

TOWNSHIP OF CLARK

Ordinance No. 04-09

Adopted June 21, 2004

Introduced: <u>May 17, 2004</u>	Public Hearing: <u>June 21, 2004</u>
Motion: <u>Mazzarella</u>	Motion: <u>Mazzarella</u>
Seconded: <u>Albanese</u>	Seconded: <u>Albanese</u>

AN ORDINANCE GRANTING RENEWAL OF MUNICIPAL CONSENT TO COMCAST OF NEW JERSEY II, LLC TO CONSTRUCT, CONNECT, OPERATE AND MAINTAIN A CABLE TELEVISION AND COMMUNICATIONS SYSTEM IN THE TOWNSHIP OF CLARK, UNION COUNTY, NEW JERSEY.

BE IT ORDAINED BY THE MAYOR AND TOWNSHIP COUNCIL OF THE TOWNSHIP OF CLARK, UNION COUNTY, as follows:

SECTION 1. PURPOSE OF THE ORDINANCE

The Township hereby grants to Comcast of New Jersey II, LLC renewal of its non-exclusive Municipal Consent to place in, upon, across, above, over and under highways, streets, alleys, sidewalks, easements, public ways and public places in the Township, poles, wires, cables, underground conduits, manholes and other television conductors, fixtures, apparatus and equipment as may be necessary for the construction operation and maintenance in the Township of a cable television and communications system.

SECTION 2. DEFINITIONS

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. Such meaning or definition of terms is supplemental to those definitions of the Federal Communications Commission ("FCC") rules and regulations, 47 C.F.R Subsection 76.1 et seq., and the Cable Communications Policy Act, 47 U.S.C Section 521 et seq., as amended, and the Cable Television Act, N.J.S.A. 48:5A-1 et seq., and shall in no way be construed to broaden, alter or conflict with the federal and state definitions:

- a. "Municipality" or "Township" is the Township of Clark, County of Union, State of New Jersey.
- b. "Company" is the grantee of rights under this Ordinance and is known as Comcast of New Jersey II, LLC.
- c. "Act" or "Cable Television Act" is Chapter 186 of the General Laws of New Jersey, and subsequent amendments thereto, N.J.S.A. 48:5A-1 et seq.,
- d. "FCC" is the Federal Communications Commission.
- e. "Board" or "BPU" is the Board of Public Utilities, State of New Jersey.

- f. "Office" or "OCTV" is the Office of Cable Television of the Board.
- g. "Basic Cable Service" means any service tier, which includes the retransmission of local television broadcast signals as defined by the FCC.

SECTION 3. STATEMENT OF FINDINGS

Public hearings conducted by the Township, concerning the renewal of Municipal Consent herein granted to the Company were held after proper public notice pursuant to the terms and conditions of the Act and the regulations of the Board adopted pursuant thereto. Said hearings, having been fully open to the public, and the Township, having received at said public hearings all comments regarding the qualifications of the Company to receive this renewal of Municipal Consent, the Township hereby finds that the Company possesses the necessary legal, technical, character, financial and other qualifications and that the Company's operating and construction arrangements are adequate and feasible.

SECTION 4. DURATION OF FRANCHISE

The non-exclusive Municipal Consent granted herein shall expire fifteen (15) years from the date of expiration of the previous Certificate of Approval issued by the Board with a 10-year automatic renewal as provided by N.J.S.A. 48:5A-19 and 25, and N.J.A.C. 14:18-13.6.

In the event that the Municipality shall find that the Company has not substantially complied with the material terms and conditions of the Ordinance, the Municipality shall have the right to petition the OCTV, pursuant to N.J.S.A. 48:5A-47, for appropriate action, including modification and/or termination of the Certificate of Approval; provided however, that the Municipality shall first have given the Company written notice of all alleged instances of non-compliance and an opportunity to cure same within ninety (90) days of that notification.

SECTION 5. FRANCHISE FEE

Pursuant to the terms and conditions of the Act, the Company shall, during each year of operation under the consent granted herein, pay to the Township two percent (2%) of the gross revenues from all recurring charges in the nature of subscription fees paid by subscribers for cable television reception service in the Township or any higher amount permitted by the Act or otherwise allowable by law, whichever is greater.

SECTION 6. FRANCHISE TERRITORY

The consent granted under this Ordinance to the renewal of the franchise shall apply to the entirety of the Township and any property subsequently annexed hereto.

SECTION 7. EXTENSION OF SERVICE

The Company shall be required to proffer service along any public right-of-way to any person's residence or business located in all areas of the franchise territory as described herein, at tariffed rates for standard and non-standard installations.

SECTION 8. SYSTEM UPGRADE

The Company has completed an upgrade of the cable television distribution system serving the Township. The Upgraded system is a hybrid fiber optic/coaxial cable system following a "fiber to the node" architecture. The upgraded system provides improved picture quality, enhanced signal reliability and increased channel capacity.

The upgrade has been completed following the Company's engineering guidelines for hybrid fiber/coaxial ("HFC") plant design, which meets or exceeds all applicable state and federal regulations as well as voluntary cable television industry standards and follows commonly accepted industry practices.

SECTION 9. CONSTRUCTION REQUIREMENTS

Restoration: In the event that the Company or its agents shall disturb any pavement, street surfaces, sidewalks, driveways, or other surface in the nature topography, the Company shall, at its sole expense, restore and replace such places or things so disturbed in as good a condition as existed prior to the commencement of said work.

Relocation: If at any time during the period of this consent, the Municipality shall alter or change the grade of any street, alley or other way or place the Company, upon reasonable notice by the Municipality; shall remove, re-lay or relocate its equipment, at the expense of the Company.

Temporary Removal of Cables: The Company shall, upon request of the Municipality at the Company's expense, temporarily raise, lower, or remove its lines in order to facilitate the moving of buildings or machinery or in other like circumstances. Whenever the request is made by, for, or on behalf of private parties, the cost will be borne by those same parties.

Removal or Trimming of Trees: During the exercise of its rights and privileges under this franchise, the Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks or other public places of the municipality so as to prevent the branches of such trees from coming in contact with the wires and cable of the Company. Such trimming shall be only to the extent necessary to maintain proper clearance of the Company's wire and cables.

SECTION 10. CUSTOMER SERVICE

In providing services to its customers, the Company shall comply with N.J.A.C. 14:18-1 et seq. and all applicable state and federal statutes and regulations. The Company shall strive to meet or exceed all voluntary company and industry standards in the

delivery of customer service and shall be prepared to report on it to the community upon written request of the Township Administrator or Clerk.

- a. The Company shall continue to comply fully with all applicable state and federal statutes and regulations regarding credits for outages, the reporting of same to regulatory agencies and notification of same to customers.
- b. The Company shall continue to fully with all applicable state and federal statutes and regulations regarding the availability of devices for the hearing impaired and the notification of same to customers.
- c. The Company shall use every effort to meet or exceed voluntary standards for telephone accessibility developed by the National Cable Television Association (NCTA). Those standards shall include, but not be limited to, the goal of answering ninety (90%) percent of incoming telephone calls within thirty (30) seconds.
- d. Nothing herein shall impair the right of any subscriber or the Municipality to express any comment with respect to telephone accessibility to the Complaint Officer, or impair the right of the Complaint Officer to take any action that is appropriate under law.
- e. The Company is permitted, but is not required to, charge a late fee consistent with applicable state and federal statutes and regulations.

SECTION 11. MUNICIPAL COMPLAINT OFFICER

The Office of Cable Television is hereby designated as the Complaint Officer for the Municipality pursuant to N.J.S.A. 48:5A-26(b). All complaints shall be received and processed in accordance with N.J.A.C. 14:17-6.5. The Municipality shall have the right to request copies of records and reports pertaining to complaints by Township customers from the OCTV.

SECTION 12. LOCAL OFFICE

During the term of this franchise, and any renewal thereof, the Company shall maintain a local business office or agent for the purpose of receiving, investigating and resolving all complaints regarding the quality of service, equipment malfunctions and similar matters. Such local business office shall be open during normal business hours and in no event less than 9:00 a.m. to 5:00 p.m., Monday through Friday, Telephone response for such purposes as mentioned herein will be provided by the Company's employees, representatives or agents twenty-four (24) hours per day.

The telephone number and address of the local office shall be listed in applicable telephone directories and in correspondence from the Company to the customer. The telephone number for the local office shall utilize an exchange that is a non-toll call for Township residents.

SECTION 13. PERFORMANCE BONDS

During the life of the franchise the Company shall give to the municipality a bond in the amount of twenty-five thousand (\$25,000.00) dollars. Such bond shall be to insure the faithful performance of all undertakings of the Company as represented in its application for municipal consent incorporated herein.

SECTION 14. SUBSCRIBER RATES

The rates of the Company shall be subject to regulation as permitted by federal and state law.

SECTION 15. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

- a. The Company shall continue to provide residents with a system-wide public access channel (currently channel 26) maintained by the Company. Qualified individuals and organizations may utilize public access for the purpose of cable casting non-commercial access programming in conformance with the Company's published public access rules.
- b. The Company shall continue to provide a system-wide leased access channel (currently channel 27) maintained by the Company for the purpose of cable casting commercial access programming in conformance with the Company's guideline and applicable state and federal statutes and regulations.
- c. The Company shall continue to provide an access channel (currently channel 36) maintained by the Company for use by the Municipality and its designees for the purpose of cable casting non-commercial educational and governmental programming.
- d. The Company shall take any steps that are necessary to ensure that the signals originated on the access channels are carried without material degradation, and with a signal whose quality is equal to that of the analog channels that the Company transmits.

SECTION 16. COMMITMENTS BY THE COMPANY

- a. The Company shall relocate the existing return of the access channel that is dedicated for use by the Township of Clark from its current location to the new master control room at 430 Westfield Avenue at its sole expense within a mutually agreed timeframe. The company shall install an outlet for a monitor (not provided by the Company) in the master control at its sole expense.
- b. Within twelve (12) months of the issuance of a Renewal Certificate of Approval (COA) by the BPU, the Company shall construct three additional origination points to send non-commercial programming to the new master control room at 430 Westfield Avenue as follows:

- 1) The Company shall construct and maintain at its sole expense three fiber optic returns for non-commercial programming to originate from two (2) fixed cameras and one (1) remote-controlled camera mounted in the Council Chamber at 315 Westfield Avenue. Said returns shall allow operation of said cameras from the master control at 430 Westfield Avenue. The company shall provide at its sole expense the necessary transmitters and receivers for the returns. The company shall similarly relocate the cable outlet for a television monitor (not provided by the company) to the new master control.
 - 2) The company shall construct and maintain at its sole expense a fiber optic return to allow non-commercial programming to originate from the Clark high school auditorium or other location within the high school.
 - 3) The company shall construct and maintain at its sole expense a fiber optic return to allow non-commercial programming to originate from the high school football field. The Company shall provide at its sole expense a transmitter and receiver for the return. Further, the company shall install and maintain at its expense a cable outlet for a television monitor (not provided by the company) at the announcer's booth, and provide free Preferred monthly service.
- c. Within twelve (12) months of the issuance of a Renewal Certificate of Approval (COA) by the BPU, the Company shall provide to the Municipality a one-time grant for production equipment in the amount of fifty thousand dollars (\$50,000).
 - d. The Company shall continue to provide free Preferred monthly service on one (1) outlet in each public and private elementary and secondary school that may be constructed in the Township, and on one (1) outlet in the municipal building, fire department, first aid squad, library, and public works building that is located in or may be constructed within the Township, provided the facility is located within 200' of active cable distribution plant. Each additional outlet installed, if any, shall be paid for by the requesting facility on a material plus labor basis. Monthly service charges shall be waived on all additional outlets.
 - e. The Company shall make every effort to deploy new or advanced technology and or services in the Township that are commercially available, economically practicable, and technically feasible. That technology shall include but not be limited to: video-on-demand; digital video compression; advanced or high-definition television, digital audio services; digital television, high-speed Internet service via cable modem; and interactive program guides.

SECTION 17. TWO WAY SERVICES AND INTERCONNECTION

In the event that the Township determines that it is necessary and feasible for it to contract with the Company for the purpose of providing two-way or interconnection services, the Company shall be required to apply to the BPU for approval to enter into

and establish the terms and conditions of such contract. All costs for such application to the BPU shall be borne by the Township.

SECTION 18. EMERGENCY USES

The Company shall be required to fully comply with all applicable federal and state statutes and regulations rules and regulations governing the implementation, operation and testing of the Emergency Alert System (EAS).

The Company shall in no way be held liable for any injury suffered by the municipality or any other person, during an emergency, if for any reason the municipality is unable to make full use of the cable television system as contemplated herein.

SECTION 19. LIABILITY INSURANCE

The Company shall at all times maintain a comprehensive general liability insurance policy with a single limit amount of \$1,000,000 covering liability for any death, personal injury, property damages or other liability arising out of its construction and operation of the cable television system, and an excess liability (or "umbrella") policy in the amount of \$3,000,000.

SECTION 20. INCORPORATION OF THE APPLICATION

All of the commitments and statements contained in the application and any amendment thereto submitted in writing to the Municipality by the Company, except as modified herein, are binding upon the Company as terms and conditions of this Municipal Consent. The application and any other relevant writings submitted by the Company shall be considered a part of this Ordinance and made a part hereof by reference as long as it does not conflict with state or federal law. All ordinances or parts of ordinances or other agreements between the Township and the Company that are in conflict with the provisions of this agreement are hereby declared invalid and superseded.

SECTION 21. COMPETITIVE EQUITY

Should the Township grant a franchise to construct, operate and maintain a cable television system to any other person, corporation or entity on terms materially less burdensome or more favorable than the terms contained herein, the Company may substitute such language that is more favorable or less burdensome for the comparable provision of this Ordinance subject to the provisions of N.J.A.C. 14:17-6.7.

SECTION 22. SEPARABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and its validity or unconstitutionality shall not affect the validity of the remaining portions of the Ordinance.

SECTION 23. THIRD PARTY BENEFICIARIES

Nothing in this Franchise or in any prior agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of such agreements or Franchise.

SECTION 24. REPEAL

This ordinance shall supercede Ordinance No. 94-20, effective September 7, 1994, which is hereby repealed in its entirety.

SECTION 25. EFFECTIVE DATE

This Ordinance shall take effect immediately upon issuance of a Renewal Certificate of Approval by the BPU.

Effective Date: July 14, 2004

ATTEST:


KATHLEEN LEONARD
Township Clerk

APPROVED:


ALVIN BARR
Council President


SALVATORE BONACCORSO
Mayor

Ord04/ComcastRenewal

	Aye	Nay	Abstain	Absent
Albanese	☒	☐	☐	☐
Bothe	☒	☐	☐	☐
Mazzarella	☒	☐	☐	☐
Toal	☒	☐	☐	☐
Ulrich	☒	☐	☐	☒
Barr	☒	☐	☐	☐