



Agenda Date: 1/20/10
Agenda Item: IIID

STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

www.nj.gov/bpu/

CABLE TELEVISION

IN THE MATTER OF THE PETITION OF	)	RENEWAL
CABLEVISION OF MONMOUTH, INC. FOR	)	CERTIFICATE OF APPROVAL
RENEWAL OF A CERTIFICATE OF	)	
APPROVAL TO CONTINUE TO OPERATE	)	
AND MAINTAIN A CABLE TELEVISION	)	
SYSTEM IN THE TOWNSHIP OF JACKSON,	)	
COUNTY OF OCEAN, STATE OF NEW	)	
JERSEY	)	DOCKET NO. CE08080572

James Eric Andrews, Esq., Schenck, Price, Smith & King, Morristown, New Jersey, for
the Petitioner

Township Clerk, Township of Jackson, New Jersey, by Ann Marie Eden, for the Township

BY THE BOARD:

On May 18, 1979, the Board granted Jackson Cable TV ("Jackson") a Certificate of Approval in Docket No. 792C-6445 for the construction, operation and maintenance of a cable television system in the Township of Jackson ("Township"). Due to a series of Board approved transfers, the Certificate was held by Cablevision of Monmouth, Inc. ("Petitioner") and on November 22, 1996, the Board issued a Renewal Certificate of Approval to the Petitioner in Docket No. CE95080370. On June 26, 2009, the Petitioner converted its system to a limited liability company and is now known as Cablevision of Monmouth, LLC. This change does not affect any obligation of the Petitioner or its successor Cablevision of Monmouth, LLC specified herein. Although by its terms the above referenced Certificate expired on May 18, 2004, the Petitioner is authorized to continue to provide cable television service to the Township pursuant to N.J.S.A. 48:5A-25, pending disposition of proceedings regarding the renewal of its Certificate of Approval.

The Petitioner filed an application for the renewal of its municipal consent ("Application") with the Township on December 10, 2003, pursuant to N.J.S.A. 48:5A-23 and N.J.A.C. 14:18-13. The Township, after public hearing, adopted an ordinance granting renewal municipal consent to the Petitioner on March 11, 2008. The Petitioner formally accepted the terms and conditions of the ordinance on June 12, 2008.

On August 7, 2008, pursuant to N.J.S.A. 48:5A-16, the Petitioner filed with the Board for a renewal of its Certificate for the Township. The Board has reviewed the application for municipal consent, the petition for a Renewal Certificate of Approval, and the municipal consent ordinance. Based upon this review and the recommendation of the Office of Cable Television, the Board **HEREBY FINDS** the following:

1. The Petitioner possesses the requisite legal, character, financial and technical qualifications for the awarding of a Certificate of Approval. Further, these qualifications were previously reviewed by the Township 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 15 years from the date of issuance of this Certificate. The Board finds this period to be of reasonable duration.
5. The Petitioner shall utilize the line extension policy ("LEP") attached to the Certificate (Appendix "I"). The minimum homes per mile ("HPM") figure is 25.
6. The Petitioner's rates shall be regulated and tariffs shall be filed for all services, in accordance with the rules and regulations of the Federal Communications Commission, the Board and the Office of Cable Television. The Petitioner shall maintain an informational schedule of prices, terms and conditions for unregulated service and promptly file any revisions thereto.
7. Pursuant to statutory requirements, the ordinance specifies a complaint officer to receive and act upon complaints filed by subscribers in the Township. In this case, it is the Office of Cable Television. All complaints shall be received and processed in accordance with applicable rules.
8. The Petitioner shall maintain a local business office or agent for the purpose of receiving, investigating and resolving complaints. Currently, the local office serving this provision is located in the Shop Rite Plaza at Route 9 and Kennedy Blvd. in Lakewood, New Jersey.
9. The franchise fee to be paid to the Township is specified to be 2% of the Petitioner's gross revenues from all recurring charges in the nature of subscription fees paid by subscribers for its cable television reception service in the Township or any additional amount thereafter required by N.J.S.A. 48:5A-30. 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.
10. The Petitioner shall provide public, educational and governmental ("PEG") access services, equipment and facilities as described in the application and the ordinance. The Petitioner currently provides one non-commercial public and governmental access channel for use by the Township and an educational access channel that is shared with the Petitioner's local origination channel. The Petitioner provides a public access studio that has VHS and some S-VHS equipment. Upon completion of a training course, access users can produce their own programming that is aired on the public and governmental access channel. All PEG access support provided by the Petitioner shall be for the exclusive use of the Petitioner's customers in the Township.

11. Within sixty days of the Petitioner's acceptance of the adopted ordinance or within 30 days of issuance of this Certificate, whichever comes first, the Petitioner shall provide the Township with an initial grant in the amount of \$7,500.00, as stipulated in the ordinance. In addition, beginning the second year of the franchise term and annually thereafter, the Petitioner shall pay the Township an annual grant of \$4,300.00 per year for each of the following 14 years within 30 days of the anniversary date of the date of adoption of the municipal consent ordinance. The Petitioner shall increase the annual grant to \$8,800.00 if prior to the date of payment the Petitioner reduces or eliminates the senior discount as stipulated in the ordinance. The Petitioner shall be relieved of any remaining payments if it converts its system to a system-wide franchise pursuant to N.J.S.A. 48:5A-25.1a. Upon payment of each portion of the contribution, the Petitioner shall provide the Office of Cable Television with proof of satisfaction of this obligation. The Office of Cable Television has confirmed that the initial payment of \$7,500.00 was made to the Township.
12. Upon written request of the Township, the Petitioner shall install two fiber access return feeds at municipally designated buildings. Upon completion of these installations, the Petitioner shall provide the Township, in lieu of the regional PEG access channel described in the Application and referenced above, with its own designated Educational and Governmental access channel.
13. Upon request of the Township, the Petitioner shall provide, free of charge, one standard installation and monthly basic cable service, to the following entities located in the Township: a) all state or locally accredited elementary and secondary public schools, b) all municipal public libraries, c) each police building, fire station and first aid building, and d) all municipal buildings located within the Township that are used for municipal governmental purposes.
14. Upon written request of the Township, the Petitioner shall provide, free of charge, one cable modem and basic Internet access service, including standard installation, to the Jackson Town Hall, to all state or locally accredited elementary and secondary public schools and all municipal public libraries within the Township.
15. The Petitioner shall implement a senior citizen's discount in the amount of 25% of the basic monthly rate of broadcast basic service for persons meeting the eligibility requirements set forth in N.J.S.A. 30:4D-21 and N.J.A.C. 14:18-3.20, as authorized by N.J.S.A. 48:5A-11.2. In the event that the Petitioner shall be required to increase the franchise fee in accordance with N.J.S.A. 48-5A-30(d), then at such time as the new franchise fee is instituted the Petitioner shall no longer be obligated to maintain or offer the senior discount specified in the ordinance. In the event that the Petitioner is no longer required to offer the current discount of 25% in Howell Township and Lakewood Township, then it will no longer be required to provide the discount in the Township. If the Petitioner is legally obligated to provide a reduced discount in those neighboring communities, the Petitioner shall continue to offer residents of the Township at least the same senior citizen discount required in Howell Township and Lakewood Township as stipulated in the ordinance. Notwithstanding any provisions in the ordinance, the Petitioner shall provide any notice of discontinuance of the discount in accordance with N.J.A.C. 14:18-3.20(b).

It is noted here that a provision of the Township's ordinance contains language contrary to the provisions of the New Jersey State Cable Act, N.J.S.A. 48:5A-1 et seq. The provision found in "Section 19. Equitable Terms" states:

In the event that another multi-channel video provider obtains the right to provide video service within the Township through a statewide, system-wide, regional or other non-municipally governed franchising process, and to the extent that such other provider's franchise does not contain a Grant either equal to or greater than the amount of the Grant provided by Cablevision in Section 20(C) of this ordinance, the Township agrees to relieve the Company of its obligations to provide the annual Grant beginning from the date that the other multi-channel video provider obtains the right to provide service and continuing through the expiration of the initial term of this Ordinance.

The Petitioner cannot reserve to its sole discretion the ability to alter its commitments under the Certificate of Approval. Furthermore, the Petitioner cannot modify its franchise obligations without any review or approval by the Board. While the parties may consider modifying the terms and conditions of an ordinance at any time, any modification to the ordinance would require an agreement between the parties and a formal petition for approval to the Board, pursuant to N.J.S.A. 48:5A-47 and N.J.A.C. 14:17-6.7. Board Staff recommends that this provision be removed because it is not in compliance with the aforementioned statute and regulation.

The alteration is supported by N.J.S.A. 48:5A-47, which provides that:

[t]he board may, after affording the holder an opportunity to be heard, revoke, suspend or alter any certificate of approval or franchise for the violation of any provisions of [the State Cable Act] or the rules, regulations or orders made under the authority of [the State Cable Act], or for other reasonable cause, upon a finding that the revocation, suspension or alteration will not adversely affect the public interest in the provision of safe, adequate and proper cable television service in this State.

Board Staff sent notices to the Township Clerk and the Petitioner on May 14, 2009 informing the parties of Staff's intent to recommend that the Board strike the provision of the ordinance at issue. On June 23, 2009, the Petitioner filed a letter stating that it did not object to the removal of this language from the Township's ordinance. The Township did not submit any objections to this provision being struck from its municipal consent ordinance in the Certificate. Therefore, pursuant to N.J.S.A. 48:5A-47, finding that the provision is not in compliance with the State Cable Act (N.J.S.A. 48:5A-1 et seq.) and N.J.A.C. 14:17-6.7 and that such alteration will not adversely affect the public interest, the Board **FINDS** that the provision shall be removed from the Township's ordinance. Accordingly, this Certificate strikes that provision from the Township's ordinance and the provision is not to be considered effective herein.

Based upon these findings, the Board **HEREBY CONCLUDES** that, pursuant to N.J.S.A. 48:5A-17(a) and 28(c), the Petitioner has the municipal consent necessary to support the petition, that such consent and issuance thereof are in conformity with the requirements of N.J.S.A. 48:5A-1 et seq., that the Petitioner has complied or is ready 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, meets the legal, character and other qualifications necessary to construct, maintain and operate the necessary installations, lines and equipment, and is capable of providing the proposed service in a safe, adequate and proper manner.

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

This Certificate 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. 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.

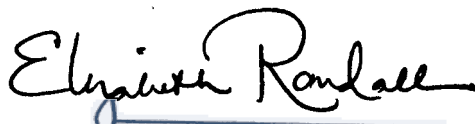
Failure to comply with all applicable laws, rules, regulations and orders of the Board or the Office of Cable Television and/or the terms, conditions and limitations set forth herein may constitute sufficient grounds for the suspension or revocation of this Certificate.

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 pursuant to the authority contained in N.J.S.A. 48:5A-1 et seq.

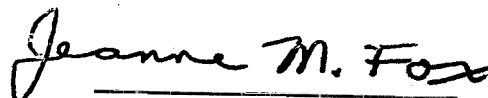
This Certificate shall expire 15 years from the date of its issuance.

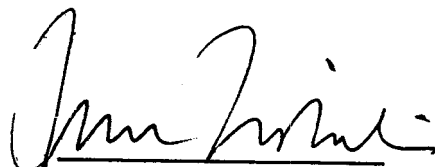
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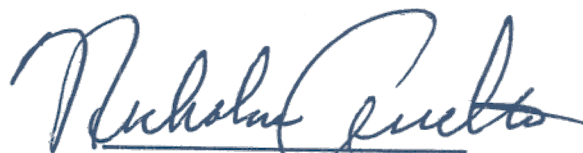
BOARD OF PUBLIC UTILITIES
BY:


ELIZABETH RANDALL
ACTING PRESIDENT

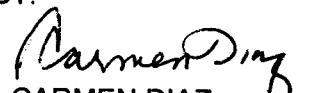

FREDERICK F. BUTLER
COMMISSIONER


JEANNE M. FOX
COMMISSIONER

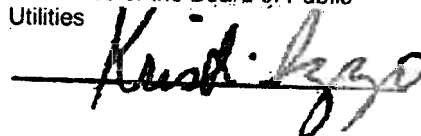

JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER

ATTEST:


CARMEN DIAZ
ACTING 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
Line Extension Policy

Company Cablevision of Monmouth, Inc.
Municipality Township of Jackson

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. | <u># of homes in extension</u>
mileage of extension | = | homes per mile (HPM)
of extension |
| 2. | <u>HPM of extension</u>
Minimum HPM that
company actually
constructs in the
system * | = | ratio of the density
of the extension to the
minimum density which the
company constructs in the
system ("A") |
| 3. | Total cost of building
the extension times "A" | = | company's share of
extension cost |
| 4. | Total cost of building
extension less company's
share of extension cost | = | total amount to be
recovered from
subscribers |
| 5. | Total amount to be
<u>recovered from subs</u>
Total subscribers in
extension | = | 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 which the company has historically constructed at its own cost. This is a function of the operator's break even 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 and/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 30 days of such a request.
2. Begin construction within 60 days of receipt of any deposit monies from potential subscribers.
3. Complete construction within six 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 years from the installation of the first dwelling unit in the extension no further adjustments shall be made. Installations after five 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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