

Explanation: This Ordinance repeals and replaces Ordinance No. 2012-010 and further amends Chapter XVI entitled "Cable Television" to grant renewal of municipal consent to Comcast of Central New Jersey II, LLC, to construct, connect, operate and maintain a cable television and communications system in the Township.

TOWNSHIP OF BEDMINSTER

ORDINANCE NO. 2013-005

AN ORDINANCE REPEALS AND REPLACES ORDINANCE NO. 2012-010, AND FURTHER AMENDING CHAPTER XVI ENTITLED "CABLE TELEVISION" OF *THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF BEDMINSTER* TO GRANT RENEWAL OF MUNICIPAL CONSENT TO COMCAST OF CENTRAL NEW JERSEY II, LLC, TO CONSTRUCT, CONNECT, OPERATE AND MAINTAIN A CABLE TELEVISION AND COMMUNICATIONS SYSTEM IN THE TOWNSHIP OF BEDMINSTER, NEW JERSEY.

WHEREAS, on or about August 10, 2011, Comcast of Central New Jersey II, LLC ("Comcast") submitted an Application for Renewal of Municipal Consent with the New Jersey Board of Public Utilities ("BPU"), to renew the current municipal franchise within the Township of Bedminster previously granted to Patriot Media & Communications CNJ, LLC ("Patriot Media"), which expires on May 15, 2012; and

WHEREAS, Comcast previously acquired the interests in Patriot Media, including the operation of cable televisions services in the Township of Bedminster; and

WHEREAS, the Township and Comcast proceeded with informal negotiations for the Township's potential consent to the franchise renewal application pursuant to the New Jersey Cable Communications Policy Act of 1984, N.J.S.A. 48:5A-1, *et seq.* (the "Act"), and corresponding BPU Regulations, N.J.A.C. 14:17 and 14:18; and

WHEREAS, upon negotiating with Comcast, the Township agreed to consent to the franchise renewal application subject to the terms and conditions set forth in this municipal consent ordinance; and

WHEREAS, the Township Committee of the Township of Bedminster finds it to be in the best interest of the Township and its citizens to consent to Comcast's franchise renewal application with the BPU subject to the terms and conditions set forth in this municipal consent ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Bedminster, in the County of Somerset and State of New Jersey as follows:

Section 1. Chapter XVI entitled "Cable Television" of *The Revised General Ordinances of the Township of Bedminster, 1984*, is hereby deleted in its entirety and hereinafter supplemented and amended to read as follows:

CHAPTER XVI CABLE TELEVISION

16-1 PURPOSE OF THE ORDINANCE.

The Township of Bedminster hereby grants to Comcast of Central New Jersey II, LLC 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 Township, 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 conditioned upon approval of the New Jersey Board of Public Utilities.

16-2 DEFINITIONS.

For the purpose of this Chapter, 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. "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.
- b. "Application" is the Company's Application for Renewal of Municipal Consent.
- c. "Basic Cable Service" means any service tier, which includes the retransmission of local television broadcast signals as defined by the FCC.
- d. "Board" or "BPU" is the Board of Public Utilities, State of New Jersey.
- e. "Company" is the grantee of rights under this Ordinance and is known as Comcast of Central New Jersey II, LLC.
- f. "FCC" is the Federal Communications Commission.
- g. "Office" or "OCTV" is the Office of Cable Television of the Board.
- h. "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.
- i. "Town" or "Municipality" is the Township of Bedminster, County of Somerset, State of New Jersey.

16-3 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, hereby finds that the Company possesses the necessary legal, technical, character, financial and other qualifications to continue to operate a cable television system within the Municipality; and that the Company's operating and construction arrangements are adequate and feasible.

16-4 DURATION OF FRANCHISE.

- a. The non-exclusive Municipal Consent granted herein shall expire fifteen (15) years from the date of expiration of the previous Certificate of Approval issued by the Board, which term shall be automatically renewed for an additional ten (10) years as provided by N.J.S.A. 48:5A-19 and 25, and N.J.A.C. 14:18-13.6.

- b. 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.

16-5 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.

16-6 FRANCHISE TERRITORY.

The consent granted under this Ordinance to the renewal of the franchise shall apply to the area of the Municipality as set forth in the system map annexed to the application and the plant extensions contemplated herein.

16-7 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. For purposes of the Line Extension Policy, the minimum density shall be 25 homes-per-mile (25 HPM).

16-8 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: 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.

16-9 INDEMNIFICATION AND RESTORATION.

The Company will construct and install all upgrades in full conformance with the requirements of N.J.A.C. 14:18-2.1 and will hold the Municipality harmless from any liability arising out of the construction or operation of the cable television system in accordance with N.J.S.A. 48:5A-28(e).

16-10 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.

16-11 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.

16-12 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 E-mail account, and be open during standard business hours, but in no event (excepting emergent circumstances) less than 9:00 A.M. to 5:00 P.M., Monday through Friday.

16-13 PERFORMANCE BONDS; ROAD REPAIR AND RESTORATION.

- a. 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.
- b. In addition to the bond, the Company specifically agrees that it will respond, either directly or through a subcontractor, within forty-eight (48) hours of a written complaint from the Municipality that a road repair or restoration is necessary. In the event that the Company fails to respond timely and make the necessary repair or restoration, the Municipality may, in its discretion, consider such failure a breach of this Chapter and the Company's certificate of authority, and may recommend to the Board that the Board take action against the Company, including, but not limited to, ordering the repair or restoration, fines and such other action as the Board deems appropriate.

16-14 SUBSCRIBER RATES.

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

16-15 INTENTIONALLY OMITTED.

16-16 PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS.

- a. The Company shall continue to provide 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 two local access channels and existing return lines 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. The second access channel will be known as the government access channel, which can be utilized to televise meetings of the various public bodies of the Municipality. All local access channels shall become digital channels in concurrence with the system's channel line-up converting to digital cable format.
- 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.

16-17 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 and 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 municipal facility, including the Municipal Building, police department, fire department, and emergency management facility and the public library in the Municipality provided the facility is located within 200 feet of active cable distribution plant. Each additional outlet installed, if any, shall be paid for on a materials and equipment plus labor basis by the Municipality. Monthly service charges shall be waived on all additional outlets.
- c. The Company shall provide, free of charge, one non-networked internet connection via cable modem and monthly Internet service to each school in the Municipality, public and private, elementary, intermediate and secondary. The Internet service provided for herein must be available to student and patron use and cannot be limited to administrative uses. The Company shall also continue to provide free of charge one non-networked internet connection via cable modem in the Municipal Building, Police Department, Firehouse and Public Works Department, and the public library.
- d. The Company shall be required to complete plant build-outs to provide service to three areas of the Township that are identified on the system maps submitted as "Exhibit A", "Exhibit B", and "Exhibit C" as part of this ordinance. The build-out areas are referred to as Node BD 13, Node BD 14 and Node BD 12, on the system maps and constitute the entirety of the plant build-outs contemplated under this ordinance. The schedule of construction in the two areas shall be as follows: The first designated plant build-out "Exhibit A, Node BD 13" shall be completed within one year of the issuance of the

renewal certificate of approval for this franchise renewal. The second and third designated plant build-outs "Exhibit B, Node BD 14" and "Exhibit C, Node BD 12" shall be completed within one year after the completion of the first build-out area..

16-18 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.

16-19 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.

16-20 REMOVAL OF FACILITIES.

Upon issuance of a final, nonappealable order of an appropriate agency or court of competent jurisdiction declaring the expiration, termination or revocation of the Company's certificate of approval, the Company, at its sole cost and expense, and upon the direction of the Municipality, shall remove the cables and appurtenant devices constructed or maintained in connection with the services authorized herein, unless the Company, its affiliated entities or assignees should, within six (6) months after such expiration, termination or revocation obtain certification from the FCC to operate a cable television system.

16-21 MEETINGS.

The Company shall make available representatives to meet upon the request of the municipality upon thirty (30) days written notice for the purpose of reviewing the Company's performance. The Company's representative shall respond to the reasonable requests for information made by the Municipality prior to or at such meeting.

16-22 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 are annexed hereto by reference and made a part hereof provided same do not conflict with applicable State or Federal law.

16-23 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.

16-24 GRANT TO MUNICIPALITY.

In consideration for the rights granted by this Chapter, the Company shall provide the Municipality, within six months of the issuance of the renewal Certificate of Approval by the Board, a one-time grant in the amount of \$5,000.00, which shall be used by the Municipality, at its discretion, for any cable or telecommunications related purpose that it deems appropriate.

16-25 COMPANY PASS THROUGH RIGHTS.

The Communications Act of 1934, as amended [47 U.S.C. §543(b)], allows the Company to itemize and/or identify: (1) the amount on the subscriber bill assessed as a franchise fee and the identity of the governmental authority to which the fee is paid; (2) the amount on the bill assessed to satisfy any requirements imposed on the Company by the cable franchise to support public, educational, and/or governmental access channels or the use of such channels; and (3) any grants or other fees on the bill or any tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber. The Company reserves these external cost pass-through rights to the extent permitted by law.

16-26 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.

16-27 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.

16-28 EFFECTIVE DATE.

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

Section 2. This Ordinance specifically repeals and replaces Ordinance No. 2012-010, which was previously adopted by the Township amending Chapter XVI entitled “Cable Television” granting the renewal of municipal consent to Comcast of Central New Jersey II, LLC.

Section 3. If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

Section 4. In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Township of Bedminster, the provisions hereof shall be determined to govern. All other parts, portions and provisions of the Revised General Ordinances of the Township of Bedminster are hereby ratified and confirmed, except where inconsistent with the terms hereof.

Section 5. This Ordinance shall be so construed as not to conflict with any provision of New Jersey or Federal law.

Section 6. This Ordinance shall take effect immediately upon adoption and publication in accordance with the laws of the State of New Jersey.

Introduced by:
Passed:
Published:
Adopted:

ATTEST:

BEDMINSTER TOWNSHIP COMMITTEE

By: _____
Judith Sullivan, RMC
Township Clerk

By: _____
Steven E. Parker,
Mayor

Introduced	Seconded	Township Committee	Vote for Adoption	Nay	Abstain	Absent
		Steven E. Parker, Mayor				
		Bernie Pane				
		Katy Rupert				
		Carolyn Freeman				
		Lawrence Jacobs				