

City of Lambertville
ORDINANCE #2010-05

“AN ORDINANCE GRANTING RENEWAL OF MUNICIPAL CONSENT TO COMCAST TO CONSTRUCT, CONNECT, OPERATE AND MAINTAIN A CABLE TELEVISION AND COMMUNICATIONS SYSTEM IN THE CITY OF LAMBERTVILLE, NEW JERSEY.”

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF LAMBERTVILLE, as follows:

SECTION 1. PURPOSE OF THE ORDINANCE

The municipality 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 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.

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" or "Municipality" is the City of Lambertville, County of Hunterdon, State of New Jersey.
- b. "Company" is the grantee of rights under this Ordinance and is known as Comcast of Southeast Pennsylvania, 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 Municipality currently served with existing plant as set forth in the map annexed to the Company's Application for Municipal Consent.

SECTION 3. STATEMENT OF FINDINGS

Public hearings conducted by the municipality, 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 municipality, having received at said public hearings all comments regarding the qualifications of the Company to receive this renewal of Municipal Consent, the Municipality 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 is for a period of 15 years beginning as of the date of issuance of a renewal Certificate of Approval by the Board, and shall thereafter be extended for, and end after, an automatic renewal term of 10 years 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 Company has 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 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 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.

SECTION 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.

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 of 35 homes per mile.

Comcast will extend its plant along rights-of-ways to all residences and business within 150 aerial feet or 100 underground feet of Comcast's active cable distribution plant at no cost beyond the normal installation rate.

SECTION 8. 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 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, re-lay or relocate its equipment, at the expense of the Company.

Temporary Removal of Cables: Upon Request, the Company 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 company shall bear the cost.

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.

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 municipality upon written request of the Municipality 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 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.

SECTION 10. 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 Municipality 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. Such 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 12. 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.

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 provide Total Preferred cable television service 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 Company shall provide Total Preferred cable television service at no cost on one (1) outlet to City Hall, 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 Company shall provide free basic Internet service, via high-speed cable and modem, to one (1) non-networked personal computer in each qualified existing and future school in the City, public and private, elementary, intermediate and secondary, at no charge provided the facility is located within 175 feet of active cable distribution plant. The Internet service shall be installed on a personal computer that is accessible to the students and not for administrative use only.
- d. The Company shall provide free basic Internet access via high-speed cable and modem 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 shall be installed on a personal computer that is accessible to library patrons and not for administrative use only.
- e. Within twelve (12) months of receipt of a Renewal Certificate of Approval, the Company shall provide the City with a one-time technology grant in the amount of twenty two thousand five hundred (\$22,500) dollars for the City's cable and technology related needs.

SECTION 15. GOVERNMENT AND EDUCATIONAL ACCESS

a. The Company will provide one channel for governmental access use (sometimes, hereinafter, the “Governmental Access Channel”). Governmental access programming shall be provided by the governing bodies of the City of Lambertville, West Amwell Township, the Borough of Stockton, and Delaware Township (hereinafter, collectively, the “Municipalities”). Unused capacity may be utilized by the Company subject to the provisions for “fallow time” below. Comcast shall activate the government channel within six months of a written request by the municipality. The request for activation shall not occur prior to receipt of the Certificate of Approval from the NJ Board of Public Utilities.

The Company shall construct a dedicated fiber optic return line to the City Municipal Building at 18 York Street in Lambertville and the Justice Center, 25 South Union Street, Lambertville for cable casting live and/or recorded programming on the Government access channel. The Company will also provide a switching device for use by the municipality to change broadcast location between the York Street and Union Street locations during emergencies. The Company will not be responsible for providing or for the maintenance of any studio equipment used for the access channel, including but not limited to cameras, editing decks, monitors, character generators, etc.

B. The Company will continue to provide one channel for educational access use (sometimes, hereinafter, the “Educational Access Channel”) by the South Hunterdon Regional High School (hereinafter, the “High School”). Educational access programming shall be provided by the governing bodies of the City of Lambertville, West Amwell Township, the Borough of Stockton, and Delaware Township (hereinafter, collectively, the “Municipalities”), the High School (together with the Municipalities, the “Users”) or other designated educational institutions within the Municipalities. Unused capacity may be utilized by the Company subject to the provisions for “fallow time” below.

c. The Company does not relinquish its ownership of or ultimate right of control over a channel by designating it for governmental or educational access use. A governmental or educational access user – whether all or any of the Users or other educational or government user – acquires no property or other interest by virtue of the use of a channel so designated, nor may it rely on the continued use of a particular channel number, no matter how long the same channel may have been designated for such use.

d. The Company shall not exercise editorial control over any governmental or educational use of channel capacity, except that the Company may refuse to transmit any governmental or educational access program or portion of a governmental or educational access program that contains obscenity, indecency, or nudity.

e. Shared use of the channels shall be governed by mutual agreement among the governing bodies of the Users. The Users shall be responsible for developing, implementing, and enforcing rules for the Access Channels.

- f. "Educational Access" shall mean the noncommercial use by educational institutions such as public or private schools, but not "home schools," community colleges, and universities.
- g. "Government Access" shall mean noncommercial use by the governing bodies of the City of Lambertville, West Amwell Township, the Borough of Stockton, and Delaware Township for the purpose of showing the public local government at work.
- h. Company Use of Fallow Time. Because a blank or under utilized governmental or educational access channel is not in the public interest, in the event that the Users do not fully program the Governmental or Educational Access Channel, the Company may program unused time on said channel (at its discretion and for any purpose), subject to reclamation by the Municipalities upon no less than 60 days written notice.
- i. Indemnification. The Municipalities shall indemnify the Company for any liability, loss, or damage it may suffer due to any violation of the intellectual property rights of third parties on the Governmental or Educational Access Channel and from claims arising out of the Users' rules for or administration of access.

SECTION 16. 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 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.

SECTION 17. 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.

SECTION 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 applicable State or Federal law.

SECTION 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 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.

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. 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 22. EFFECTIVE DATE

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

The foregoing Ordinance was introduced at a Regular Meeting of the Mayor and City Council of the City of Lambertville held on February 16, 2010 and was read for the first time. Notice of pending Ordinance was advertised on February 18, 2010 in the Times.

This ordinance was considered for second reading and adopted after a public hearing at the regularly scheduled meeting of Mayor and Council of March 15, 2010, held at the Justice Center, 25 So. Union Street, in the City of Lambertville in the County of Hunterdon in the State of New Jersey. Notice of Adoption was advertised on _____, 2010 in the Times.

After a passage of 20 days, with no record of protest signed by any person against making the improvement or incurring the indebtedness authorized therein, nor any petition requesting that a referendum vote be taken on the action proposed in the ordinance has been presented to the governing body or to me or filed in my office within 20 days after the publication or at any other time after the final passage thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of Lambertville this ____th day of _____, 2010.

Cynthia L. Ege, Acting City Clerk