

ORDINANCE NO. 2010-11

**TOWNSHIP OF EASTAMPTON
BURLINGTON COUNTY**

**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
EASTAMPTON, NEW JERSEY**

BE IT ORDAINED by the Township Council of the Township of Eastampton, as follows:

SECTION 1. PURPOSE OF THE ORDINANCE

The Township 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 Township 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:

Act or Cable Television Act

Chapter 186 of the General Laws of New Jersey, and subsequent amendments thereto, N.J.S.A. 48:5A-1, et seq.

Application

The Company's Application for Renewal of Municipal Consent.

Basic Cable Service

Any service tier, which includes the retransmission of local television broadcast signals as defined by the FCC.

Board or BPU

The Board of Public Utilities, State of New Jersey.

Company

The grantee of rights under this Ordinance and is known as Comcast of Garden State, L.P.

Construction

The construction, installation, and completion of cable television system facilities, fixtures and other things described and/or referred to in the company’s Application and all written correspondence, commitments, representations and other statements in connection herewith. Construction shall not pertain to small extensions of plant and installation of services to residences, businesses, or institutions.

FCC

The Federal Communications Commission.

Office or OCTV

The Office of Cable Television of the Board.

Primary Service Area or PSA

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.

Township or Municipality

The Township of Eastampton, County of Burlington, and State of New Jersey.

SECTION 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.

SECTION 4. DURATION OF FRANCHISE

The non-exclusive Municipal Consent granted herein is for a period of 10 years beginning as of the date of issuance of a renewal Certificate of Approval by the Board, 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 Township 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 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.

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 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, whichever is greater.

Company shall report gross revenues in accordance with regulations set forth by the Board of Public Utilities.

SECTION 6. FRANCHISE TERRITORY

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

SECTION 7. EXTENSION OF SERVICE

The Company shall, during the franchise period, be required to offer service to any present or future dwelling unit, school, institution, and business located and to be located along any public rights of way in the Primary Service Area, as set forth in the Company's Application. The Company's Line Extension Policy of 35 homes per mile shall govern any extension of plant beyond the Primary Service Area.

SECTION 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 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.

C. Removal or Trimming of Trees: The Company shall, subject to the following conditions, 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.

(1) Except in an emergency, the Company will not, without the prior consent of the Supervisor of the Township's Department of Public Works, or his/her delegate, trim or remove trees in the public rights-of-way or parks in the Township. The Supervisor or delegate will respond to a request for authorization within 48 hours, Monday through Friday. If requested, the Company will perform any trimming under the direct supervision of the Supervisor or his designee.

D. Temporary removal of cables: The Company shall, upon request of the Township, at the Company's expense, temporarily raise, lower or remove its cables and associated facilities in order to facilitate the moving of Township-owned buildings, equipment, vehicles and machinery and to accommodate other like circumstances. In light of a temporary removal request by other than the Township for non-Township owned buildings, equipment, vehicles and machinery, the cost of such temporary removal shall be the responsibility of the requesting party.

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 Township Council upon written request of the Township Manager 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.

SECTION 10. MUNICIPAL COMPLAINT OFFICER

The Township Clerk 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.

SECTION 11. LOCAL OFFICE

During the term of this franchise, 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 BOND

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 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 the Township building, each police, fire, emergency management facility, and public library in the Municipality; and the municipal recreation center, 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 Township. Monthly service charges shall be waived on all additional outlets.
- c. The Company shall provide free basic internet service, via high-speed cable modem, to one non-networked personal computer in each qualified existing and future elementary, intermediate and secondary school, both public and private, in the Township, provided the school is within 175 feet of an 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. A Company representative shall be required to appear once per year, upon written notice of at least 30 days, before the Township Council or such other committee as Council shall designate, to discuss matters pertaining to the provisions of cable television services to residents of the Township and other cable television related issues.

SECTION 15. EDUCATIONAL AND GOVERNMENTAL ACCESS

- a. The Company will continue to provide one channel for educational and governmental (“EG”) access for the shared use by the residents of Eastampton Township, Lumberton Township, Mount Holly Township, Westampton Township and Hainesport Township (collectively, “Municipalities”). The governing bodies of Eastampton Township, Lumberton Township, Mount Holly Township, Westampton Township and Hainesport Township or a designated educational institution shall provide educational access video programming. The governing bodies of Eastampton Township, Lumberton Township, Mount Holly Township, Westampton Township and Hainesport Township shall provide government video programming. Unused capacity may be utilized by the Company subject to the provisions for “fallow time” below.
- b. The Company does 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 Company shall not exercise editorial control over any educational or governmental use of channel capacity, except the Company 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 of Eastampton Township, Lumberton Township, Mount Holly Township, Westampton Township and Hainesport Township shall be responsible for developing, implementing, and enforcing rules for EG Access Channel use which shall ensure that the EG Access Channel and the EG Access Equipment, which shall be provided by the Municipalities or designated educational institution, will be available on a first-come, first served, non-discriminatory basis.
- 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 universities.
- f. Government Access. “Government Access” shall mean noncommercial use by the governing bodies of Eastampton Township, Lumberton Township, Mount Holly Township, Westampton Township and Hainesport Township, for showing the public local government at work.

- g. Company Use of Fallow Time. Because blank or under utilized EG channels are not in the public interest, in the event the Municipalities or other EG access users elect not to fully program their EG access channel, Company 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 Municipalities 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 EG channel and from claims arising out of the Municipalities' 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. The Company shall assure that no such policy of insurance shall lapse without timely notice to the Township. Further, the Company shall file with the Township certificates of insurance evidencing such policies prior to or on or about the effective date of the policy.

SECTION 18. INDEMNITY

Except as set forth in Section 15 (h) and 16 above or to the extent limited by State or Federal law, the Company shall hold and save the Township harmless from and indemnify and defend the Township against every claim, loss, and liability of every kind ("Loss") arising in, under or from, directly or indirectly, the grant or use of this municipal consent, except for any Loss caused by or attributable to the Township's own actions or inactions.

SECTION 19. INCORPORATION OF THE APPLICATION

Except as modified by this chapter, the following are hereby incorporated by reference and are and shall continue to be binding upon the Company as the terms and conditions of this consent to the same extent as if set forth herein:

1) All correspondence and other writings and documents submitted by the Company in connection with its Application.

2) The written Application of the Company and all written commitments, representations and statements contained therein. The company's Application, which has been filed with the Township Clerk and is available for public inspection, shall, upon final adoption of this chapter, be annexed hereto and made a part hereof provided the same do not conflict with applicable State and Federal law.

SECTION 20. 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 21. SEVERABILITY

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 22. 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 23. EFFECTIVE DATE

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

ATTEST:

KIM-MARIE WHITE

KIM-MARIE WHITE
Municipal Clerk

JAY SPRINGER

JAY SPRINGER
Mayor

Adopted: May 24, 2010