

## **CHAPTER XXIII**

### **CATV\***

#### **23-1 PURPOSE OF CHAPTER.**

The Borough hereby grants to Comcast of Long Beach Island renewal of its nonexclusive Municipal Consent to place in, upon, across, above, over and under highways, streets, alleys, sidewalks, easements, public ways and public places in the Borough, 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 Borough of a cable television and communications system. (Ord. No. 2004-15 § 1)

#### **23-2 DEFINITIONS.**

For the purpose of this chapter, 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:

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\***Editor's Note:** Prior ordinance history includes portions of Ordinance No. 94-13 and 95-8.

- a. *Municipality* or *Borough* shall mean the Borough of Surf City, County of Ocean, State of New Jersey.
- b. *Company* shall mean the grantee of rights under this chapter and is known as Comcast of Long Beach Island.
- c. *Act* or *Cable Television Act* shall mean Chapter 186 of the General Laws of New Jersey, and subsequent amendments thereto, N.J.S.A. 48:5A-1 et seq.
- d. *FCC* shall mean the Federal Communications Commission.
- e. *Board* or *BPU* shall mean the Board of Public Utilities, State of New Jersey.
- f. *Office* or *OCTV* shall mean the Office of Cable Television of the Board.
- g. *Basic cable service* shall mean any service tier, which includes the retransmission of local television broadcast signals as defined by the FCC.  
(Ord. No. 2004-15 § 2)

### 23-3 STATEMENT OF FINDINGS.

Public hearings conducted by the Borough, 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 Borough, having received at said public hearings all comments regarding the qualifications of the Company to receive this renewal of Municipal Consent, the Borough 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. (Ord. No. 2004-15 § 3)

**23-4 DURATION OF FRANCHISE.**

The nonexclusive Municipal Consent granted herein shall expire fifteen (15) years from the date of expiration of the previous Certificate of Approval issued by the Board.

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 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 noncompliance and an opportunity to cure same within ninety (90) days of that notification. (Ord. No. 2004-15 § 4)

**23-5 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 Borough two (2%) percent of the gross revenues from all recurring charges in the nature of subscription fees paid by subscribers for cable television reception service in the Borough or any higher amount permitted by the Act or otherwise allowable by law, whichever is greater. (Ord. No. 2004-15 § 5)

**23-6 FRANCHISE TERRITORY.**

The consent granted under this chapter to the renewal of the franchise shall apply to the entirety of the Borough and any property subsequently annexed hereto. (Ord. No. 2004-15 § 6)

**23-7 EXTENSION OF SERVICE.**

The Company shall be required to proffer service along any 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 and nonstandard installations. (Ord. No. 2004-15 § 7)

#### **23-8 SYSTEM UPGRADE.**

The Company has completed an upgrade of the cable television distribution system serving the Borough. The upgraded system is a hybrid fiber optic/coaxial cable system following a "fiber to the node" architecture. The upgraded system provides improved picture quality, enhanced signal reliability and increased channel capacity.

The upgrade has been completed following the Company's engineering guidelines for hybrid fiber/coaxial (HFC) plant design, which meets or exceeds all applicable State and Federal regulations as well as voluntary cable television industry standards and follows commonly accepted industry practices.

The Company shall make every effort to deploy new or advanced technology and or services in the Borough that are commercially available, economically practicable, and technically feasible. That technology shall include but not be limited to: video-on-demand; digital video compression; advanced or high-definition television, digital audio services; digital television, high-speed Internet service via cable modem; and interactive program guides. (Ord. No. 2004-15 § 8)

#### **23-9 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 nature 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, relay or relocate its equipment, at the expense of the Company.

- c. *Temporary Removal of Cables.* The Company shall, upon request of the Municipality 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.
- d. *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 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.  
(Ord. No. 2004-15 § 9)

#### **23-10 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 community upon written request of the Borough Administrator or Clerk.

- a. The Company shall continue to comply fully with all applicable State and Federal statutes and regulations regarding credits 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 effort to meet or exceed voluntary standards for telephone accessibility developed by the National Cable Television Association (NCTA). Those standards shall include, but not be limited to, the goal of answering eighty (80%) percent of incoming telephone calls within thirty (30) seconds.
- 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 appropriate under law.
- e. The Company is permitted, but is not required to, charge a late fee consistent with applicable State and Federal statutes and regulations.  
(Ord. No. 2004-15 § 10)

#### **23-11 MUNICIPAL COMPLAINT OFFICER.**

The Office of Cable Television is hereby designed 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 Borough customers from the OCTV. (Ord. No. 2004-15 § 11)

#### **23-12 LOCAL OFFICE.**

During the term of this franchise, and any renewal thereof, the Company shall maintain a local business office or agent for the purpose of receiving, investigating and resolving all

complaints regarding the quality of service, equipment malfunctions and similar matters. Such local business office shall be open during normal business hours and in no event less than 9:00 a.m. to 5:00 p.m., Monday through Friday. Telephone response for such purposes as mentioned herein will be provided by the Company's employees, representatives or agents twenty-four (24) hours per day.

The telephone number and address of the local office shall be listed in applicable telephone directories and in correspondence from the Company to the customer. The telephone number for the local office shall utilize an exchange that is a non-toll call for Borough residents. (Ord. No. 2004-15 § 12)

#### **23-13 PERFORMANCE BONDS.**

During the life of the franchise the Company shall give to the Municipality 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. (Ord. No. 2004-15 § 13)

#### **23-14 SUBSCRIBER RATES.**

The rates of the Company shall be subject to regulation as permitted by Federal and State law. (Ord. No. 2004-15 § 14)

#### **23-15 PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS.**

- a. The Company shall continue to provide residents with a system-wide public access channel maintained by the Company. Qualified individuals and organizations may utilize public access for the purpose of cable casting noncommercial access programming in conformance with the Company's published public access rules.

- b. The Company shall continue to provide a dedicated municipal access channel maintained by the Company for use by the Municipality and its designees for the purpose of cable casting noncommercial public, educational and governmental programming.
- c. The Company shall continue to provide a system-wide leased access channel maintained by the Company for the purpose of cablecasting commercial access programming in conformance with the Company's guideline and applicable State and Federal statutes and regulations.
- d. The Company shall take any steps that are necessary to ensure that the signals originated on the access channels are carried without material degradation, and with a signal whose quality is equal to that of the other channels that the Company transmits.  
(Ord. No. 2004-16 § 15)

**23-16 COMMITMENTS BY THE COMPANY.**

- a. Eleven thousand five hundred fifty (\$11,550.00) dollar Technology Grant.
- b. The Company shall continue to provide standard installation of one (1) free cable drop and monthly-expanded basic service to the Municipal building, Police, Fire and First Aid Departments, libraries and community centers. This obligation shall apply to any new facilities that are constructed during this Municipal Consent. Installation shall be completed within thirty (30) days of the Certificate of Occupancy. The Municipality shall notify the Company of any new construction requiring a free drop.
- c. The company shall provide standard installation of one (1) free cable drop monthly expanded service to each elementary and middle school, public or private,



in the Municipality no later than one (1) year after issuance of a Certificate of Approval by the Board of Public Utilities.

- d. Company representatives shall appear at least once annually, upon reasonable written request of the Borough, at a public hearing of the Governing Body or before the Borough's Cable Television Advisory Committee, to discuss matters pertaining to the provision of cable service to residents of the Borough and other related issues as the Borough and Company may see fit.

(Ord. No. 2004-15 § 16)

#### **23-17 TWO-WAY SERVICES AND INTER-CONNECTION.**

In the event that the Borough 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 costs for such application to the BPU shall be borne by the Borough. (Ord. No. 2004-15 § 17)

#### **23-18 EMERGENCY USES.**

The Company shall be required to fully comply with all applicable Federal and State statutes and regulations rules and regulations governing the implementation, operation and testing of the Emergency Alert System (EAS).

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. (Ord. No. 2004-15 § 18)

23-19            BOROUGH OF SURF CITY CODE

**23-19    LIABILITY INSURANCE.**

The Company shall at all times maintain a comprehensive general liability insurance policy with a single limit amount of one million (\$1,000,000.00) dollars 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 three million (\$3,000,000.00) dollars. (Ord. No. 2004-15 § 19)

**23-20    INCORPORATION OF THE APPLICATION.**

All of the commitments and statements contained in the application and any amendment thereto submitted in writing to the Municipality by the Company, except as modified herein, are binding upon the Company as terms and conditions of this Municipal Consent. The application and any other relevant writings submitted by the Company shall be considered a part of this chapter and made a part hereof by reference as long as it does not conflict with State or Federal law. All ordinances or parts of ordinances or other agreements between the Borough and the Company that are in conflict with the provisions of this agreement are hereby declared invalid and superseded. (Ord. No. 2004-15 § 20)

**23-21    COMPETITIVE EQUITY.**

Should the Borough 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 chapter subject to the provisions of N.J.A.C. 14:17-6.7. (Ord. No. 2004-15 § 21)

**23-22 SEPARABILITY.**

If any section, subsection, sentence, clause, phrase or portion of this chapter 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 chapter. (Ord. No. 2004-15 § 22)

**23-23 EFFECTIVE DATE.**

This chapter shall take effect immediately upon issuance of a Renewal Certificate of Approval from the BPU. (Ord. No. 2004-15 § 23)