

DELAWARE TOWNSHIP
ORDINANCE #2011-15
CABLE TELEVISION FRANCHISE RENEWAL

AN ORDINANCE OF THE TOWNSHIP OF DELAWARE, COUNTY OF HUNTERDON AND STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING CHAPTER XVIII (CABLE TELEVISION FRANCHISE) OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF DELAWARE TO GRANT RENEWAL OF MUNICIPAL CONSENT TO COMCAST TO CONSTRUCT, CONNECT, OPERATE AND MAINTAIN A CABLE TELEVISION AND COMMUNICATIONS SYSTEM IN THE TOWNSHIP OF DELAWARE, NEW JERSEY. #2011-15

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

Section 1. Chapter XVIII CABLE TELEVISION FRANCHISE shall be repealed in its entirety and replaced as follows:

CHAPTER XVIII CABLE TELEVISION FRANCHISE

18-1 PURPOSE OF THE ORDINANCE

The Municipality 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 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 Municipality of a cable television and communications system.

18-2 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 the Township of Delaware, County of Hunterdon, State of New Jersey.
- b. "Company" or "Comcast" shall mean:
 1. Within Zone A, as shown on the map and described in the metes and bounds description appended hereto and made a part hereof, Comcast of Southeast Pennsylvania, LLC.
 2. Within Zone B, as shown on the map and described in the metes and bounds description appended hereto and made a part hereof, Comcast of Central New Jersey II, LLC.
 3. References in the plural shall be deemed to apply to both companies.
- 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 Companies' Application for Renewal of 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 Companies' Application for Municipal Consent.

18-3 STATEMENT OF FINDINGS

Public hearings conducted by the municipality, concerning the renewal of Municipal Consent herein granted to the Companies 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 Municipality, having received at said public hearings all comments regarding the qualifications of the Companies to receive this renewal of Municipal Consent, the Municipality hereby finds that the Companies possesses the necessary legal, technical, character, financial and other

qualifications and that the Companies' operating and construction arrangements are adequate and feasible.

18-4 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, with a 10-year automatic renewal as provided by N.J.S.A. 48:5A-19 and 25, and N.J.A.C. 14:18-13.6.

In the event that the Municipality shall find that the Companies have 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 Companies written notice of all alleged instances of non-compliance and an opportunity to cure same within ninety (90) days of that notification.

18-5 FRANCHISE FEE

Pursuant to the terms and conditions of the Act, the Companies shall, during each year of operation under the consent granted herein, pay to the Municipality 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 Municipality or any higher amount permitted by the Act or otherwise allowable by law, whichever is greater.

18-6 FRANCHISE TERRITORY

The consent granted under this Ordinance to the renewal of the franchise shall apply to the entirety of the Municipality and any property subsequently annexed hereto and the territory of the Municipality as follows:

- a. As to Comcast of Southeast Pennsylvania, LLC., Zone A, being more fully described on the map and metes and bounds description appended hereto and made a part hereof as if set forth in full herein.
- b. As to Comcast of Central New Jersey II, LLC, Zone B, being more fully described on the map and metes and bounds description appended hereto and made a part hereof as if set forth in full herein.
- c. The description and map, referred to herein, may be found attached to the ordinance as the Appendix.

18-7 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 of 30 homes per mile.

18-8 CONSTRUCTION REQUIREMENTS

a. Restoration: In the event that the Companies or its agents shall disturb any pavement, street surfaces, sidewalks, driveways, or other surface in the natural topography, the Companies 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 Companies, upon reasonable notice by the Municipality, shall remove, re-lay or relocate its equipment, at the expense of the Companies.

c. Temporary Removal of Cables: Upon request, the Companies shall temporarily move or remove appropriate parts of its facilities to allow for the moving of buildings, and machinery or in other similar circumstances. The expense shall be borne by the party requesting such action, except when requested by the Municipality, in which case the Companies shall bear the cost.

d. Removal or Trimming of Trees: During the exercise of its rights and privileges under this franchise, the Companies 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 Companies. Such trimming shall be only to the extent necessary to maintain proper clearance of the Companies' wire and cables.

18-9 CUSTOMER SERVICE

In providing cable services to its customers, the Companies shall comply with N.J.A.C. 14:18-1, et seq. and all applicable state and federal statutes and regulations. The Companies 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 Municipality upon written request of the Municipality Administrator or Clerk.

a. The Companies 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 Companies 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 Companies 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 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 permitted under law.

18-10 MUNICIPAL COMPLAINT OFFICER

The Office of Cable Television is hereby designated 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 Municipality customers from the OCTV.

18-11 LOCAL OFFICE

During the term of this franchise, and any renewal thereof, the Companies 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.

18-12 PERFORMANCE BONDS

During the life of the franchise the Companies 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 Companies as represented in its application for municipal consent incorporated herein.

18-13 SUBSCRIBER RATES

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

18-14 COMMITMENTS BY THE COMPANIES

a. The Companies shall provide Expanded Basic cable television service, within its respective Zones (A&B), on one (1) outlet at no cost to each school in the

Municipality, public and private, elementary, intermediate and secondary, provided the school is within 175 feet of active cable distribution plant. 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. The Companies shall provide Expanded Basic cable television service, within its respective Zones (A&B), at no cost on one (1) outlet to the Township Building, each police, fire, emergency management facility and public library in the Municipality, provided the facility is located within 175 feet of active cable distribution plant. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the Municipality. Monthly service charges shall be waived on all additional outlets.

c. The Companies shall provide free basic Internet access via high-speed cable and modem, within its respective Zones (A&B), on one (1) non-networked personal computer in each qualified existing and future public library at no charge provided the facility is located within 175 feet of active cable distribution plant. The Internet access shall be installed on a personal computer that is accessible to library patrons and not for administrative use only.

d. Within six (6) months of passage of the Certificate of Approval, the Companies shall make available in Zone A the Education and Government channel broadcast in Zone B, pursuant to the conditions outlined in Section 15 of this ordinance.

18-5 EDUCATIONAL AND GOVERNMENTAL ACCESS

a. The Companies will continue to provide one channel for educational and governmental (“EG”) access for the residents of Delaware Township.

The Companies will provide and maintain the cable, modulators and equipment necessary for the Township education-government access channel to send a signal to the Companies, and to receive the return feed signal. The Companies will not be responsible for the acquisition or maintenance of any studio equipment used for the access channel including, but not limited to cameras, editing decks, monitors, character generators, etc.

b. The Companies do not relinquish its ownership of or ultimate right of control over a channel by designating it for EG 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 Companies shall not exercise editorial control over any educational or governmental use of channel capacity, except Companies may refuse to transmit any educational or governmental access program or portion of an educational or governmental access program that contains obscenity, indecency, or nudity.

d. The governing bodies shall be responsible for developing, implementing, and enforcing rules for EG Access.

e. Educational Access. "Educational Access" shall mean noncommercial use by educational institutions such as public or private schools, but not "home schools," community colleges, and/or universities.

f. Government Access. "Government Access" shall mean noncommercial use by the governing bodies, for the purpose of showing the public local government at work.

g. Companies Use of Fallow Time. Because blank or underutilized EG channels are not in the public interest, in the event the Municipality or other EG access users elect not to fully program their EG access channel, Companies may program unused time on those channels (at its discretion and for any purpose), subject to reclamation by the Municipality upon no less than 60 days written notice.

h. Indemnification. The Municipality shall indemnify the Companies 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 Municipalities' rules for or administration of access.

18-16 EMERGENCY USES

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

The Companies 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.

18-17 LIABILITY INSURANCE

The Companies 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.

18-18 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 Companies as terms and conditions of this consent. The Application and other relevant writings submitted by the Companies shall be annexed hereto and made a part hereof by reference provided same do not conflict with applicable State or Federal law.

18-19 COMPETITIVE EQUITY

Should the Municipality 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 Companies 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.

18-20 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.

18-21 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 2. This Ordinance shall take effect immediately upon issuance of a Renewal Certificate of Approval from the BPU.

Section 3. This ordinance may be renumbered for codification purposes.

Kenneth J. Novak, Mayor

ATTEST:

Judith A. Allen, RMC
Township Clerk
December 12, 2011
Published 12/15/11

PLEASE TAKE NOTICE that the above Ordinance was adopted on first reading at a Regular Meeting of the Delaware Township Committee held on December 12, 2011. It will be considered on second reading for final adoption and will have a public hearing at a Regular Meeting on Tuesday December 27, 2011 at 8:00 p.m. at the Delaware Township Municipal Building, 570 Rosemont Ringoes Road (Route 604), Sergeantsville, NJ. At that time, an opportunity will be given for all interested citizens to be heard.

APPENDIX A

Appendix: Boundaries and Map of Zones for Cable Franchise Systems

The following description of the franchise service area boundary lines which were established in Delaware Township, Hunterdon County, New Jersey by the Delaware Township Committee on June 25, 1990. The franchise boundary line shall represent the division between the areas which shall be served by Comcast of Southeastern Pennsylvania, LLC (Zone A), and Comcast Cable of Central NJ II, LLC (Zone B). The description of the boundary line is as follows:

Beginning at a point where Upper Creek Road intersects the common municipal boundary line between Delaware and Kingwood Townships and proceeding south along said road to the point of intersection with Old Mill Road; thence, in a westerly direction continuing along Upper Creek Road to the point of intersection with Featherbed Lane; thence, proceeding in a southerly direction along Upper creek Road to the intersection with Rosemont-Ringoes Road (County Route 604); thence proceeding in a southerly direction along Lower creek Road to the intersection of Covered Bridge Road; thence along Covered Bridge Road in a southerly direction to the intersection of Stockton-Flemington Road (County Route 523); thence south along Stockton-Flemington Road to the intersection of Cemetery Road; thence, southeasterly along Cemetery Road to the intersection with Sandy Ridge Road; then proceeding easterly along Sandy Ridge Road to the intersection of Sandy Ridge-Mount Airy Road; thence southeasterly along Sandy Ridge-Mount Airy Road (County Route 605) to the intersection of Alexauken Creek Road; thence along Alexauken Creek Road to a point where said road crosses the municipal boundary line of West Amwell Township and the City of Lambertville. Also, residents of Knoster Drive may be served by Comcast of Southeastern Pennsylvania, LLC.

South of the described boundary line is Zone A served by Comcast of Southeastern Pennsylvania, LLC and north of the line is Zone B served by Comcast Cable of Central NJ II, LLC.