

TOWNSHIP OF MAPLEWOOD



ORDINANCE

#2650-10

**AN ORDINANCE GRANTING RENEWAL OF MUNICIPAL CONSENT TO
COMCAST OF NEW JERSEY II, LLC,
TO CONSTRUCT, CONNECT, OPERATE AND MAINTAIN A CABLE
TELEVISION AND COMMUNICATIONS SYSTEM
IN THE TOWNSHIP OF MAPLEWOOD, NEW JERSEY.**

"Interpretive Statement"

This Ordinance grants renewal of non-exclusive municipal consent to Comcast to operate a cable television and communication system in the Township of Maplewood.

WHEREAS, the Township Committee having engaged in certain investigation and review of the performance of Comcast of New Jersey II, LLC (Comcast) and the Township's cable-related needs; and the Township Committee having held hearings fully open to the public on March 16, 2010 and October 5, 2010, after proper public notice pursuant to the requirements of law, concerning the Township's consent to renewal; and the Township having received and considered all comments relating to its consent to a renewal of the franchise; and

WHEREAS, the Township Committee finds that Comcast has substantially complied with its obligations under the franchise and applicable law and has provided generally satisfactory service, and the Township has no reason to believe that in the future Comcast would fail to comply with its obligations under a renewal of the franchise and under applicable law; and

WHEREAS, the Township Committee finds that if Comcast undertakes the commitments and performs thereunder, such shall provide a reasonable assurance of meeting the Township's future cable-related needs and shall remedy any deficiencies in its performance which the Township may determine to exist;

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Maplewood, County of Essex, State of New Jersey, that Chapter A336 of the Code of the Township of Maplewood entitled "Cable Television Franchise" be revoked in its entirety and replaced as follows:

SECTION 1. PURPOSE OF THE ORDINANCE

The municipality hereby grants to Comcast of New Jersey II, LLC ("Comcast"), subject to the terms and conditions of this ordinance and upon the condition that Comcast shall accept the provisions of this ordinance and confirm, in writing, that it shall comply with all of the commitments, 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 those regulations of the State of New Jersey Board of Regulatory Commissioners relating to cable television, N.J.A.C. 14:17-1.1 *et seq.*, and 14:18-1.1 *et seq.*, as amended, 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 Maplewood, County of Essex, State of New Jersey.
- b. "Company" is the grantee of rights under this Ordinance and is known as Comcast of New Jersey II, 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, and shall provide a reasonable assurance of meeting the Township's future cable-related needs.

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. Only in the event that applicable law hereafter permits a larger franchise fee to be collected, but does not fix the amount thereof, the Township and Comcast shall negotiate in good faith with respect to the amount thereof.

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. The Company's Line Extension Policy, as set forth in the Company's Application, shall govern any extension of plant beyond the Primary Service Area.

Comcast will comply with all lawful rules and regulations governing the operation of its cable television system and cable communications system within the Township of Maplewood. 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. The Company shall, at the request of the Municipality, temporarily raise, lower or remove its lines in order to facilitate the moving of buildings or machinery or other like circumstances, at the expense of the Company.

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 Township Administrator is hereby designed as the Complaint Officer for the Municipality pursuant to N.J.S.A. 48:5A-26. All complaints shall be received and processed in accordance with N.J.A.C. 14:17-6.5. All complaints shall be in writing, signed by the subscriber and shall state the names and addresses of both the complainant and the party complained of, as well as the essential facts upon which the complaint is based, including the dates of acts or omissions complained of and attempts, if any, by the subscriber to resolve the complaint directly. The complaint officer will bring the matter to the attention of the party complained of and will request that party to submit a response to the complaint. The complaint officer shall review the complaint response, shall attempt an amicable adjustment of the dispute and shall report the results to all parties within thirty (30) days of receipt of the complaint. The complaint shall be without prejudice to the rights of any party to file a petition pursuant to the Cable Television Act.

Comcast will provide quarterly notice to the residents of the township informing them that the Township Administrator is the complaint officer. 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, and in the commitments.

SECTION 13. SUBSCRIBER RATES

The rates of the Company shall be subject to regulation as permitted by 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.
- e. The Company shall provide scheduled technical assistance at any PEG designee's hub site and studio, which will include a visit for the purposes of providing adjustment and diagnostic services on an "as needed" basis within twenty-four (24) hours of notice.
- f. The Company shall make available to the Township on an availability and scheduled basis, a mobile production vehicle for the purpose of producing non-commercial community governmental or educational access programming, consistent with company's written rules and regulations on use of said vehicle. The Company shall provide basic training to uses of production vehicle and will provide other technical assistance and training upon written request for local residents for the purpose of producing PEG access programming, to the extent that the Company offers such technical assistance and training.

SECTION 15. COMMITMENTS BY THE COMPANY

- a. The Company shall provide standard installation and basic 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 200 feet of active cable distribution plant. Each additional outlet installed, if any, shall be paid for on a materials/equipment plus labor basis by the school requesting service. Monthly service charges shall be waived on all additional outlets.
- b. The Company shall provide standard installation and basic cable television service at no cost on one (1) outlet to each of the following municipal facilities: all police, fire, emergency management facilities, Township Hall, the Department of Public Works facility, and each public library; and the Senior Citizen Drop in Center at Maplecrest Park, Unity Auditorium at the Civic House at Memorial Park, 124 Dunnell Road, DeHart Community Center, 120 Burnett Avenue, 1978 Maplewood Arts Center, 1978 Springfield Avenue, and the Burgdorff Cultural Center, 10-12 Durand Road, provided the facilities are located within 200 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 standard installation of one free non-networked internet connection via high-speed cable modem on one outlet in each public library facility and in each public or private elementary, middle or secondary school. Connections at all facilities outlined in this section shall be accessible to student or patron use and cannot be restricted to administrative use. All facilities must be within 200 feet of active cable distribution plant.
- d. If, at any time during the franchise, the Township makes a written request to the Company for a second dedicated local access channel and return line, the Company shall make the requested channel operational within one (1) year of receipt of the written request. The second local access channel will be a digital channel and will require digital equipment to be viewed by customers. The Company shall also provide within one (1) year, at no cost to the municipality, an additional channel return line at a location of the Township's choosing. The channel return line must be within 200 feet of active cable distribution plant.
- e. Within ninety (90) days of the issuance of a renewal Certificate of Approval by the OCTV, the Company shall provide to the municipality a one-time grant in the amount of \$45,000 for access related needs.
- f. The Company shall publish its toll free number on every monthly bill.
- g. The Company shall, within ninety (90) days of the Company's receipt of a customer complaint made by a resident of the Township, provide to the Township a copy of the complaint along with a statement of the Company's resolution of the complaint.
- h. The Company shall provide and offer customer communications options regarding service, billing, installations and complaints that are efficient and economical and in accordance with N.J.A.C. 14:18-3.3 ("Customer information") and N.J.A.C. 14:18-3.4 ("Information on company's schedule of prices, rates, terms and conditions").
- i. At the request of the Township, the Company and the Township's designee shall meet at least annually to review all matters relating to cable television in the township, with the minutes of such meetings to be delivered to the Company and to be filed with the Township.

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, which includes the capability to permit the broadcasting of emergency messages by municipal governing bodies

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 after final passage and publication and as provided by law and immediately upon issuance of a Renewal Certificate of Approval from the BPU.

PUBLIC NOTICE is hereby given that the foregoing proposed Ordinance was introduced and read by title for the first time at a meeting of the Township Committee of the Township of Maplewood, held on November 1, 2010, and that Committee met again on November 15, 2010, at 7:30 p.m. at the Municipal Building, 574 Valley Street, Maplewood, New Jersey, at which time and place the Committee proceeded to consider the said Ordinance on second reading and final passage.

MADLINE SMITH
Deputy Township Clerk