



Agenda Date: 9/18/23
Agenda Item: 3C

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
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OFFICE OF CABLE
TELEVISION AND
TELECOMMUNICATIONS

IN THE MATTER OF NOTICE OF COMCAST OF NEW JERSEY II, LLC REGARDING THE CONVERSION OF ITS MUNICIPAL FRANCHISE IN THE CITY OF PERTH AMBOY TO A SYSTEM-WIDE FRANCHISE) ORDER
)
)
) DOCKET NO. CE23030148

Parties of Record:

Stan Barrett, Esq., Scarinci Hollenbeck, LLC, on behalf of Comcast of New Jersey, LLC
Victoria Ann Kopsch, Clerk, City of Perth Amboy, New Jersey

BY THE BOARD:

This matter relates to the filing of a letter with the New Jersey Board of Public Utilities ("Board") by Comcast of New Jersey II, LLC, ("Comcast"), providing notice of its intention to convert its municipal ordinance-based franchise in the City of Perth Amboy ("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. The applicant was required thereafter to obtain a certificate of approval ("COA") from the Board, pursuant to N.J.S.A. 48:5A-16. Board approval of a COA is issued upon a determination that, in addition to having the requisite municipal consent, 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" pursuant to 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 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) through (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, in accordance with the requirements set forth in N.J.S.A. 48:5A-25.1. 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, pursuant to N.J.S.A. 48:5A-30.

NOTICE

On February 17, 2023, Comcast filed notice with the Board and the City, that Comcast intended to convert its municipal consent ordinance-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) through (n), as required by the System-wide Cable Television Franchise Act. Specifically, N.J.S.A. 48:5A-28 (h) through (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 Comcast 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 along any public right-of-way in the Primary Service Area in the City at no cost beyond the installation rates contained in its schedule of prices, rates, terms and conditions filed with the Board as applicable. For any extension outside the Primary Service Area, Comcast shall provide service in accordance with the line extension policy attached to this order as Appendix "I", utilizing a homes per mile figure of 35.

N.J.S.A. 48:5A-28 (i) requires a cable television company operating under a system-wide franchise to provide two (2) PEG access channels upon request of the municipality. Comcast, as a municipal consent ordinance-based franchise holder, agreed to provide two (2) PEG access channels for use by the City. Pursuant to this section, the City would be responsible for the management, operations and programming of the PEG access channels that are in its control. Pursuant to N.J.A.C. 14:18-15.4 (b), either Comcast or the City may request assistance from the Office of Cable Television and Telecommunications ("OCTV&T") for resolution of any disputes regarding the terms and conditions of the provision of the access channels. 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. Comcast has provided free service to many 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&T 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&T 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, Comcast is required to provide a return line, upon written request, from any one location in the City to Comcast'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. Furthermore, pursuant to N.J.A.C. 14:18-15.4 (c), either party may request assistance from the OCTV&T for resolution of any disputes regarding the provision of these services. Comcast has committed to the requirements of this Section.

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

Comcast has also committed to maintaining, under its system-wide franchise, the same liability limits required under N.J.S.A. 48:5A-28 (f). Comcast 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 Comcast'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. See N.J.S.A. 48:5A-30. It is noted that Comcast 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 on October 8, 2009 in Docket No. CO09080696.

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.” Comcast currently maintains local offices at 2345 US Route 22, Union, 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 Comcast, as Comcast of New Jersey II, LLC does not provide more than 40 percent of the local exchange telephone service market in the State.

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.” Comcast’s Certificate of Approval and the underlying municipal consent ordinance from the City were renewed by the Board on September 28, 2022, in Docket No. CE22080484, to provide cable television service to the City for a term of 10 years to expire on August 1, 2031. Because Comcast 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 **HEREBY FINDS** that Comcast’s COA for the City has expired by operation of law, and Comcast 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) through (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 Comcast 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** Comcast’s conversion of its franchise for the City 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 Comcast shall meet the requirements of N.J.S.A. 48:5A-28 (h) through (n) and the following terms and conditions:

1. Comcast shall maintain an informational schedule of prices, terms and conditions for unregulated service and promptly file any revisions thereto.
2. Comcast may convert and add existing municipal consent-based franchises and affected municipalities to its system-wide franchise authorization, pursuant to the requirements set forth in N.J.S.A. 48:5A-25.1.
3. As explicitly required by the Act, the OCTV&T 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. Comcast shall pay a franchise fee to each municipality served by its system-wide franchise in the amount of 3.5% of Comcast's gross revenues, as defined by N.J.S.A. 48:5A-3 (x) and N.J.S.A. 48:5A-30.
5. Comcast shall pay to the State Treasurer an amount up to 0.5% of Comcast's gross revenues, in accordance with N.J.S.A. 48:5A-3 (x) and N.J.S.A. 48:5A-30. Comcast shall provide copies to the Board of all documentation regarding payment of this fee to the State Treasurer.
6. Comcast shall continue to pay additional regulatory fees to the State in an amount not to exceed 2% of Comcast's gross operating revenues derived from intrastate operations.
7. Pursuant to the Act, either Comcast or the City may request assistance from the OCTV&T for resolution of disputes, and the OCTV&T 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), Comcast 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.

This System-wide Franchise 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. Comcast 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 Telecommunications and/or the terms, conditions and limitations set forth herein may subject Comcast 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

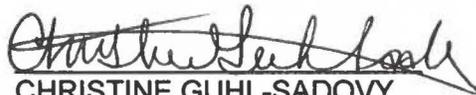
Comcast's conversion notice are true, and the undertakings therein contained shall be adhered to and be enforceable unless specific waiver is granted by the Board or the Office of Cable Television and Telecommunications pursuant to the authority contained in N.J.S.A. 48:5A-1 et seq.

The System-wide Franchise shall expire on February 17, 2030.

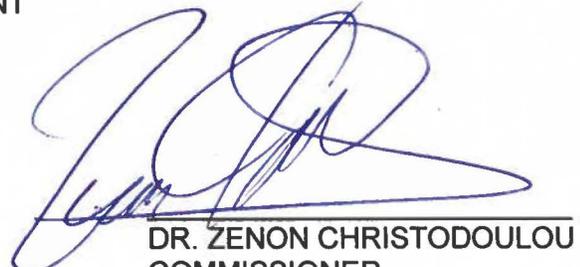
This Order shall be effective on September 25, 2023.

DATED: September 18, 2023

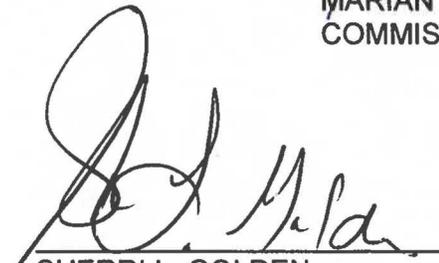
BOARD OF PUBLIC UTILITIES
BY:


CHRISTINE GUHL-SADOVY
PRESIDENT


MARY-ANNA HOLDEN
COMMISSIONER


DR. ZENON CHRISTODOULOU
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"
Comcast of New Jersey II, LLC
SYSTEM-WIDE FRANCHISE

Office of Cable Television and Telecommunications
Line Extension Policy

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. $\frac{\text{\# of homes in extension}}{\text{mileage of extension}}$ = homes per mile ("HPM") of extension
2. $\frac{\text{HPM of extension}}{\text{Minimum HPM that company actually constructs in the system*}}$ = ratio of the density of the extension to the minimum density that 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. $\frac{\text{Total amount to be recovered from subs}}{\text{Total subscribers in extension}}$ = 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 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. CE23030148

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