

ORDINANCE NO. 19-2005

**AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO
COMCAST OF NEW JERSEY II, LLC, A DELAWARE CORPORATION, TO
CONSTRUCT, CONNECT, OPERATE AND MAINTAIN A CABLE
TELEVISION FRANCHISE IN THE TOWNSHIP OF LIVINGSTON**

WHEREAS, the Township Council is concerned over raising cable television rates and lack of competition and the inequities that exist between Comcast of New Jersey and the value it assigns to its subscriber base in Livingston and other municipalities it serves; and

WHEREAS, plant and equipment owned by Comcast in Livingston has been paid several times over by Livingston cable television subscribers and system upgrades that allow for additional revenue opportunities to Comcast that are not shared with the municipality such as internet access (non-regulated) and other broadband features; and

WHEREAS, the Livingston Township Council believes that Comcast should reduce the burden on Livingston tax payers by returning to Livingston an equitable share of all video revenues it derives from its Livingston subscriber base and acknowledges that Comcast enjoys more than an 80% penetration rate in Livingston; and

WHEREAS, the Township Council recognizes that the New Jersey Cable Act of 1972 is over thirty years old.

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Livingston, County of Essex:

1. SHORT TITLE.

This Ordinance shall be known, and may be cited, as the “Livingston CATV Franchise Ordinance.”

2. DEFINITIONS.

As used in this Ordinance, the following terms, words and derivations shall have the meanings given herein. Such meanings or definitions of terms shall be interpreted consistent with the definitions of the Cable Communications Policy Act of 1984 47 U.S.C. §521 *et. seq.*, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and related regulations, and the New Jersey Cable Television Act, N.J.S.A. 48:5A-1 et seq., as amended, and related regulations, and shall in no way be construed to broaden, alter or conflict with those definitions. When not inconsistent with the context, words used in the present tense shall include the future; words in the plural number shall include the singular; and words in the singular number shall include the plural. The word “shall” is always mandatory and not merely directory.

- (a) "CATV service" shall have the same meaning as "cable service" as that term is defined in the Cable Communications Policy Act, 47 U.S.C. §522(6).
- (b) "CATV system" or "system" shall have the same meaning as that term is defined in the Cable Communications Policy Act. 47 U.S.C. §522(7).
- (c) "Company" means Comcast of New Jersey II, LLC, a corporation of the State of Delaware, with its principal office at 800 Rahway Avenue, Union, New Jersey, and shall include its successors or assigns, if any.
- (d) "Person" means any person, firm, partnership, corporation, company, association or organization of any kind.
- (e) "Public utility" means an entity as defined in N.J.S.A. 48:2-13.
- (f) "Street" means any street, road, highway, alley or public way in the Township, between the right-of-way lines thereof, no lay out or dedicated or which may hereafter be laid out or dedicated.
- (g) "Township" means the Township of Livingston in the County of Essex.
- (h) "Senior Citizen" means any person 62 years or older who subscribes to CATV service and who does not share the subscription with more than one other person in the same dwelling unit who is less than 62 years of age.
- (i) "Application" means the application of Comcast of New Jersey II, LLC, and addenda thereto, which application and addenda are on file in the office of the Township Clerk and are incorporated herein by reference and made a part hereof, except as modified, changed, limited or altered by this Ordinance.

3. GRANT OF AUTHORITY.

Subject to acceptance by the Company, as hereinafter provided, the Township hereby grants to the Company the non-exclusive consent to place, operate and maintain a CATV system in, upon, along, across, above, over and under the streets in the Township and to provide CATV service within the territorial limits of the Township. Such CATV system shall be operated by attachment onto, and use of, facilities owned and maintained by public utilities operating within the Township, pursuant to utilities. Where a subscriber's existing telephone and electric service are provided by an underground system, then the Company shall install its CATV service to the subscriber in the same Public Utilities. In the event that it becomes necessary to open a street in order to connect the Company's lines or equipment, no such street opening shall be made without a permit first being obtained from the Township Engineer without charge to the Company.

The Township's consent to the renewal of the franchise is subject to the terms and conditions of this Ordinance and the Company's acceptance of the provisions

of the Ordinance and its written confirmation that it will comply with all of its obligations hereunder.

4. INSTALLATION OF INDIVIDUAL SUBSCRIBERS.

The Company shall provide installation to each person's residence or business within the Township based on the price schedule set forth in the Application, which may be amended from time to time.

5. TERRITORY.

The consent granted herein to the Company shall apply to the entirety of the Township and any property hereafter annexed thereto.

6. CONDITIONS ON STREET OCCUPANCY AND SYSTEM CONSTRUCTION.

- (a) Use. All transmission and distribution structures, lines and equipment erected by the Company shall be so located as to cause minimum interference with the rights or reasonable convenience of persons whose properties abut upon any of said streets.
- (b) Restoration. In the case of any disturbance of pavement, sidewalks, driveways or other surfacing, the Company shall, at its own expense and in a manner approved by the Township, replace and restore such places so disturbed in as good condition as before said work was completed.
- (c) Relocation. In the event that at any time during the period of this Franchise Ordinance the Township shall lawfully elect to alter or change the grade of any street, the Company, upon reasonable notice by the Township, shall remove, relay and relocate its equipment at its own expense.
- (d) Placement of Fixtures. The Company shall not place any fixtures or equipment where the same will interfere with preexisting gas, electric, telephone, water, sanitary or storm sewer lines, fixtures or equipment, and the location by the Company of its lines and equipment shall be in such manner as not to interfere with the usual travel on said streets.
- (e) Temporary Removal of Wires for Building Moving. The Company shall, temporarily raise or lower its wires to permit the moving of buildings. All costs for such activity shall be borne by the party requesting such action, except when requested by the municipality in which case the Company shall bear the cost.
- (f) No Property Right. Nothing in this Franchise Ordinance shall be deemed or construed to grant to the Company any right to property in Township owned property, nor shall the Township be compelled

to maintain any of its property any longer than, in the Township's judgment, its own business or needs may require.

- (g) Permits, Easements and Agreements. The Township shall not be required to assume any responsibility for the securing of any rights-of-way or easements, nor shall the Township be responsible for securing any permits or agreements with other persons or utilities.

7. PERFORMANCE BOND AND INSURANCE COVERAGE.

- (a) In order to insure the performance of all the terms and conditions of this Franchise Ordinance and those set forth in the Company's application incorporated herein, the Company shall provide and deliver to the Township a performance bond in the sum of \$25,000.00. Such bond shall specifically serve the faithful performance of all undertakings of the Company as represented in the Application and in this Ordinance. The Township reserves the right, by resolution of its governing body and subject to approval by the Board of Public Utilities, to require a reasonable increase in the sum of such bond as the Company's system grows.
- (b) The Company shall also provide and deliver to the Township certificates of insurance coverage, insuring the company and the Township and its officers, agents and employees with respect to all liability for any death, personal injury, property damage or other liability arising out of the company's construction and operation of its CATV system. The amounts of such insurance against liability due to physical damage to property or bodily injury or death to any one person shall not be less than One Million Dollars (\$1,000,000.00) and not less than One Million Dollars (\$1,000,000.00) to any one accident, and excess liability (or "umbrella") policy in the amount of Twenty-Five Million Dollars (\$25,000,000.00).
- (c) The Company shall also carry such insurance as it deems necessary to protect it from all claims under the Workmen's Compensation Laws in effect that may be applicable to the Franchise.
- (d) All insurance required by this Ordinance shall be in full force and effect for the entire life of the Franchise. A Certificate of Insurance must be submitted to the Township Administrator to review for compliance with the above-mentioned limit of liability. Said policy or policies of insurance or Certificate of Insurance shall be deposited with and kept or filed by the Township Clerk, and the Township shall be named insured on said policies. The insurer shall notify the township at least thirty (30) days prior of its intention to cancel or not to renew any policy.
- (e) The bond and insurance policies required by the foregoing provisions of this section shall be written by a company or

companies authorized and qualified to do business in the State of New Jersey.

8. INDEMNIFICATION.

The Company shall indemnify and hold the Township harmless at all times from and against any and all claims for injury and damage to persons or property, both real and personal, including payment made under the Workmen's Compensation law, arising out of or caused by the construction, erection, operation, maintenance, repair, replacement, removal or use of any structure, equipment or appliance or product used pursuant to this Franchise Ordinance.

9. RATES AND CHARGES TO SUBSCRIBERS.

- (a) The Township may not regulate the rates the Company may charge subscribers for its service; provided, however, that in the event the Federal Act and other applicable law hereafter is amended to permit the exercise of regulatory power over rates by municipalities, the Township reserves the right to exercise the maximum power permitted by law.
- (b) The Company shall establish rates or schedules which provide for a reduction or discount in rate for CATV service for senior citizens and disabled citizens who meet the eligibility requirements of the Pharmaceutical Assistance to the Aged and Disabled ("PADD") 48:5A-11.1, 11.2.

10. FEE.

A. Franchise Fee. 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 video charges including but not limited to Basic Cable, Extended Basic Cable, Premium Cable Video, HDTV-Cable or any greater amount allowed by federal or NJ law, immediately upon the effective date thereof. The fees shall be paid on or before January 25 of each succeeding year, and at the same time the Company shall file with the Chief Financial Officer of the Township a verified statement showing the gross receipts upon which payment is based. The Township reserves its right to request from the New Jersey Board of Public Utilities a periodic review of subscriber rate calculations and performance reviews (audits).

B. Equipment Fee. The Company shall pay the Township a \$2 per subscriber annual equipment fee, payable annually on or before September 30 of each franchise year to provide funds for the equipment needs associated with the ongoing operation of the television production studio.

11. SERVICE TO THE TOWNSHIP.

- (a) On request of the Township, the Company, at its own expense, shall provide and maintain one (1) cable connection to each and every Township office building, police station, fire station, first aid station, and school within the corporate limits of the Township, at the Monmouth Court School Building, at the common room of the Livingston Community/Senior Center, and at the studio and office of TV34, and shall provide and maintain two (2) cable connections at the Rockwood Memorial Library. No monthly customer service fee shall be charge for basic service to such place.
- (b) The Company, without charge of customer service fees or reduction of franchise fee payable to the Township under paragraph10, and at its own expense, shall:
 - (1) Allocate the separate channel known as “TV34” for exclusive use by the Township for such purposes as the Township may desire for distribution of programming in the public interest to subscribers of the system;
 - (2) Provide, at the request of the Township and at an agreed upon cost, an outlet at each floor of every public school and one outlet to each parochial school in the township having a certificate of approval issued by the Commissioners of Education of New Jersey, with power at each interface point sufficient to service any number of television sets specified by the schools, without additional amplification. Each such outlet furnished by the Company shall include the converter device necessary to receive the basic service, premium services, internet access.
 - (3) At the request of the Township and at an agreed upon cost, interconnect all such public and parochial schools within the Township making possible two-way communication between such schools;
 - (4) Maintain, for local programming, a television studio, in the town of Union or within a 25 mile radius of the Township, with telecasting camera equipment, video tape recording facilities, and vehicles and equipment for remote telecasting. Such facilities and equipment when scheduled for availability, shall be such as to be able to provide to the Company’s subscribers both live and taped programs of local origination, such as, but not limited to, school functions and athletic events, educational and institutional programming, public meetings and other programs or matters of public interest to the residents of the Township;
 - (5) Provide for the proper playback, at the Company’s main studio, of all commercially available prerecorded materials in analog mode or in digital or other modes, provided the

- playback of such digital or other materials is economically practicable, supplied by the municipal and educational users;
- (6) Provide the training and necessary technical assistance to make possible the telecasting of the programs contemplated by the foregoing provisions of this subsection;
 - (7) Provide fiber optic returns with transmitter, receiver and monitor outlets (fully operational) from origination points to be specified by the Township;
 - (8) Provide a one-time \$500,000 grant for the complete upgrade of the Township/High School television production studio from analog to digital service; and
 - (9) Right of first refusal to an additional local access channel (TV35).

12. NON-INTERFERENCE WITH OFF-AIR BROADCASTS.

The Company shall, if required by applicable law, promptly after notification correct any interruption, interference or disruption of off-air television or AM or FM radio reception of the residents of the Township, provided such interference shall have been caused by the Company or its equipment.

13. COMPLAINT OFFICER.

The Office of Cable Television is hereby designated as the complaint officer for the municipality, pursuant to N.J.S.A. 48:5A-26(b).

14. LOCAL OFFICE.

During the term of this Franchise Ordinance, and any renewal or extension thereof, the Company shall maintain a local business office or agent for the purpose of receiving, investigating and resolving all complaints regarding the quality of its service, malfunctions of its equipment, and similar matters. Such office shall be open during regular business hours, and in no event less than 9:00 a.m. to 5:00 p.m., Monday through Friday. In addition, the Company shall have an agent present at a Town Council meeting quarterly (four times a year) to meet with Livingston cable subscribers. The Company shall advertise the date and time of the meeting in the West Essex Tribune.

15. TECHNICAL STANDARDS AND NEW DEVELOPMENTS.

- (a) During the term of this Franchise Ordinance, as technological advances in broadband become standardized and economically feasible, the Company projects the ability to continue offering ongoing expansion of services to its subscribers. Such initiatives shall include, but not be limited to, increase of program channel capacity upgrading of wiring network by fiber optic cable, development of a distribution plan for services based on

“neighborhood nodes”, and programming of interactive and/or customized information and communications services.

- (b) As soon as practicable after any source of television programming or signals (“Programming Source”) carried by the Company commences the transmission of at least fifty percent (50%) of its programming day utilizing an MTS (stereo) signal, the Company shall, unless compelling reasons dictate otherwise, complete any necessary steps to effect its retransmission of such programming service with an MTS signal.

16. APPLICATION PROVISIONS INCORPORATED HEREIN.

The Company’s application filed with the Township is hereby incorporated in, and made a part of, this Franchise Ordinance as though said application and its contents were herein set forth at length. Such application may be examined by interested persons at the Office of the Township Clerk during ordinary business hours. In the event of any inconsistency between said application and this Franchise Ordinance, then the terms, provisions and conditions hereof shall prevail. If any portion of Company’s application conflicts with state or federal law, it will not be effective.

17. ASSIGNMENT OR TRANSFER PROHIBITED.

The Company shall not sell, assign or transfer its plant or system, or any portion thereof, nor any right, title or interest therein, nor shall the Company sell, assign or transfer any of its rights under this Franchise Ordinance, to any other person except as provided in N.J.S.A. 48:5A-19, N.J.A.C. 14:17-6, and any other applicable statutes, rules or regulations.

18. REVOCATION OR FORFEITURE OF FRANCHISE.

The Township may seek from the Board of Public Utilities revocation and forfeiture of the franchise and all the rights and privileges hereby granted to the Company upon the happening of any of the following events:

- (a) The failure or neglect of the Company promptly to comply with any of the provisions or requirements of this Franchise Ordinance on its part to be done, performed or complied with, and the continuance of such default for a period of three (3) months after notice in writing to correct such violation or failure to perform.
- (b) The suspension or revocation by the Board of Public Utilities of the Certification of Approval issued by said Board to the Company.
- (c) The adjudication of the Company as insolvent or bankrupt, or the making by the Company of an assignment for the benefit of creditors.

19. DURATION OF FRANCHISE ORDINANCE.

This Franchise Ordinance shall remain in full force and effect for a period of 3 years from the date of the 2005 Certificate of Approval as issued by the Board of Public Utilities.

20. FORMAL REVIEW.

A formal review of the Company's performance shall be conducted to assure compliance with the Ordinance within one (1) years from the Effective Date. The formal review shall include, but not be limited to, a written report to be provided by the Company to the Township detailing the manner in which the company has complied with this Franchise Ordinance.

21. SEPARABILITY.

In the event any section or part of this Ordinance shall be 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 such holding shall not affect the validity of the remaining portions hereof.

22. GOVERNING LAW.

The terms of this Ordinance shall be governed by and construed in accordance with the laws of the State of New Jersey.

23. EFFECTIVE DATE.

This Ordinance shall take effect upon final passage and publication in accordance with law.

Adopted:8/8/05