeframe.

**SECTION 8. SYSTEM UPGRADE**

The Company commits itself to keeping pace with the state-of-the-art technology of the cable industry for systems of comparable size and to maintain the highest degree of product availability, signal integrity and system reliability.

In or about 1997, the Company completed an upgrade of the cable television distribution system serving the Township. The upgraded system is a hybrid fiber optic/coaxial cable system following a fiber to the node architecture.

The Company shall provide notice to the Township of any major upgrade to the system.

**SECTION 9. CONSTRUCTION REQUIREMENTS**

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.

Relocation: If at any time during the period of this consent, the Township shall find it necessary to alter, construct, change the grade of or otherwise improve any highway, street, alley, sidewalk, easement, public way or public place, the Company, upon reasonable notice by the Township, shall remove, re-lay or relocate its equipment as necessary to enable the Township's improvements, at the expense of the Company.

Temporary Removal of Cables: The Company shall, upon request of the Township and 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. Whenever the request is made by, for, or on behalf of private parties, the cost will be borne by those same parties. Private parties will be provided a free cost estimate prior to the commencement of work.

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 Township 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 and shall be in accordance with Chapter 41 of the Code of the Township of Cranbury, New Jersey, and any ordinance duly adopted by the Cranbury Township Shade Tree Commission.

Local Ordinances and other Laws: The Company shall be subject to full and detailed compliance with the Code of the Township of Cranbury, New Jersey, as may be amended from time to time; all other Municipal ordinances and resolutions; and all rules, regulations and laws of all applicable jurisdictions with the exception of any fees and charges, other than those allowed by controlling statutes.

## **SECTION 10. 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 Township upon written request of the Township 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 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 law.

**SECTION 11. MUNICIPAL COMPLAINT OFFICER**

The Office of Cable Television is hereby designed 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.

**SECTION 12. 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. Such a business office 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 A.M. to 5:00 P.M., Monday through Friday.

**SECTION 13. PERFORMANCE BONDS**

- a. 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.
- b. The amount of the performance bond shall be increased if state laws or regulations are amended to require a higher minimum bond, in which event the Company's performance bond shall be in an amount that is not less than the state minimum, or the Company undertakes major construction or a rebuild of its system, in which case the amount of the performance bond shall be renegotiated.

**SECTION 14. SUBSCRIBER RATES**

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

**SECTION 15. COMMITMENTS BY THE COMPANY**

- a. **Free Service to Schools in Township.** The Company shall provide or continue to provide, as the case may be, Total Preferred cable television service to ten (10) outlets at The Cranbury School, and one (1) outlet at no cost to any other public, private, elementary, intermediate and secondary school that is located in or may be constructed in the Township, provided the school is within 200 feet of an active cable distribution plant. This obligation shall apply to any new facilities that are constructed during this municipal consent. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the school requesting service. Monthly service charges shall be waived on all additional outlets.

- b. Free Service to All Municipal Buildings and Agencies. The Company shall provide or continue to provide, as the case may be, Total Preferred cable television service at no cost to one (1) outlet to the Municipal Building, Police Department Building, Public Works Building, History Center, and each public library, firehouse, first aid and rescue squad, senior center and other Municipal Building in the Township that is located in or may be constructed in the Township, provided the facility is located within 200 feet of active cable distribution plant. This obligation shall apply to any new facilities that are constructed during this municipal consent. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the Township. Monthly service charges shall be waived on all additional outlets.
- c. Free Internet Service to Schools and Library. The Company shall provide 1 free basic Internet service to one non-networked computer in the Cranbury School and each public library that is located in or may be constructed in the Township during the term of this franchise.
- d. Technology Grant. A one-time technology grant of \$12,000 shall be paid within twelve (12) months of the BPU's issuance of the Certificate of Approval.
- e. The Company shall provide one (1) dedicated digital municipal access channel within 12 months of a written request by the Township's governing body. The Company will provide and maintain the cable modulators and equipment necessary for the Township's channel to send a signal to the Company, and to receive the return feed of signal. The Company shall take any steps that are necessary to ensure that the signals originated on the access channel are carried without material degradation and with a signal whose quality is equal to that of the other channels that the Company transmits.
- f. Annual Reporting or Service. The Company shall file a report with the Township Clerk on the state of the Cranbury cable television system and service at least once annually. Also at least once annually, Company representatives shall appear, upon reasonable written request of the Township, at a public hearing of the governing body or its designees to discuss matters pertaining to the provision of cable service to residents of the Township and other related issues as the Township and Company may see fit.
- g. Proof of Performance. The Company shall, upon request, provide the Township with copies of its semiannual proof-of-performance tests conducted in accordance with Part 76 Subpart K of Title 47 C.F.R. § 76.601(c) and maintained in accordance with N.J.A.C. 14:18-9.2(c). The company shall also, upon request, provide the Township with the statement indicating the extent to which the system complies with the applicable standards, maintained in accordance with N.J.A.C. 14:18-9.2(c).

**SECTION 17. TWO WAY SERVICES AND INTERCONNECTION**

In the event that the Township determines that it is necessary and feasible for it to contract with the Company for the purpose of providing two-way or interconnection services, the Company shall be required to apply to the BPU for approval to enter into and establish the terms and conditions of such contract. All reasonably necessary costs for such application to the BPU shall be borne by the Township.

**SECTION 18. EMERGENCY USES**

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

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.

**SECTION 19. 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. The Company shall indemnify, protect and hold the Township harmless at all times from and against all claims for injury and damage to persons or property, both real and personal, arising out of the construction, erection, operation, repair, installation, replacement and maintenance of its CATV system or of any structure, equipment or appliance or product used pursuant to the provisions of the Act or this municipal consent or by any other act or omission of the Company, its agents or employees. The Company shall also provide evidence by certificate of insurance or otherwise of sufficient insurance insuring the Township and the Company with respect to all liability for any death, personal injury, property damage or other liability arising out of the Company’s construction and operation of its CATV system in the amounts set forth in the Application.

**SECTION 20. 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 21. 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 and the Company seeks to substitute such language that is more favorable or less burdensome for the comparable provision of this Ordinance, the Company shall notify the Township's of its desire in writing. The parties shall work together in good faith to make reasonable and agreeable modifications to this Ordinance, subject to the provisions of N.J.A.C. 14:17-6.7. Neither party shall be under any obligation to agree to modify the Ordinance, however.

**SECTION 22. TRANSFER OF OWNERSHIP**

The Company shall be bound by the terms and conditions of the Ordinance irrespective of the number of subscribers to its system. In the event there is a transfer of ownership, the new owner shall be required to comply with the provisions of this Ordinance. Otherwise, the Township may initiate the necessary steps to revoke municipal consent, subject to review and action by the Board of Public Utilities.

**SECTION 23. 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 24. 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 25. EFFECTIVE DATE**

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