



Agenda Date: 2/11/10
Agenda Item: IIIJ

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 MONMOUTH,) ORDER
LLC FOR THE CONVERSION TO A SYSTEM-WIDE)
FRANCHISE IN THE BOROUGH OF INTERLAKEN,)
COUNTY OF MONMOUTH, STATE OF NEW JERSEY) DOCKET NO. CE10010023

Adam Falk, Vice President, Government and Regulatory Affairs, Cablevision Systems Corporation, Bethpage, New York, for the Petitioner

Borough Clerk, Borough of Interlaken, New Jersey, by Aime Antonides, for the Borough

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 Monmouth, LLC, ("Cablevision"), providing notice of its intention to convert its municipal ordinance-based franchise in the Borough of Interlaken ("Borough") 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 January 11, 2010, Cablevision filed notice with the Board and the Borough, that Cablevision intended to convert its municipal consent ordinance-based franchise in the Borough 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. Specifically, N.J.S.A. 48:5A-28(h)-(n) imposes 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 ordinance-based franchise at the time the franchise is granted. Therefore, because Cablevision was the incumbent, it is required to continue to provide, at a minimum, pursuant to its existing installation policies, service to the Borough 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, as a municipal consent ordinance-based franchise holder, currently provides two PEG access channels for use by the Borough which may be shared with other municipalities. Pursuant to this section, the Borough will be responsible for the management, operations and programming of the PEG access channels that are in its control. Either Cablevision or the Borough 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 has provided free service to many public buildings in the Borough 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. Accordingly, Cablevision is required to provide a return line, upon written request, from any one location in the Borough to Cablevision'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 Borough with the ability to cablecast live or taped access programming in real time. Cablevision has committed to the requirements of this Section.

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

Cablevision 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 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'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 is already collecting and will be paying the increased franchise/CATV Universal Access Fund fee in the Borough 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 Borough. The Board approved Verizon New Jersey, Inc.'s certification on November 7, 2008 (BPU Docket No. CO08080567).

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 currently maintains local offices in Wall, New Jersey 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).

Finally, the requirements set forth in N.J.S.A. 48:5A-25.2(a) are not applicable to Cablevision as Cablevision of Monmouth, LLC, LLC does not provide telephony service.

DISPOSITION OF CERTIFICATE OF APPROVAL AND UNDERLYING MUNICIPAL CONSENT

As discussed above, the Act allows a cable television company, operating under a municipal consent ordinance-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's Certificate of Approval and the underlying municipal consent ordinance from the Borough expired on August 15, 2005 Cablevision initiated renewal proceedings with the Borough on March 24, 2005 and was authorized to continue to provide cable television service to the Borough pursuant to N.J.S.A. 48:5A-25, pending disposition of the proceedings regarding the renewal of its Certificate. Because Cablevision 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's Certificate of Approval for the Borough has expired by operation of law, and Cablevision is authorized to provide cable television service to the Borough 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 Borough may impose reasonable and non-discriminatory rights-of-way management powers on Cablevision 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 Borough of Middletown v. Storer Cable Communications, Inc., 206 N.J. Super. 572 (App. Div. 1985).

Based upon the above, the Board HEREBY ACKNOWLEDGES Cablevision's conversion of its franchise for the Borough in the Cablevision of Monmouth, LLC 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 shall meet the requirements of N.J.S.A. 48:5A-28 (h)-(n) and the following terms and conditions:

1. Cablevision 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 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 Borough and any municipality added to its system-wide franchise. All complaints shall be received and processed in accordance with applicable rules.
4. Cablevision shall pay a franchise fee to each municipality served by its system-wide franchise in the amount of 3.5% of Cablevision's gross revenues, as defined by N.J.S.A. 48:5A-3(x) and N.J.S.A. 48:5A-30.
5. Cablevision shall pay to the State Treasurer an amount up to 0.5% of Cablevision's gross revenues, in accordance with N.J.S.A. 48:5A-3(x) and N.J.S.A. 48:5A-30. Cablevision shall provide copies to the Board of all documentation regarding payment of this fee to the State Treasurer.
6. Cablevision shall continue to pay additional regulatory fees to the State in an amount not to exceed 2% of Cablevision's gross operating revenues derived from intrastate operations.
7. Pursuant to the Act, either Cablevision or the Borough 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 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 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).

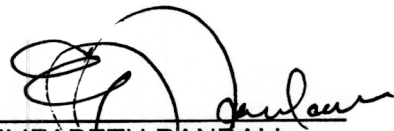
This System-wide Franchise is subject to all applicable State and federal laws, the rules and regulations of the Office of Cable Television, and any such lawful terms, conditions and limitations as currently exist or may hereafter be attached to the exercise of the privileges granted herein. Cablevision 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 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'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 January 11, 2017.

DATED: 2/11/10

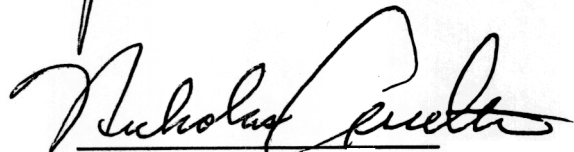
BOARD OF PUBLIC UTILITIES
BY:


ELIZABETH RANDALL
ACTING PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


JEANNE M. FOX
COMMISSIONER

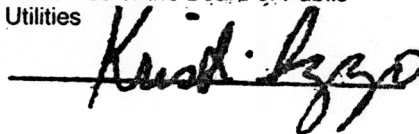

JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER

ATTEST:


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

Adam Falk, Vice President
Cablevision
683 Route 10 East
Randolph, NJ 07869

Don Viapree, Mgr, Government Affairs
Cablevision
765 Broad Street
Newark, NJ 07102

James Eric Andrews, Esq.
Schenck, Price, Smith & King
10 Washington Street
Morristown, NJ, 07963

Aime Antonides
Borough Clerk
Borough of Interlaken
100 Grasmere Ave.
Interlaken, NJ 07712

Celeste Fasone, Director
Board of Public Utilities
Office of Cable Television
Two Gateway Center
Newark, NJ 07102

Jessica L. Campbell
Deputy Attorney General
State of New Jersey, Division of Law
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101

Nancy J. Wolf, Coordinator,
State and Local Planning, South
Office of Cable Television
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102