

TOWNSHIP OF UNION

ORDINANCE NO. 2022-6

**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
UNION, HUNTERDON COUNTY, NEW JERSEY**

WHEREAS, Comcast of Central New Jersey II (“Comcast”) currently operates and maintains a cable television and telecommunications system in the Township of Union pursuant to the Certificate of Approval issued by the New Jersey Board of Public Utilities to Comcast’s predecessor, Patriot Media & Communications CNJ, LLC, on December 2, 2005 and a municipal consent ordinance that was approved by the Board of Public Utilities and is codified in Chapter 21 of the “Code of the Township of Union” (“Township Code”); and

WHEREAS, the aforementioned Certificate of Approval, issued in 2005, expired after a term of 15 years on December 2, 2020; and

WHEREAS, Comcast filed an application for renewal of municipal consent with the Township of Union in advance of the expiration on March 2, 2020; and

WHEREAS, a public hearing was held regarding Comcast’s application for renewal of municipal consent on September 16, 2020; and

WHEREAS, the Township Committee has evaluated Comcast’s application for renewal of municipal consent and worked with representatives of Comcast to prepare a mutually-agreeable municipal consent ordinance to replace the expired one; and

WHEREAS, the New Jersey Board of Public Utilities has reviewed and preliminarily approved the proposed municipal consent ordinance for introduction at a regular meeting of the Township Committee;

NOW THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Union, County of Hunterdon and State of New Jersey, as follows:

1. Chapter 21 of the Township Code Replaced. Chapter 21, “Cable Television and Communication System” of the Township Code is hereby amended by replacing it in its entirety, with the following sections:

§ 21-1. Purpose of the Ordinance.

The Township hereby grants to Comcast renewal of its non-exclusive Municipal Consent to place in, upon, along, 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.

§ 21-2. 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 in 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” is the Township of Union, County of Hunterdon, 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 and Telecommunications 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 Township currently served with existing plant as set forth in the map annexed to the Company’s Application for Municipal Consent.

§ 21-3. 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.

§ 21-4. Duration of Franchise.

The non-exclusive Municipal Consent granted herein shall expire 10 years from the date of expiration of the previous Certificate of Approval issued by the Board.

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.

§ 21-5. Franchise Fee.

Pursuant to the terms and conditions of the Act, and, except as where higher payment is otherwise required by the applicable law and regulations (including N.J.S.A. 48:5A-30), 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.

§ 21-6. Franchise Territory.

The consent granted under this Ordinance for the renewal of the franchise shall apply to the entirety of the Township and any property subsequently annexed hereto.

§ 21-7. Extension of Service.

The Company shall be required to proffer service to any residence 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.

§ 21-8. 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 Township shall alter or change the grade of any street, alley or other way or place the Company, upon reasonable notice by the Township, shall remove, re-lay or relocate its equipment, at the expense of the Company, subject to the prior 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 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.
- d. Temporary removal of cables: The Company shall, upon request of the Township, 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.
- 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.

§ 21-9. 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 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.

§ 21-10. Municipal Complaint Officer.

The 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.

§ 21-11. 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. Such a business office shall have a publicly listed toll-free telephone number and be open during standard business hours.

§ 21-12. Performance Bond.

During the life of the franchise the Company shall give to the Township a bond in the amount of Twenty-Five Thousand 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.

§ 21-13. Subscriber Rates.

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

§ 21-14. Commitments by the Company.

- a. The Company shall provide Expanded Basic or a similar tier of cable television service to one (1) outlet to each qualified existing and future school in the Township, 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 every Township building and each qualified existing and future municipal building, police, fire, emergency management facility and public library in the Township, 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 Township.
- 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.

§ 21-15. Educational and Governmental Access.

- a. The Company shall continue to make available a shared Educational and Governmental Access channel. The channel is currently administered by North Hunterdon High School.
- b. The Company does not relinquish its ownership of or ultimate right of control over a channel by designating it for Educational Access use. An 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 will maintain the cable, modulators, and equipment necessary for the signal to be sent to the Company, and to receive the return feed of the signal.
- d. The Company shall not exercise editorial control over any educational use of channel capacity, except Company may refuse to transmit any educational access program or portion of any Educational Access program that contains obscenity, indecency, or nudity.
- e. Definitions. "Educational Access" shall mean noncommercial use by educational institutions such as public or private schools, but not "home schools," community colleges, and universities. "Governmental Access" shall mean noncommercial use by the Township for the purpose of showing the local government at work.
- f. Company Use of Fallow Time. Because blank or underutilized Educational Access channels are not in the public interest, in the event the Township or other qualified Educational Access users elect not to fully program their access channel, Company may program unused time on those channels subject to reclamation by the Township upon no less than 60 days written notice.

- g. Indemnification. The Township 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 channel and from claims arising out of the rules for or administration of Educational 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 Township a one-time Educational Access Capital Grant in the amount of \$10,000.00 to meet the Educational Access capital needs of the community.
- i. 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.

§ 21-16. 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 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.

§ 21-17. 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). The Township shall be named as an additional insured under this policy.

§ 21-18. 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 the application of State or Federal law.

§ 21-19. Competitive Equity.

Should the Township 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.

§ 21-20. 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.

§ 21-21. 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.

§ 21-22. Effective Date.

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

2. Repealer. All ordinances and resolutions or parts thereof inconsistent with this ordinance are repealed.

3. Severability. If any section, paragraph, subsection, clause or provision of this ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause, or provision so adjudged, and the remainder of this ordinance shall be valid and enforceable.

4. Effective Date. This ordinance shall take effect immediately upon passage and publication, and issuance of a Renewal Certificate of Approval from the New Jersey Board of Public Utilities.

ATTEST: