

BOROUGH OF MOUNT ARLINGTON

ORDINANCE NO. 09 - 13

AN ORDINANCE GRANTING MUNICIPAL CONSENT FOR THE OPERATION OF A CABLE TELEVISION SYSTEM WITHIN THE BOROUGH OF MOUNT ARLINGTON, NEW JERSEY TO CSC TKR, LLC d/b/a CABLEVISION OF MORRIS

WHEREAS, the governing body of the Borough of Mount Arlington (hereinafter referred to as the "Borough") determined that CSC TKR, LLC d/b/a Cablevision of Morris, (hereinafter referred to as "the Company" or "Cablevision") had the technical competence and general fitness to operate a cable television system in the Borough, and by prior ordinance granted its municipal consent for Cablevision to obtain a non-exclusive franchise (the "Franchise") for the placement of facilities and the establishment of a cable television system in the Borough; and

WHEREAS, by application for renewal consent filed with the Borough and the Office of Cable Television on or about January 2, 2013, Cablevision has sought a renewal of the Franchise; and

WHEREAS, the Borough having held public hearings has made due inquiry to review Cablevision's performance under the Franchise, and to identify the Borough's future cable-related needs and interests and has concluded that Cablevision has substantially complied with its obligations under the Franchise and applicable law and has committed to certain undertakings responsive to the Borough's future cable-related needs and interests;

WHEREAS, the governing body of the Borough has accordingly concluded that the consent should be renewed subject to the requirements set forth below; and that, provided Cablevision's proposal for renewal embodies the commitments set forth below, the Borough's municipal consent to the renewal of the Franchise should be given; and

WHEREAS, imposition of the same burdens and costs on other competitors franchised by the Borough is a basic assumption of the parties;

NOW THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Mount Arlington, County of Morris, and State of New Jersey, as follows:

SECTION 1. DEFINITIONS

For the purpose of this Ordinance the terms defined above shall have the meanings there indicated, and the following additional terms shall have the following meanings:

- (a) “Act” or “Cable Television Act” shall mean that statute of the State of New Jersey relating to cable television, known as the Cable Television Act, N.J.S.A. 48:5A-1 et seq.
- (b) “Application” shall mean Cablevision’s application for Renewal of Municipal Consent, which application is on file in the Borough Clerk’s office and is incorporated herein by reference and made a part hereof, except as modified, changed, limited or altered by this Ordinance.
- (c) “Board” shall mean the Board of Public Utilities of the State of New Jersey or its successor agency.
- (d) “Borough” shall mean the governing body of the Borough of Mount Arlington in the County of Morris, and the State of New Jersey.
- (e) “Company” shall mean CSC TKR, LLC d/b/a Cablevision of Morris (“Cablevision”) the grantee of rights under this Ordinance.
- (f) “FCC” shall mean the Federal Communications Commission.
- (g) “Federal Act” shall mean that federal statute relating to cable communications commonly known as the Cable Communications Policy Act of 1984, 47 U.S.C. Section 521 et seq. and the Telecommunications Act of 1996, or as those statutes may be amended.
- (h) “Federal Regulations” shall mean those federal regulations relating to cable television services, 47 C.F.R. Section 76.1 et seq. (and, to the extent applicable, any other federal rules and regulations relating to cable television, including but not limited to, those described in 47 C.F.R. Section 76.3), or as such regulations may be amended.
- (i) “Standard installation” shall mean the installation of drop cable to a customer’s premise where the distance from the point of entry into the building being served is less than 150 feet from the active cable television system plant.
- (j) “State” shall mean the State of New Jersey.
- (k) “State Regulations” shall mean those regulations of the State of New Jersey Board of Public Utilities relating to cable television. N.J.A.C. 14:17-1.1 et seq. and N.J.A.C. 14:18-1 et seq., or as such regulations may be amended.

SECTION 2. STATEMENT OF FINDINGS

A public hearing concerning the consent herein granted to Cablevision was held after proper public notice pursuant to the terms and conditions of the Act. Said hearing having been held and fully open to the public, and the municipality having received all comments regarding the qualifications of Cablevision to receive this consent, the Borough hereby finds Cablevision possesses the necessary legal, technical, character, financial and other qualifications to support municipal consent, and that Cablevision's operating and construction arrangements are adequate and feasible.

SECTION 3. GRANT OF AUTHORITY

The Borough hereby grants to Cablevision its non-exclusive consent to place in, upon, along, across, above, over, and under its highways, streets, alleys, sidewalks, public ways, and public places in the municipality poles, wires, cables, and fixtures necessary for the maintenance and operation in the Borough of a cable television system or other communications facility, and for the provision of any communication service over such facilities. Operation and construction, pursuant to said consent, is conditioned upon prior approval of the Board of Public Utilities.

SECTION 4. DURATION OF FRANCHISE

This consent granted herein shall be non-exclusive and shall be for a term of ten (10) years from the date of issuance of a Certificate of Approval by the Board.

SECTION 5. EXPIRATION AND SUBSEQUENT RENEWAL

If Cablevision seeks successive consent, it shall, prior to the expiration of this consent, apply for a municipal consent and certificate of approval in accordance with N.J.S.A 48:5A-16, and applicable state and federal rules and regulations. In accordance with N.J.S.A. 48:5A-25.1, both the Borough and Cablevision shall be bound by the terms of this municipal consent until such time as Cablevision converts the municipal consent (and any certificate of approval) into a system-wide franchise.

SECTION 6. FRANCHISE TERRITORY

The consent granted under this Ordinance to Cablevision shall apply to the entirety of the Borough and any property hereafter annexed.

SECTION 7. SERVICE AREA

Cablevision shall be required to proffer video programming service along any public right-of-way to any person's residence within the portion of the Franchise territory, as described in the Application for municipal consent, at Cablevision's schedule of rates for standard and nonstandard installation.

SECTION 8. EXTENSION OF SERVICE

Commercial and residential entities will be proffered service in accordance with the Company's line extension policy as identified in the Application.

SECTION 9. FRANCHISE FEE

Pursuant to the terms and conditions of the Cable Television Act, Cablevision shall pay to the Borough, as an annual franchise fee, a sum equal to two (2%) percent of the actual gross revenues received from all recurring charges in the nature of subscription fees paid by subscribers for its cable television reception services in the Borough. In the event applicable law hereinafter permits a larger franchise fee to be collected, but does not fix the amount thereof, the Borough and Cablevision shall negotiate in good faith with respect to the amount thereof; provided, however, that nothing herein shall be construed to permit the Borough to require payment of a franchise fee by Cablevision that is higher than the fee paid by all other cable television service providers offering service in the Municipality.

SECTION 10. FREE SERVICE

Cablevision shall, upon written request, provide free of charge, one (1) standard installation and monthly cable television reception service to all State or locally accredited public schools and all municipal public libraries, as well as municipal buildings located within the Borough.

Upon written request from the Borough, the Company shall provide to state and locally accredited elementary and secondary schools and municipal public libraries in the Borough, without charge, the following: (1) one standard installation per school or library; (2) one cable modem per installation; and, (3) basic cable modem service for the term of this Ordinance for each installation. This offer shall be subject to the terms, conditions and use policies of the Company, as those policies may exist from time to time.

Upon written request from the Borough, the Company shall provide to (1) one municipally owned facility, without charge, the following: (1) one standard installation; (2) one cable modem per installation; and (3) basic cable modem service for the term of

this Ordinance for each installation. This offer shall be subject to the terms, conditions and use policies of the Company as those policies may exist from time to time.

SECTION 11. CONSTRUCTION/SYSTEM REQUIREMENTS

Cablevision shall perform construction and installation of its plant and facilities in accordance with applicable State and federal law. The Company shall be subject to the following additional construction requirements with respect to the installation of its cable plant and facilities in the Borough:

(a) In the event that the Company or its agents shall disturb any pavement, street surfaces, sidewalks, driveways or other surfaces, the Company shall at its sole expense restore and replace such disturbances in as good a condition as existed prior to the commencement of said work.

(b) 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 Borough shall remove or relocate its equipment, at its own expense.

(c) Upon request of a person holding a building or moving permit issued by the Borough, the Company shall temporarily move or remove appropriate parts of its facilities so as to permit the moving or erection of buildings or for the performance of other work. The expense of any such temporary removal or relocation shall be paid in advance to the Company by the person requesting the same. In such cases, the Company shall be given not less than fourteen (14) days prior written notice in order to arrange for the changes required.

(d) During the exercise of its rights and privileges under this consent, the Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the Borough so as to prevent the branches of such trees from coming in contact with the wires, cables, conduits and fixtures of the Company. Such trimming shall be only to the extent necessary to maintain proper clearance for the Company's facilities.

SECTION 12. TECHNICAL AND CUSTOMER SERVICE STANDARDS

Cablevision shall comply with the technical and customer service standards established for the cable industry under applicable federal and State laws, rules and regulations.

SECTION 13. LOCAL OFFICE OR AGENT

Cablevision shall establish and maintain during the entire term of this consent a local area business office or agent for the purpose of receiving, investigating and resolving complaints regarding the quality of service, equipment malfunctions and similar matters. Said office shall be open daily during normal business hours, and in no event less than 9:00 a.m. to 5:00 p.m., Monday through Friday, with the exception of holidays.

SECTION 14. DESIGNATION OF COMPLAINT OFFICER

The Office of Cable Television is hereby designated as the complaint officer for the Township pursuant to the provisions of N.J.S.A. 48:5A-26. All complaints shall be reviewed and processed in accordance with N.J.A.C. 14:17-6.5.

SECTION 15. LIABILITY INSURANCE

Cablevision agrees to maintain and keep in force and effect at its sole cost at all times during the term of this consent, sufficient liability insurance naming the Borough as an additional insured and insuring against loss by any such claim, suit, judgment, execution or demand in the minimum amounts of five-hundred thousand dollars (\$500,000) for bodily injury or death to one person, and one million dollars (\$1,000,000) for bodily injury or death resulting from any one accident or occurrence stemming from or arising out of the Company's exercise of its rights hereunder.

SECTION 16. PERFORMANCE BOND

Cablevision shall obtain and maintain, at its sole cost and expense, during the entire term of this Agreement, a bond to the municipality in the amount of twenty-five thousand dollars (\$25,000.00). Such bond shall be to insure the faithful performance of its obligations as provided in this Franchise.

SECTION 17. RATES

A. The rates of the Company for cable television service shall be subject to regulation to the extent permitted by federal and State law.

SECTION 18. EMERGENCY USES

Cablevision shall be required to have the capability to override the audio portion of the system in order to permit the broadcasting of emergency messages by the Borough pursuant to state and federal requirements. The Company shall in no way be held liable

for any injury suffered by the Borough 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. The Borough shall utilize the state-approved procedures for such emergency uses.

SECTION 19. EQUITABLE TERMS

In the event that the service of another multi-channel video program provider not subject to the Borough's regulatory authority within the Borough creates a significant competitive disadvantage to Cablevision, the Company shall have the right to request from the Borough lawful amendments to its Franchise that relieve it of burdens which create the unfair competitive situation. Should the Company seek such amendments to its Franchise, the parties agree to negotiate in good-faith appropriate changes to the Franchise in order to relieve the Company of such competitive disadvantages. If the parties can reach an agreement on such terms, the Borough agrees to support the Company's petition to the Board for modification of the consent in accordance with N.J.S.A 48:5A-47 and N.J.A.C. 14:17-6.7.

If the parties are unable to reach an agreement on appropriate amendments to the franchise, the Borough acknowledges that the Company shall have the right to petition the Board directly for such amendments in accordance with N.J.S.A. 48:5A-47 and N.J.A.C. 14:17-6.7; provided, however, the Borough shall be under no obligation to support Cablevision's request for such relief from the Board.

In any subsequent municipal consent, Borough shall require, at a minimum, the same terms and conditions of any other provider of multi-channel video programming subject to the Borough's regulatory authority as those contained in the instant consent. In the event such subsequent consent does not contain the same terms and conditions as the instant consent, Borough agrees to support the Company's petition to the Board for modification of the consent in accordance with NJSA 48:5A-47 and NJAC 14:17-6.7 to relieve the Company of competitive disadvantages identified in the Company's petition.

SECTION 20. REMOVAL OF FACILITIES

Upon expiration, termination or revocation of this Ordinance, Cablevision at its sole cost and expense and upon direction of the Board, shall remove the cables and appurtenant devices constructed or maintained in connection with the cable services authorized herein, unless Cablevision, its affiliated entities or assignees should, within six (6) months after such expiration, termination or revocation obtain certification from the FCC to operate an open video system or any other federal or state certification to provide telecommunications.

SECTION 21. PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ACCESS

A. Cablevision shall continue to make available non-commercial public, educational and governmental (PEG) access services available to the residents of the Borough as described in the Application for municipal consent. All Cablevision support for PEG access shall be for the exclusive benefit of Cablevision's subscribers.

B. The Borough agrees that Cablevision shall retain the right to use the PEG access channel, or portion thereof, for non-PEG access programming, during times when the Borough is not utilizing the channel for purposes of providing PEG access programming. In the event that the Company uses said PEG access channel for the presentation of such other programming, the PEG programming shall remain the priority use and the Company's rights with respect to using the channel for non-PEG programming shall be subordinate to the Borough's provision of PEG access programming on such channel.

C. Cablevision shall have discretion to determine the format and method of transmission of the PEG access programming provided for in this Section 20.

D. Cablevision shall provide the Borough with a one-time PEG grant of up to ten thousand dollars (\$10,000.00) payable as follows: (1) an initial grant payment of one thousand dollars (\$1,000.00) within 90 days of the issuance of the Certificate of Approval by the Board of Public Utilities (the "Initial Grant"); and (2) a grant up to nine thousand dollars (\$9,000.00) provided in annual installments of one thousand dollars (\$1,000.00) each, upon written request by the Borough (the "Annual Grant"). Each installment of the Annual Grant shall be payable to the Borough annually during the term of this Franchise, within ninety (90) days from receipt of the Borough's written request. Cablevision shall not be obligated to make any additional payments beyond year ten of the franchise term.

E. The Borough agrees that the Initial Grant and the Annual Grant provided pursuant to Paragraph D shall be used by the Borough for any cable and/or other telecommunications related purpose and/or for the exclusive support of PEG access programming, such as the purchase and/or rental of PEG access equipment and facilities. On request, the Borough shall provide Cablevision with a certification of compliance with this Section 20(E).

F. The Company shall have no further obligation to provide any PEG grant payments due and payable after the date upon which the Company converts the municipal consent granted herein to a system-wide franchise in accordance with N.J.S.A. 48:5A-25.1.

SECTION 22. INCORPORATION OF APPLICATION

All of the commitments contained in the Application and any amendment thereto submitted in writing to the Borough by the Company except as modified herein, are binding upon Cablevision as terms and conditions of this consent. The Application and any other written amendments thereto submitted by Cablevision in connection with this consent are incorporated in this Ordinance by reference and made a part hereof, except as

specifically modified, changed, limited, or altered by this Ordinance, or to the extent that they conflict with State or federal law.

SECTION 23. CONSISTENCY WITH APPLICABLE LAWS

This consent shall be construed in a manner consistent with all applicable federal, State and local laws; as such laws, rules and regulations may be amended from time to time.

SECTION 24. SEPARABILITY

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

SECTION 25. NOTICE

Notices required under this Ordinance shall in writing and shall be mailed, first class, postage prepaid, to the addresses below. Either party may change the place where notice is to be given by providing such change in writing at least thirty (30) days prior to the time such change becomes effective. The time to respond to notices under this Ordinance shall run from receipt of such written notice.

Notices to the Company shall be mailed to:

Cablevision Systems Corporation
111 Stewart Avenue
Bethpage, NY 11714
Attention: Vice President for Government/Public Affairs, New Jersey

With a copy to:

CSC TKR, LLC
1111 Stewart Avenue
Bethpage, NY 11714
Attention: Legal Department

Notices to the Borough shall be mailed to:

Borough of Mount Arlington
419 Howard Boulevard
Mount Arlington, New Jersey 07856
Attention: Borough Administrator

SECTION 26. EFFECTIVE DATE AND BOARD OF PUBLIC UTILITY APPROVAL

This Ordinance shall take effect upon issuance of a Certificate of Approval as issued by the Board of Public Utilities that incorporates the material terms of this Ordinance. Nothing herein shall alter the right of the Company to seek modification of this Ordinance in accordance with N.J.S.A 48:5A-47 and N.J.A.C. 14:17-6.7. In accordance with N.J.S.A. 48:5A-25.1, the terms of this Ordinance will no longer be in effect upon Cablevision converting the municipal consent (and any certificate of approval) into a system-wide franchise.

BE IT FURTHER ORDAINED that this Ordinance shall take effect upon the passage, and publication as required by law.

I HEREBY CERTIFY this to be a true and correct Ordinance of the Mayor and Borough Council of the Borough of Mount Arlington, adopted on September 3, 2013 and will be further considered after a Public Hearing held on October 1, 2013 at the Municipal Building, 419 Howard Boulevard, Mount Arlington, NJ at 7:00 p.m.

ATTEST:


LINDA DeSANTIS, Clerk

BOROUGH OF MT. ARLINGTON


ARTHUR ONDISH, Mayor

Dated: 10/2/13