



Agenda Date: 8/4/10
Agenda Item: IIIH

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

CABLE TELEVISION

IN THE MATTER OF CABLEVISION OF HUDSON)
COUNTY, LLC FOR THE CONVERSION TO A SYSTEM-)
WIDE FRANCHISE IN THE CITY OF HOBOKEN)

ORDER

DOCKET NO. CE10050328

Adam Falk, Vice President, Government and Regulatory Affairs, Cablevision Systems Corporation, Bethpage, New York, for Cablevision of Hudson County

City Clerk, City of Hoboken, by James J. Farina, for the City

BY THE BOARD:

This matter has been opened to the New Jersey Board of Public Utilities ("Board") by the filing of a letter by Cablevision of Hudson County, LLC ("Cablevision of Hudson County") providing notice of its intention to convert its municipal-based franchise in the City of Hoboken ("City") to a system-wide cable television franchise, pursuant to P.L. 2006, c. 83 ("System-wide Cable Television Franchise Act" or "Act"), which modified the existing Cable Television Act, N.J.S.A. 48:5A-1 et seq.

BACKGROUND

The Cable Television Act, prior to the changes introduced by the System-wide Cable Television Franchise Act, vested the authority to grant a franchise for the operation of a cable television system in a joint process between the municipality and the Board. In order to obtain an initial franchise or a renewal, a cable television operator was required to negotiate with the municipality the terms of a municipal consent, pursuant to N.J.S.A. 48:5A-22. Then, the applicant was required to obtain a certificate of approval ("COA") from the Board. N.J.S.A. 48:5A-16. Board approval of a COA is issued upon a determination that the cable television operator has the "financial and technical capacity and the legal, character and other qualifications to construct, maintain and operate the necessary installations, lines and equipment and to provide the service proposed in a safe, adequate and proper manner."

N.J.S.A. 48:5A-28(c). Because the negotiation process occurs on a municipality by municipality basis, the contents of each franchise can differ significantly between each municipality and even between each cable television operator.

The System-wide Cable Television Franchise Act, however, has provided an alternative to this framework. Under the system-wide franchise regime, an applicant for a system-wide franchise applies to the Board for approval of its franchise without first obtaining a municipal consent from the individual municipalities to be served. Under N.J.S.A. 48:5A-25.1, a cable television operator with a municipal consent-based franchise or franchises issued prior to the effective date of the Act may automatically convert any or all of its municipal franchises, upon notice to the Board and to the affected municipality, without meeting the requirements applicable to cable television operators applying for a system-wide franchise, except that the commitment requirements under N.J.S.A. 48:5A-28 (h)-(n) shall be applicable to all system-wide franchises, including conversions. Cable television operators are not required to convert all municipal consent-based franchises at the same time; cable television operators can add or convert municipal franchises at any time during the system-wide franchise. Furthermore, the System-wide Cable Television Franchise Act provides for an increase in franchise fees from 2% to 3.5% of gross revenues, as well as an amount not to exceed 0.5% of gross revenues for a Cable Television ("CATV") Universal Access Fund. N.J.S.A. 48:5A-30.

DISCUSSION

On May 10, 2010, Cablevision of Hudson County filed notice with the City, by certified mail, that it intended to convert its municipal consent-based franchise in the City to a system-wide franchise and confirmed that it would abide by the provisions of N.J.S.A. 48:5A-28 (h)-(n), as required by the System-wide Cable Television Franchise Act. That notice was received by the Board on May 11, 2010. N.J.S.A. 48:5A-28(h)-(n) specifically impose requirements on all cable television companies operating under a system-wide franchise and includes commitments as to line extensions; public, educational and governmental ("PEG") access channels; interconnection with other cable television companies; free cable and Internet service to public schools and municipal buildings; training and equipment for access users; PEG access return feeds; and compliance with customer protection regulations.

N.J.S.A. 48:5A-28(h) requires a cable television system-wide franchise operator to meet or exceed the line extension policy commitments of the cable television company operating under a municipal consent-based franchise at the time the franchise is granted. Therefore, because Cablevision of Hudson County was the incumbent, it is required to continue to provide, at a minimum, pursuant to its existing installation policies, service to any residence or business in the City at no cost beyond the installation rates contained in its schedule of prices, rates, terms and conditions filed with the Board, pursuant to N.J.A.C. 14:17-6.16 and 6.17, as applicable.

N.J.S.A. 48:5A-28(i) requires a cable television company operating under a system-wide franchise to provide two PEG access channels upon request of the municipality. Cablevision of Hudson County, as a municipal consent-based franchise holder, currently provides two dedicated channels (one for educational access and one for governmental access) for the City and a public access channel which is shared by the City and the other municipalities in Cablevision of Hudson County's system. Pursuant to this section, the City will be responsible

for the management, operations and programming of any PEG access channels that are in its control. Either Cablevision of Hudson County or the City may request assistance from the Office of Cable Television ("OCTV") for resolution of any disputes regarding the terms and conditions of the provision of the access channels. N.J.A.C. 14:18-15.4(b) and (c). N.J.S.A. 48:5A-28(i) also requires all cable television companies operating in a municipality to provide PEG access interconnection on reasonable terms and conditions with all other cable television companies.

N.J.S.A. 48:5A-28(j) and (k) require a cable television operator under a system-wide franchise to provide a single outlet of free basic cable television service and free Internet service, upon written request, to any fire station, public school, police station, public library, or other building used for municipal purposes. Cablevision of Hudson County has provided free service to many public schools and public buildings in the City and has committed to install cable and Internet services to any qualified building within 90 days of written request by the municipality, provided that the location is passed by active cable television plant. N.J.A.C. 14:18-15.5. Pursuant to N.J.A.C. 14:18-15.5(b), either party may request assistance from the OCTV for resolution of any disputes regarding the provision of these services.

N.J.S.A. 48:5A-28(l) requires a cable television company operating under a system-wide franchise to provide equipment and training for PEG access users, without charge, on a schedule to be agreed upon between the municipality and the cable television company. The negotiated terms of the provision of equipment and training shall conform with N.J.A.C. 14:18-15.6. Furthermore, pursuant to N.J.A.C. 14:18-15.6(d), either party may request assistance from the OCTV for resolution of any disputes regarding the provision of these services.

N.J.S.A. 48:5A-28(m) requires a cable television company operating under a system-wide franchise to provide a return line. Cablevision of Hudson County is required to provide a return line, upon written request, from any one location in the City to Cablevision of Hudson County's head-end or other location of interconnection to the cable television system for PEG access use. Furthermore, the return line must at least provide the City with the ability to cablecast live or taped access programming in real time. Cablevision of Hudson County currently maintains two return lines in the City: one at the City High School and one at the City Municipal Building. Therefore, Cablevision of Hudson County has met the requirements of this Section.

N.J.S.A. 48:5A-28(n) requires Cablevision of Hudson County to continue to "meet any consumer protection requirements applicable, pursuant to board regulations, to cable television companies operating under certificates of approval." Cablevision of Hudson County has certified in its notice that it will meet the requirements of this Section.

Cablevision of Hudson County has also committed to maintaining, under its system-wide franchise, the same liability limits required under N.J.S.A. 48:5A-28(f). Cablevision of Hudson County will continue to maintain commercial general liability insurance coverage with respect to claims related to bodily injury, property damage or other claims arising out of Cablevision of Hudson County's construction and operation of its cable television system in amounts that are at least: (1) \$150,000 for bodily injury or death to any one person, within the limit, however, of \$500,000 for bodily injury or death resulting from any one accident, (2) \$100,000 for property damage resulting from any one accident, and (3) \$50,000 for other commercial general liability claims.

The System-wide Cable Television Franchise Act requires cable television companies operating under a system-wide franchise to pay increased franchise fees from 2% of basic cable television service revenues to 3.5% of gross cable television service revenues, as well as an amount not to exceed 0.5% of gross revenues for a CATV Universal Access Fund. N.J.S.A. 48:5A-30. It is noted that Cablevision of Hudson County is already collecting and will be paying the increased franchise/CATV Universal Access Fund fee in the City because Verizon New Jersey, Inc., a competing cable television company operating under a system-wide franchise, certified that it was capable of serving at least 60 percent of the residents in the City. The Board approved Verizon New Jersey, Inc.'s certification in March 2010 (BPU Docket No. CO10010039).

Pursuant to N.J.A.C. 14:18-5.1, all cable television operating companies are required to maintain "in or within reasonable proximity of its service area, a local business office, the current location of which shall be furnished to the Office where applications for service, complaints, service inquiries, bill payments, and so forth will be received." Cablevision of Hudson County currently maintains a local office in the City and any modification to the location of the office will be subject to the approval process specified at N.J.A.C. 14:18-5.1(c).

DISPOSITION OF CERTIFICATE OF APPROVAL AND UNDERLYING MUNICIPAL CONSENT

As discussed above, the Act allows a cable television company, operating under a municipal consent-based franchise, to "automatically convert" its system in any or all of its municipalities without approval from the Board or the impacted municipalities. N.J.S.A. 48:5A-25.1(a). Furthermore, N.J.S.A. 48:5A-19 provides that a "certificate of approval issued by the board shall be valid for 15 years from the date of issuance... or until the expiration, revocation, termination or renegotiation of any municipal consent upon which it is based, whichever is sooner." Although Cablevision of Hudson County's Certificate of Approval and the underlying municipal consent ordinance from the City expired on June 19, 2007, Cablevision of Hudson County initiated renewal proceedings with the City in September of 2006 and was authorized to continue to provide cable television service to the City pursuant to N.J.S.A. 48:5A-25, pending disposition of the proceedings regarding the renewal of its Certificate. Because Cablevision of Hudson County has now converted the municipal consent based-franchise to a system-wide franchise, pursuant to N.J.S.A. 48:5A-19 and N.J.S.A. 48:5A-25.1(a), the Board **FINDS** that Cablevision of Hudson County's Certificate of Approval for the City has expired by operation of law, and Cablevision of Hudson County is authorized to provide cable television service to the City pursuant to its converted system-wide franchise and the requirements of N.J.S.A. 48:5A-28 (h)-(n) and applicable law.

Additionally, the Board notes that N.J.S.A. 48:5A-25.1(b) provides that nothing shall "preclude a municipality from enforcing its right-of-way management powers on a reasonable and nondiscriminatory basis." However, a municipality is prohibited from imposing any fees, taxes, assessments or charges for the use of public rights-of-way by a cable television operator except where permitted under the System-wide Cable Franchise Act. Accordingly, the City may impose reasonable and non-discriminatory rights-of-way management powers on Cablevision of Hudson County but may not impose any fees, taxes, assessments or charges for use of the public rights-of-way pursuant to N.J.S.A. 48:5A-25.1(a) and as further discussed in City of Middletown v. Storer Cable Communications, Inc., 206 N.J. Super. 572 (App. Div. 1985).

Based upon the above, the Board **HEREBY ACKNOWLEDGES** Cablevision of Hudson County's conversion of its franchise for the City in the Cablevision of Hudson County system to a system-wide franchise, which shall be in effect for a period of seven (7) years, pursuant to the provisions of the System-wide Cable Television Franchise Act. The Board **HEREBY ORDERS** that Cablevision of Hudson County shall meet the requirements of N.J.S.A. 48:5A-28 (h)-(n) and the following terms and conditions:

1. Cablevision of Hudson County shall maintain an informational schedule of prices, terms and conditions for unregulated service and promptly file any revisions thereto. Rate and channel line-up changes shall be performed in accordance with applicable rules.
2. Cablevision of Hudson County may add additional municipalities to its system-wide franchise authorization, pursuant to the requirements set forth in N.J.A.C. 14:18-14.14.
3. As explicitly required by the Act, the OCTV is the designated complaint officer for the City and any municipality added to its system-wide franchise. All complaints shall be received and processed in accordance with applicable rules.
4. Cablevision of Hudson County shall pay a franchise fee to each municipality served by its system-wide franchise in the amount of 3.5% of Cablevision of Hudson County's gross revenues, as defined by N.J.S.A. 48:5A-3(x) and N.J.S.A. 48:5A-30.
5. Cablevision of Hudson County shall pay to the State Treasurer an amount up to 0.5% of Cablevision of Hudson County's gross revenues, in accordance with N.J.S.A. 48:5A-3(x) and N.J.S.A. 48:5A-30. Cablevision of Hudson County shall provide copies to the Board of all documentation regarding payment of this fee to the State Treasurer.
6. Cablevision of Hudson County shall continue to pay additional regulatory fees to the State in an amount not to exceed 2% of Cablevision of Hudson County's gross operating revenues derived from intrastate operations.
7. Pursuant to the Act, either Cablevision of Hudson County or the City may request assistance from the OCTV for resolution of disputes, and the OCTV shall use the procedures specified in N.J.A.C. 14:18-15.3 through 15.6.
8. Under N.J.A.C. 14:18-5.1(a), Cablevision of Hudson County shall maintain a local office in or within reasonable proximity of its service area where applications for service, complaints, service inquiries, bill payments, and so forth will be received. Furthermore, Cablevision of Hudson County shall not close or relocate a local office without seeking and receiving consent from the Board pursuant to N.J.A.C. 14:18-5.1(c).

This System-wide Franchise is subject to all applicable State and federal laws, the rules and regulations of the Office of Cable Television, and any such lawful terms, conditions and limitations as currently exist or may hereafter be attached to the exercise of the privileges granted herein. Cablevision of Hudson County 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 System-wide Franchise.

Failure to comply with all applicable laws, rules, regulations and orders of the Board or the Office of Cable Television and/or the terms, conditions and limitations set forth herein may subject Cablevision of Hudson County to penalties, as enumerated in N.J.S.A. 48:5A-51, and/or may constitute sufficient grounds for the suspension or revocation of this System-wide Franchise. This System-wide Franchise is issued on the representation that the statements contained in Cablevision of Hudson County's conversions are true, and the undertakings therein contained shall be adhered to and be enforceable unless specific waiver is granted by the Board or the Office of Cable Television pursuant to the authority contained in N.J.S.A. 48:5A-1 et seq.

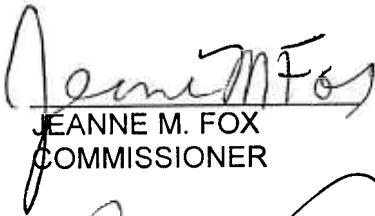
This Order shall expire on May 11, 2017.

DATED: 8/4/10

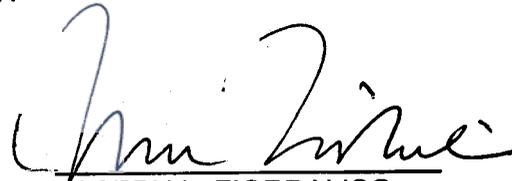
BOARD OF PUBLIC UTILITIES
BY:



LEE A. SOLOMON
PRESIDENT



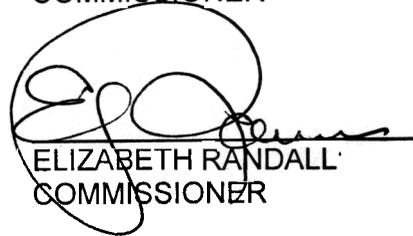
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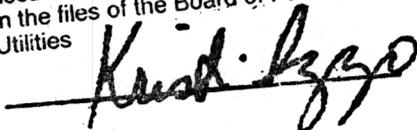
ELIZABETH RANDALL
COMMISSIONER

ATTEST:



KRISTI IZZO
SECRETARY

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



SERVICE LIST

**IN THE MATTER OF CABLEVISION OF HUDSON COUNTY, LLC FOR THE CONVERSION
TO A SYSTEM-WIDE CABLE TELEVISION FRANCHISE FOR THE CITY OF HOBOKEN**

DOCKET NO. CE10050328

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