

Ord. #7-2011

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 Mount Olive, Morris County, New Jersey.

CLERK:

Delivered to Mayor:

Date: 3/30/11

Time: 1:00 p.m.

Signed: Lisa M. Lashway
Township Clerk

MAYOR:

Action by Mayor:

Approved: ✓

Date: 4/3/11

Vetoed: _____

Date: _____

(Reasons for which Mayor has withheld approval of ordinance, item or part Thereof.)

Signed: D. [Signature]
Mayor

CLERK:

Returned:

Date: 4/4/11

Time: 1 pm

Date: _____

Not returned within the (10) days:

Signed: Lisa M. Lashway
Township Clerk

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 MOUNT OLIVE, MORRIS COUNTY, NEW JERSEY

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWNSHIP OF MOUNT OLIVE, 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, 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. "Town" or "Municipality" is the Township of Mt. Olive, County of Morris, State of New Jersey.
- b. "Company" is the grantee of rights under this Ordinance and is known as Comcast of Northwest New Jersey, 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" or "Franchise Territory" 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 shall expire 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, 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 required 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 area of the Township previously approved for consent and currently served by Comcast. The area encompasses Blocks 8600 (Sheet 86), 8602 (Sheet 86), and 8700 (Sheet 87) as shown on the Tax Map of the Township, dated May 1990, updated February 2001 and those portions of the Township bounded by the following: North from a point where Smithtown Road and the South Raritan River intersect to Stephens Park Road; northwest on Stephens Park road to the Musconetcong River bearing south along the river; east on Old Drakestown Road to Mine Hill Road; south on Bartley-Drakestown Road to the intersection of River Road; north on River Road to Stephens Mill Road; northeast on Stephens Mill Road to the intersection of Flanders-

Drakestown Road; Flanders-Drakestown Road west to the intersection of Raritan River; north on the westerly bank of the river to Smithtown Road.

The service area is further constituted in the system map filed with the renewal application and is the entirety of the area served by Comcast in the municipality.

SECTION 7. EXTENSION OF SERVICE

The Company shall be required to proffer service to any residence or business along any public right-of-way located in the all areas of the franchise territory as described herein at tariffed rated for standard and non-standard installations. Any extension of the cable television system beyond the current franchise territory will be made in accordance with Office of Cable Television's ("OCTV") Line Extension Policy (LEP).

Comcast will comply with all lawful rules and regulations governing the operation of its cable television system and cable communications system within the (name of municipality). If any referenced regulations are deemed unlawful by a court of competent jurisdiction or superseded by a duly enacted State or federal statute or regulation, Comcast will not be bound by such regulation, nor will the company be bound by any provision of the Municipal Consent Ordinance or Renewal Certificate of Approval with regard to same. Comcast reserves the right to seek administrative or judicial review of the validity of any statute, regulation or ordinance.

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: The Company shall, upon request of the Municipality at the Company's expense, temporarily raise, lower, or remove it lines in order to facilitate the moving of buildings or machinery or in other like circumstances. Whenever the request is made by, for on behalf of private parties, the cost will be borne by those same parties.

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.
- e. The Company is permitted, but is not required to, charge a late fee consistent with applicable state and federal statutes and regulations.

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 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 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. 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 cablecasting non-commercial access programming in conformance with the Company's published public access rules.
- b. 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.
- c. The Company shall continue to provide a dedicated local access channel maintained by the Company for the purpose of cablecasting non-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 standard channels that the Company transmits.

SECTION 15. COMMITMENTS BY THE COMPANY

- a. Company representatives shall appear at least once annually, upon reasonable written request of the Township, at a public hearing of the Governing Body or before the Township's Cable Television Advisory Committee, to discuss matters pertaining to the provision of cable services to residents of the Township and other related issues as the Township and Comcast may deem appropriate.
- b. The Company shall provide one free standard cable installation and free basic service and required digital equipment to each elementary, middle, and secondary school classroom located in the service area; and one standard installation and free basic service to the municipal building and each fire department, first aid squad, library and public works building that is located in the or may be constructed with the consent area as specified in Section 6 and the system map filed with the renewal application. All schools and other facilities must be located within 175 feet of active cable distribution plant. Each additional outlet installed, if any, shall be paid for on a material plus labor and equipment basis by requesting entity. Monthly service charges shall be waived on all additional outlets.

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.

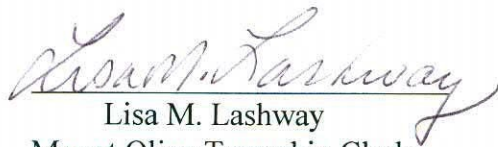
SECTION 21. THIRD PARTY BENEFICIARIES


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.

ATTEST: 3/29/11


Lisa M. Lashway
Mount Olive Township Clerk


Phil Tobey
Mount Olive Twp. Council President