



Agenda Date: 8/16/23
Agenda Item: IIID

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

OFFICE OF CABLE TELEVISION
AND TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF COMCAST) RENEWAL CERTIFICATE OF
OF MONMOUTH COUNTY, LLC, FOR A RENEWAL) APPROVAL
CERTIFICATE OF APPROVAL TO CONTINUE TO)
CONSTRUCT, OPERATE AND MAINTAIN A CABLE)
TELEVISION SYSTEM IN AND FOR THE VILLAGE)
OF LOCH ARBOUR, COUNTY OF MONMOUTH,)
STATE OF NEW JERSEY) DOCKET NO. CE21060913

Parties of Record:

Dennis C. Linken, Esq., Scarinci Hollenbeck, LLC, on behalf of Comcast of Monmouth County, LLC
Marilyn Simons, Clerk, Village of Loch Arbour, New Jersey

BY THE BOARD:

On November 7, 1983, the New Jersey Board of Public Utilities (“Board”) granted Futurevision Cable Enterprises, Inc. d/b/a Storer Cable Communications a Certificate of Approval (“Certificate”), in Docket No. 805C-6681, for the construction, operation and maintenance of a cable television system in the Village of Loch Arbour (“Village”). Through a series of transfers with required Board approvals, Comcast Cablevision of Monmouth County, Inc. (“Comcast”) became the holder of the Certificate. On August 21, 1995, the Board issued a Renewal Certificate of Approval (“Renewal Certificate”) to Comcast in Docket No. CE95030117. Through a series of subsequent transfers, with the required Board approvals, the current holder of the Certificate is Comcast of Monmouth County, LLC (“Petitioner”). On February 24, 2006, the Board issued a Renewal Certificate to the Petitioner for the Village, in Docket No. CE05100864. Although, by its terms, the Petitioner’s above referenced Certificate expired on August 15, 2020, the Petitioner is authorized to continue to provide cable television service to the Village pursuant to N.J.S.A. 48:5A-25, pending disposition of proceedings regarding the renewal of its Certificate.

The Petitioner filed an application for the renewal of its municipal consent with the Village on November 15, 2019, pursuant to N.J.S.A. 48:5A-23 and N.J.A.C. 14:18-13.1 to 9. On November 4, 2020, the Village, after public hearing, adopted an ordinance granting renewal municipal consent to the Petitioner (“ordinance”). The Petitioner formally accepted the terms and conditions of the ordinance on March 2, 2021. On June 15, 2021, pursuant to N.J.S.A. 48:5A-16, the Petitioner filed with the Board for a renewal of its Certificate for the Village.

DISCUSSION AND FINDINGS

The Board has reviewed the application for municipal consent, the municipal consent ordinance, and the petition for a Renewal Certificate. Based upon this review and the recommendation of the Office of Cable Television and Telecommunications, the Board **HEREBY FINDS** the following:

1. The Petitioner possesses the requisite legal, character, financial, and technical qualifications for the awarding of a Certificate. Further, these qualifications were reviewed by the Village in conjunction with the municipal consent process.
2. The design and technical specifications of the system shall ensure that the Petitioner provides safe, adequate, and proper service.
3. The Petitioner has represented that all previously required construction within the franchise territory is complete.
4. The franchise period as stated in the ordinance is 10 years, pursuant to N.J.S.A. 48:5A-19 and 25. The Board finds this franchise period reasonable.
5. The Village has reserved the right to review the Petitioner's performance with regard to the ordinance. In the event that the Village shall find that the Petitioner has not substantially complied with the material terms and conditions of the ordinance, the Village shall have the right to petition the Board for appropriate administrative action, pursuant to N.J.S.A. 48:5A-47, provided, however, that the Village shall first have given the Petitioner written notice of all alleged instances of non-compliance and an opportunity to cure the same within 90 days of that notification. If, after such reasonable notice and opportunity to cure, the Petitioner has not cured any such findings of non-compliance, the Village may petition the Board for appropriate administrative action, including modification and/or termination of the Certificate.
6. The Petitioner shall proffer service to any residence along any public right-of-way in the Primary Service Area, at no cost beyond standard and non-standard installation charges as set forth in the Petitioner's application. For any extension outside of the Primary Service Area, the Petitioner shall utilize the line extension policy attached to the Certificate (Appendix "I") with a minimum homes per mile ("HPM") figure of 35.
7. The Petitioner shall maintain an informational schedule of prices, terms and conditions for unregulated service, and promptly file any revisions thereto.
8. Pursuant to statutory requirements, the ordinance specifies a complaint officer to receive and act upon complaints filed by subscribers in the Village. In this case, it is the Office of Cable Television and Telecommunications. All complaints shall be received and processed in accordance with any applicable rules.
9. During the term of this franchise, and any renewal thereof, the Petitioner shall maintain a local business office or agent for the purpose of receiving, investigating and resolving complaints regarding the quality of service, equipment malfunctions, and similar matters. The Petitioner currently maintains a local office located at: 310 Route 36, West Long Branch, New Jersey.

10. Pursuant to N.J.S.A. 48:5A-30, the franchise fee to be paid to the Village is specified to be 3.5% of the Petitioner's gross revenues, as defined in N.J.S.A. 48:5A-3(x), derived from cable television charges or fees paid by subscribers for its cable television service in the Village. Additional regulatory fees shall be paid to the State in an amount not to exceed 2% of Petitioner's gross operating revenues derived from intrastate operations. The Board finds these fees to be reasonable.
11. The Petitioner shall provide public, educational, and governmental ("PEG") access channels and facilities in accordance with its renewal application and the ordinance. Specifically, the Petitioner provides one (1) system-wide public access channel and one (1) educational access channel. The Petitioner shall maintain the cable, modulators, and equipment necessary for the Village or its designee to send a signal to the Petitioner, and to receive the return feed of the signal.
12. Within six (6) months of issuance of this Certificate, the Petitioner shall provide to the Village a one-time PEG Access Capital Grant of \$1,000 to meet the PEG Access capital needs of the community. Upon completion, the Petitioner shall submit proof to the Office of Cable Television and Telecommunications indicating its compliance with this provision.
13. The Petitioner shall continue to provide basic cable service, free of charge, to the Municipal Building, and the Village Beach Pavilion, provided that the facility is located within 200 feet of the active cable distribution plant.
14. Upon written request of the Village, the Petitioner's representatives shall appear at least once annually, at a public hearing of the Governing Body to discuss matters pertaining to the provision of cable service to residents of the Village, and other related issues as the Village and the Petitioner deem appropriate.

The Board notes that a provision of the Village's ordinance could be interpreted in a manner inconsistent with the New Jersey Cable Television Act, N.J.S.A. 48:5A-1 *et seq.* Specifically, Section 16(b) of the ordinance regarding the provision of free services contains language that states, in part, the following: "Comcast will continue to provide basic cable service to Municipal Building and the Village Beach Pavilion, and has the right in accordance with applicable law to deduct the fair market value of those services from franchise fees."

The above provision is problematic for several reasons as it appears to modify the collection of franchise fees, which is outside of the purview of the parties under existing statutory provisions. The Federal Communications Act of 1934 ("Act") requires the cable company to pay a franchise fee and allows the Petitioner to itemize and/or identify the amount on the monthly bill assessed to satisfy any requirements imposed on the Petitioner by the cable franchise to support PEG channels, or any other services required under the franchise. However, with respect to the amount of the franchise fee, the Act states at 47 U.S.C. Sec. 542 (b): "For any twelve-month period, the franchise fees paid by a cable operator with respect to any cable system shall not exceed 5% of such cable operator's gross revenues derived in such period from the operation of the cable system to provide cable services." The current franchise fee required in New Jersey pursuant to N.J.S.A. 48:5A-30 is a total of either 2% or 3.5% of the cable operator's gross revenues, which in either instance, does not reach the federal maximum of 5%. As stated above, the Petitioner is currently required to pay the Village a franchise fee of 3.5%. Any amendment to franchise fees paid by the Petitioner must be brought before the Board for review, as the duly designated franchising authority responsible for the enforcement of cable television franchise

agreements. While the Petitioner may reserve its pass-through rights to the full extent permitted by law on external costs, it may not make changes to the franchise fee collected which do not exceed the federal 5% cap without prior Board approval. Therefore, the Board **HEREBY CLARIFIES** that the language identified above in Section 16(b) of the ordinance which appears to allow a reduction in the franchise fee without prior review by the Board is not in conformance with the New Jersey Cable Act and the Board's rules, regulations and orders pursuant to N.J.S.A. 48:5A- 25, and is therefore not applicable to this Renewal Certificate.

Based upon these findings, the Board **HEREBY CONCLUDES**, pursuant to N.J.S.A. 48:5A-17(a) and 28(c), that the Petitioner has the municipal consent necessary to support the petition, subject to the exception noted above; that such consent and issuance thereof are in conformity with the requirements of N.J.S.A. 48:5A-1 to 64; that the Petitioner has complied or is ready, willing, and able to comply with all applicable rules and regulations imposed by or pursuant to State and federal law as preconditions for engaging in the proposed cable television operations; that the Petitioner has sufficient financial and technical capacity, and meets the legal, character, and other qualifications necessary to construct, maintain, and operate the necessary installations, lines, and equipment; and that the Petitioner is capable of providing the proposed service in a safe, adequate, and proper manner.

Therefore, the Petitioner is **HEREBY ISSUED** this Renewal Certificate as evidence of Petitioner's authority to construct and operate a cable television system within the entirety of the Village.

This Renewal Certificate is subject to all applicable State and federal laws, the rules and regulations of the Office of Cable Television and Telecommunications, and any such lawful terms, conditions, and limitations as currently exist or may hereafter be attached to the exercise of the privileges granted herein. The Petitioner shall adhere to the operating standards set forth by the Federal Communications Commission's rules and regulations, 47 C.F.R. § 76.1 et seq., including, but not limited to, the technical standards 47 C.F.R. § 76.601 through § 76.630. Any modifications to the provisions thereof shall be incorporated into this Certificate.

Failure to comply with all applicable laws, rules, regulations, and orders of the Board or the Office of Cable Television and Telecommunications and/or the terms, conditions, and limitations set forth herein may constitute sufficient grounds for the suspension or revocation of this Certificate.

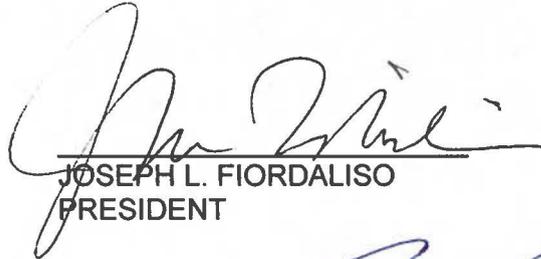
This Renewal Certificate is issued on the representation that the statements contained in the Petitioner's applications are true, and the undertakings therein contained shall be adhered to and be enforceable unless specific waiver is granted by the Office of Cable Television and Telecommunications pursuant to the authority contained in N.J.S.A. 48:5A-1 to 64.

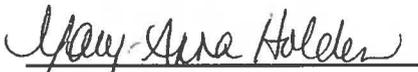
This Certificate shall expire on August 15, 2030.

This Order shall be effective on August 23, 2023.

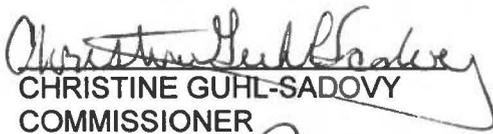
DATED: August 16, 2023

BOARD OF PUBLIC UTILITIES
BY:


JOSEPH L. FIORDALISO
PRESIDENT

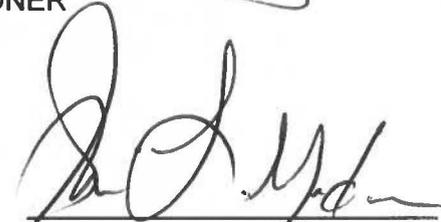

MARY-ANNA HOLDEN
COMMISSIONER


DR. ZENON CHRISTODOULOU
COMMISSIONER


CHRISTINE GUHL-SADOVY
COMMISSIONER


MARIAN ABDOU
COMMISSIONER

ATTEST:


SHERRI L. GOLDEN
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities.

APPENDIX "I"
Office of Cable Television and Telecommunications
Line Extension Policy

Company: Comcast of Monmouth County, LLC
Municipality: Village of Loch Arbour, County of Monmouth

A cable operator is required to absorb the cost of extensions to the system in the same proportion that the extension is to the remainder of the system.

Actual subscribers served by the extension are required to absorb the remainder of the cost.

If new subscribers are added to the extension, the cost is adjusted and those who previously paid receive an appropriate rebate.

1. $\frac{\text{\# of homes in extension}}{\text{mileage of extension}} = \text{homes per mile ("HPM") of extension}$
2. $\frac{\text{HPM of extension}}{\text{Minimum HPM that company actually constructs in the system*}} = \text{ratio of the density of the extension to the minimum density that the company constructs in the system ("A")}$
3. $\text{Total cost of building the extension times "A"} = \text{company's share of extension cost}$
4. $\text{Total cost of building extension less company's share of extension cost} = \text{total amount to be recovered from subscribers}$
5. $\frac{\text{Total amount to be recovered from subs}}{\text{Total subscribers in extension}} = \text{each subscriber's share}$

In any case, the company shall extend its plant along public rights of way to:

1. All residences and businesses within 150 aerial feet of the operator's existing plant at no cost beyond the normal installation rate.
2. All residences and businesses within 100 underground feet of the operator's plant at no cost beyond the normal installation rate.

* The minimum HPM that the company actually constructs in the system or municipality is the minimum number of homes that the company has historically constructed at its own cost. This is a function of the operator's breakeven point and its rate of return. Unbuilt systems will use the primary service area rather than construction.

The operator's installation policies shall apply to construction beyond the public right of way.

Detailed accounting or financial information to support the minimum HPM shall be supplied to the Office for its approval in such form as required. The minimum HPM shall be updated as appropriate.

When a request for service is received, and unless good cause is shown, cable companies shall:

1. Provide a written estimate within thirty (30) days of such a request.
2. Begin construction within sixty (60) days of receipt of any deposit monies from potential subscribers.
3. Complete construction within six (6) months of receipt of any deposit monies from potential subscribers.
4. Inform each home passed along the extension of the potential costs for subscribers.

Subscribers who pay for an extension shall be entitled to rebates in the following manner:

1. If the company acquires new subscribers subsequent to the initial calculation of step 5 above, the formula will be adjusted and those who have previously paid for the extension will be entitled to an appropriate rebate. In no event shall the amount of the rebate exceed the subscriber's contribution.
2. The company shall keep accurate records of the cost of the extension, the amounts paid by subscribers, and any appropriate adjustments.
3. The company shall notify subscribers in the extension of their rights and responsibilities concerning the extension.
4. Once an individual dwelling has paid its share of the extension cost, future reconnections or installations shall be made at the company's standard rates.
5. After a period of five (5) years from the installation of the first dwelling unit in the extension, no further adjustments shall be made. Installations after five (5) years shall be at the company's standard rate.
6. Once a subscriber is installed, that person shall not normally be entitled to a refund of any monies paid for the installations, except in accordance with the rebate procedure outlined in this policy.

Definitions

Primary Service Area

The Primary Service Area (“PSA”) can be an entire municipality, but in many instances the PSA is a limited area within a community outside of which a line extension policy may apply. The PSA is depicted by a franchise map and narrative, presented and recorded during the franchise proceedings. It normally remains a fixed geographic area throughout the life of the franchise.

Line Extension Survey

Potential subscribers residing outside the PSA who request service are entitled to an estimate of their share of the cost to secure service. When conducting a survey and estimating costs, a cable company should factor in all potential subscribers who could practicably be included in the extension and give consideration to apparent residential construction in areas contiguous to the proposed extension.

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DOCKET NO. CE21060913

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