



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 3rd Floor, Suite 314  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

OFFICE OF CABLE TELEVISION  
AND TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF	)	ORDER ADOPTING THE INITIAL
COMCAST OF SOUTH JERSEY, LLC FOR A	)	DECISION AND ISSUING
RENEWAL CERTIFICATE OF APPROVAL TO	)	AUTOMATIC RENEWAL
CONTINUE TO CONSTRUCT, OPERATE AND	)	CERTIFICATE OF APPROVAL
MAINTAIN A CABLE TELEVISION SYSTEM IN	)	
AND FOR THE TOWNSHIP OF DOWNE,	)	
COUNTY OF CUMBERLAND, STATE OF NEW	)	BPU DOCKET NO. CE13010007
JERSEY	)	OAL DOCKET NO. CTV 03657-16

**Parties of Record:**

**Dennis C. Linken, Esq.**, Scarinci Hollenbeck, LLC, on behalf of Comcast of South Jersey, LLC  
**Nadine Lockley, Clerk**, Township of Downe, New Jersey

BY THE BOARD:<sup>1</sup>

**BACKGROUND**

On December 30, 1982, the Board of Public Utilities ("Board") granted Clover Cable Systems, Inc. a Certificate of Approval ("Certificate") in Docket No. 826C-6920, for the construction, operation, and maintenance of a cable television system in the Township of Downe ("Township"). Due to a series of Board approved transfers, the Certificate was held by Lenfest Atlantic, Inc. ("Lenfest"). On May 6, 1998, the Board issued a Renewal Certificate of Approval ("Renewal Certificate") to Lenfest for the Township, in Docket No. CE98020083. Due to an additional series of Board-approved transfers, the Renewal Certificate was held by Comcast of South Jersey, LLC ("Petitioner"). Although the Petitioner's Renewal Certificate expired on December 30, 2012, the Petitioner is authorized to continue to provide cable television service in the Township pursuant to N.J.S.A. 48:5A-25, pending disposition of proceedings regarding the renewal of its Certificate of Approval.

<sup>1</sup> Commissioner Robert M. Gordon recused himself due to a potential conflict of interest and as such took no part in discussions or deliberations on this matter.

On December 31, 2012, the Petitioner filed with the Board for Automatic Renewal of its Certificate of Approval for the Township, pursuant to N.J.S.A. 48:5A-16, 19, and 25 and N.J.A.C. 14:17-6.9 and 14:18-13.6. The petition for Automatic Renewal was based on the Township's January 15, 1998 adopted ordinance granting renewal of municipal consent to the Petitioner. The Township's ordinance granting municipal consent to the Petitioner provided for an initial term of fifteen (15) years with an automatic renewal term of ten (10) years. On January 21, 1998, the Petitioner accepted the ordinance. On November 29, 2012, the Petitioner filed notice with the Township and the Office of Cable Television and Telecommunications of its intention to exercise its right under the automatic renewal provision of the Township's municipal consent and the Renewal Certificate. However, on December 5, 2012, the Township notified the Petitioner's representative of its objections to the automatic renewal of the franchise based on outstanding issues related to the franchise agreement.

Thereafter, on March 27, 2013, the Township filed an answer to the petition, formally requesting that the Board not issue the automatic renewal of the franchise because the Petitioner did not complete construction that was required by the Renewal Certificate. The Township asserted that, pursuant to the Renewal Certificate, the Petitioner's predecessor had agreed to extend cable services in the municipality at its own cost by an additional one (1) mile of plant each year for five (5) years following issuance of the Renewal Certificate and that this had not been accomplished. The Township was to have sole discretion as to which streets within the Township, contiguous to the Petitioner's existing plant at the time, were to be constructed, provided that the Township advised the Petitioner in writing of the same. The Petitioner had no record of any requests from the Township regarding the construction, but stated that construction of additional cable plant within the Township had been completed. A pre-transmittal settlement conference was held on May 22, 2013, in accordance with N.J.A.C. 14:17-8.1 et seq. The parties were allowed a lengthy period of time to resolve the issues but no settlement could be reached.

The matter was transmitted, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, to the Office of Administrative Law ("OAL"), where it was filed on March 8, 2016. The matter was subsequently assigned to Administrative Law Judge ("ALJ") John S. Kennedy. Petitioner filed a Motion for Summary Decision on June 13, 2016; however, consideration of the motion was stayed to allow the parties an opportunity to discuss settlement. On September 29, 2017, the Township's representative advised that no settlement could be reached and requested sufficient time to respond to the Summary Decision Motion. On October 23, 2017, the Township opposed the Motion for Summary Decision, and on December 8, 2017, the Petitioner filed a reply to the opposition.

### **THE ALJ'S RULING ON THE MOTION FOR SUMMARY DECISION**

After considering all papers and evidence filed in support of and in opposition to a summary decision, ALJ Kennedy found that there were no issues of fact that required a plenary hearing and that this matter was therefore ripe for summary decision.

ALJ Kennedy found that it is undisputed that the Township prepared a letter, dated December 5, 2012, advising the Petitioner of its intention not to accept an automatic renewal, and that the letter did not copy an indispensable party: the Office of Cable Television and Telecommunications. Furthermore, the Township did not conduct a hearing or develop a record prior to issuance of the December 5, 2012 letter, pursuant to N.J.A.C. 14:18-13.6.

ALJ Kennedy found that N.J.S.A. 48:5A-15 provides that, "[n]o person shall hereafter begin to the construction or extension of a CATV system, or begin operation of a CATV system, ... without first obtaining from the board a Certificate of Approval ... issued in accordance with the provisions and procedures of P.L. 1972, C.186..." As stated above, the Renewal Certificate, under which the Petitioner operates in the Township, was issued for an initial term of fifteen (15) years, with provision for an automatic renewal term of ten (10) years. Under the Board's regulatory scheme, following a petition to the Board, the automatic renewal period commences unless either the cable television operator or the municipality has timely and adequately notified the other party and the Office of Cable Television and Telecommunications of its intention not to proceed with the renewal process. ALJ Kennedy found that N.J.A.C. 14:18-13.6 mandates that, in order to negate the effect of an automatic renewal provision in a cable franchise, at least 60 days prior to the expiration of the initial term, either the municipality or the cable television company must serve the other party and the Office of Cable Television and Telecommunications with a notice of intention not to accept renewal in order to deny renewal. N.J.A.C. 14:18-13.6 also requires that prior to the notice not to accept the automatic renewal, the municipality must hold a public hearing, with a record of the hearing to be made upon 30 days' notice to the public and cable television company. Additionally, ALJ Kennedy found that N.J.A.C. 14:18-13.6 requires that a notice of intention not to accept automatic renewal must be based on substantial evidence in the record. Furthermore, ALJ Kennedy stated that the Board has noted that the procedural rules provided at N.J.A.C. 14:18-13.6, unless waived by the Board, must be satisfied prior to the issuance of a notice of intention to not accept an automatic renewal.<sup>2</sup>

ALJ Kennedy stated that the Township did not provide the mandatory 60 days' notice prior to the expiration of the term, did not copy the Office of Cable Television and Telecommunications on its notice, and did not hold a public hearing. The Renewal Certificate was due to expire on December 30, 2012, and a notice of intention to not renew, in order to be valid, was required to have been issued no later than October 31, 2012, but the Township's letter was not issued until December 5, 2012. ALJ Kennedy thus concluded that the Township's December 5, 2012 letter failed to comply with N.J.A.C. 14:18-13.6(a)(1) in that it was not timely issued and was not served upon the Office of Cable Television and Telecommunications. ALJ Kennedy further concluded that there was no express waiver issued by the Board with respect to the Township's failure to comply with this regulatory provision.

ALJ Kennedy also stated the Township's factual assertions and arguments against the renewal should have been discussed and considered at a public meeting prior to the Township issuing its December 5, 2012 letter, as required by N.J.A.C. 14:18-13.6(a)(2). Due to the lack of a hearing, ALJ Kennedy found that there was no substantial evidence in the record to support the finding that the Petitioner had not met the criteria of N.J.A.C. 14:18-13.7(a)(1) through (4). Therefore, ALJ Kennedy concluded that the Township failed to meet the requirements necessary under N.J.A.C. 14:18-3.6 to not accept the automatic renewal provision contained in the Renewal Certificate. On October 12, 2018, ALJ Kennedy issued an Initial Decision (attached as Appendix "II") stating that the Petitioner is therefore entitled to implement the automatic renewal provision of its Renewal Certificate.

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<sup>2</sup> I/M/O the Petition of CSC TKR, Inc. d/b/a Cablevision of Raritan Valley for Renewal of a Certificate of Approval to Continue to Operate and Maintain a Cable Television System in the Borough of Sayreville, County of Middlesex, State of New Jersey, BPU Docket No. CE06110787, Order dated October 3, 2007 (denying request of the Borough of Sayreville to not issue a Certificate of Automatic Renewal in light of Borough's failure to provide sixty (60) days' notice and to hold the requisite public hearing).

## **THE BOARD'S FINDINGS AND CONCLUSIONS**

The Board has received no exceptions to the Initial Decision. The Board has reviewed the Initial Decision of ALJ Kennedy and **FINDS** that it is fair, reasonable, and in the public interest. Therefore, the Board **HEREBY ADOPTS** the Initial Decision in its entirety.

The Board has also reviewed the petition for an Automatic Renewal Certificate of Approval and the application filed therein by the Petitioner. Based upon this review and the recommendation of the Office of Cable Television and Telecommunications, 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. N.J.S.A. 48:5A-22 to 29, N.J.A.C. 14:18-13-1 to -9.
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 automatic renewal period based on the franchise period, as stated in the ordinance, is ten (10) years, pursuant to N.J.S.A. 48:5A-19 and 25. The Board finds this franchise period reasonable.
5. The Petitioner shall provide service along any public right-of-way to any person's residence or business located in all areas of the Township at tariffed rates for standard and non-standard installation in the primary service area. For all other circumstances, the Petitioner shall utilize the line extension policy ("LEP") attached to the Certificate as Appendix "I", except that the Petitioner has agreed to extend cable service at standard installation rates to any potential subscriber within 250 feet of proposed or existing aerial or underground trunk line. The minimum homes per mile figure is twenty-five (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 and Telecommunications. The Petitioner shall maintain and file with the Board informational schedules 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 and Telecommunications. All complaints shall be received and processed in accordance with any 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 is located at 2160 N. 2<sup>nd</sup> Street, Millville, New Jersey.

9. The franchise fee to be paid to the Township is specified to be two percent (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 required by N.J.S.A. 48:5A-30. Additional regulatory fees shall be paid to the State in an amount not to exceed two percent (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. The Petitioner shall continue to provide one (1) system-wide educational and governmental ("EG") access channel. The Petitioner provides portable production equipment, editing equipment, and training in the use of the equipment.
11. The Petitioner shall provide or continue to provide basic and standard monthly cable television service on one (1) outlet, free of charge, to each school in the Township.

Based upon these findings, the Board **HEREBY CONCLUDES**, pursuant to N.J.S.A. 48:5A-17(a) and 28(c), that 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 to -64; that the Petitioner has complied or is ready, willing, and able 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; that the Petitioner meets the legal, character, and other qualifications necessary to construct, maintain, and operate the necessary installations, lines, and equipment; and that the Petitioner is capable of providing the proposed service in a safe, adequate, and proper manner.

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

This Automatic Renewal Certificate 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. 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 Telecommunications or the terms, conditions, and limitations set forth herein may constitute sufficient grounds for the suspension or revocation of this Certificate.

This Automatic 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 and Telecommunications pursuant to the authority contained in N.J.S.A. 48:5A-1 to -64.

This Certificate shall expire on December 30, 2022.

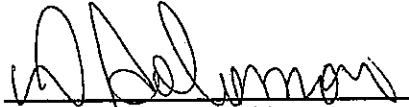
This Order shall be effective on November 29, 2018.


DATED: 11/19/18

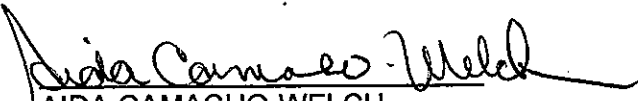
BOARD OF PUBLIC UTILITIES  
BY:

  
JOSEPH L. FIORDALISO  
PRESIDENT

  
MARY-ANNA HOLDEN  
COMMISSIONER

  
DIANNE SOLOMON  
COMMISSIONER

  
UPENDRA J. CHIVUKULA  
COMMISSIONER

ATTEST:   
AIDA CAMACHO-WELCH  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public Utilities.



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.

APPENDIX "II"



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**SUMMARY DECISION**

OAL DKT. NO. CTV 03657-16

AGENCY DKT. NO. CE13010007

**IN THE MATTER OF THE PETITION OF  
COMCAST OF SOUTH JERSEY, L.L.C.,  
FOR A RENEWAL CERTIFICATE OF  
APPROVAL TO CONTINUE TO CONSTRUCT  
OPERATE AND MAINTAIN A CABLE  
TELEVISION SYSTEM FOR THE  
TOWNSHIP OF DOWNE, COUNTY OF  
CUMBERLAND, STATE OF NEW JERSEY.**

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**Laura M. Miller, Esq., for petitioner, Comcast of South Jersey, LLC (Scarinci &  
Hollenbeck, LLC, attorneys)**

**John C. Carr, Esq., for respondent, Township of Downe (Cress and Carr,  
attorneys)**

Record Closed: September 27, 2018

Decided: October 12, 2018

**BEFORE JOHN S. KENNEDY, ALJ:**

*New Jersey is an Equal Opportunity Employer*

OAL DKT. NO. CTV 03657-16

**STATEMENT OF THE CASE**

On or about January 3, 2013, Comcast filed a Verified Petition ("Petition") with the New Jersey Board of Public Utilities ("Board" or "BPU"), seeking to implement the automatic renewal provision of Comcast's 1998 Certificate of Approval ("COA") to continue to construct, operate and maintain its system in the Township of Downe ("Township" or "Downe") pursuant to 47 U.S.C. §546(c), N.J.S.A. 48:5A-15, -16 and -17, N.J.S.A. 48:5A-17(d), N.J.A.C. 14:17-6.9 and N.J.A.C. 14:18-13.6.

**PROCEDURAL HISTORY**

The matter was transmitted, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, to the Office of Administrative Law (OAL), where it was filed on March 8, 2016. The matter was initially assigned to the Honorable W. Todd Miller, Administrative Law Judge (ALJ). Petitioner originally filed a Motion for Summary Decision on June 13, 2016, (P-1) however consideration of the Motion was stayed to allow the parties an opportunity to discuss settlement. On September 29, 2017, the Township's representative advised that no settlement could be reached and requested sufficient time to respond to the Summary Decision Motion. Thereafter, the Township opposed the Motion for Summary Decision (R-1) and petitioner filed a reply to the opposition. (P-2)

**STATEMENT OF FACTS**

The following facts are not in dispute and therefore I FIND that the following FACTS:

On or about December 30, 1982, pursuant to N.J.S.A. 48:5A-17(a) and (b) and 28 (c), in Docket No. 826C-6920, the BPU issued a COA to Clover Cable Systems, Inc., to construct, operate and maintain a cable television system in and for the Township (the "1982 COA"). (P-1, Paragraph 2 of Certification of Fred J. DeAndrea (DeAndrea Cert.)) Through a series of transfers in accordance with required Board approvals, Lenfest Atlantic, Inc., ("Lenfest") became the holder of the 1982 COA. (P-1, Paragraph

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3-5 of DeAndrea Cert.) On or about May 6, 1998, pursuant to N.J.S.A. 48:5A-17(a) and (b), and 28(c), the Board issued a Renewal Certificate of Approval to Lenfest in Docket No. CE98020083 to continue to construct, operate and maintain the System in the Township (the "1998 COA"). (P-1, Paragraph 6 of DeAndrea Cert.)

On January 18, 2000, pursuant to an Order of Approval issued January 6, 2000, by the Board in Docket No. CM99110855, Lenfest became an indirect, wholly owned subsidiary of Comcast Corporation. Subsequently, on or about September 13, 2000, Lenfest's name was formally changed to Comcast Cable Communications of South Jersey, Inc., now known as Comcast of South Jersey, LLC, the petitioner herein. (P-1, Paragraph 7 of DeAndrea Cert.)

The 1998 COA, in accordance with the underlying municipal consent ordinance adopted by the Township on January 15, 1998, reflected and included an automatic renewal provision, pursuant to which the Downe franchise would be subject to automatic renewal for a period of ten (10) years following its scheduled expiration date of December 30, 2012.<sup>1</sup> (P-1, Paragraph 8 of DeAndrea Cert.)

As set forth under N.J.A.C. 14:18-13.6 (a)(1), applicable to franchises which provide for automatic renewal, in the absence of notice at least sixty (60) days prior to expiration of the initial term of a franchise from either the cable television company or the municipality (copying the Office of Cable Television and Telecommunications ("OCTV&T")) of its intention to not renew, a franchise will be deemed to automatically renew. Neither the Township nor Comcast provided notice of intent not to renew at least sixty (60) days prior to expiration as required by N.J.A.C. 14:18-13.6(a)(1). (P-1, Paragraph 3 of Certification of Dennis C. Linken, Esq. (Linken Cert.)) Instead, by letter, dated December 5, 2012, the Township, through its attorneys, advised Comcast that the Township objected to the automatic renewal of the 1998 COA and noted, generally, and without elaboration, "concerns and issues." (P-1, Paragraph 4 of Linken Cert.)

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<sup>1</sup> The 1998 COA states that "[t]he franchise period as stated in the Ordinance is 15 years with an automatic renewal provision for a term of 10 years thereafter pursuant to N.J.S.A. 48:5A-19 and 25. The Office of Cable Television finds these periods to be of reasonable duration." 1998 COA, finding number 4, page 2:

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**STANDARD FOR SUMMARY DECISION**

Summary decision may be granted "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b).

The standard for granting summary judgment (decision) is found in Brill v. Guardian Life Insurance Company of America, 142 N.J. 520 (1995). In Brill, the Court looked at the precedents established in Matsushita Electrical Industrial Co. v. Zenith Radio Corporation, 475 U.S. 574, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986), Anderson v. Liberty Lobby, 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986), and Celotex Corporation v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986), wherein the Supreme Court adopted a standard that "requires the motion judge to engage in an analytical process essentially the same as that necessary to rule on a motion for a directed verdict: 'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" Brill, 142 N.J. at 533 (quoting Liberty Lobby, 477 U.S. at 251-52, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214). The Court stated that under the new standard,

a determination whether there exists a "genuine issue" of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the non-moving party. The "judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial."

[Brill, 142 N.J. at 540 (quoting Liberty Lobby, 477 U.S. at 249, 106 S. Ct. at 2511, 91 L. Ed. 2d at 212).]

The Brill standard contemplates that the analysis performed by the trial judge in determining whether to grant summary judgment should comprehend the evidentiary

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standard to be applied to the case or issue if it went to trial. "To send a case to trial, knowing that a rational jury can reach but one conclusion, is indeed 'worthless' and will 'serve no useful purpose.'" Brill, 142 N.J. at 541.

In addressing whether the Brill standard has been met in this case, further guidance is found in R. 4:46-2(c):

An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.

It is undisputed that Downe prepared a letter, dated December 5, 2012, advising Comcast of its intention not to accept an automatic renewal. It is also undisputed that the December 5, 2012, letter did not copy an indispensable party (the OCTV&T), and that the Township did not conduct a hearing prior to issuance of the December 5, 2012, letter.

Following the Brill standard, after considering all papers and evidence filed in support of and in opposition to Summary Decision, I **CONCLUDE** that there are no issues of fact that require a plenary hearing and that this matter is ripe for summary decision.

#### LEGAL DISCUSSION

The franchise authorization process under the New Jersey Cable Television Act, N.J.S.A. 48:5A-1 et seq., starts with N.J.S.A. 48:5A-15, which provides that "[n]o person shall hereafter begin the construction or extension of a CATV system, or begin the operation of a CATV system, ... without first obtaining from the board a Certificate of Approval ... issued in accordance with the provisions and procedures specified in P.L. 1972, C.186...." N.J.S.A. 48:5A-17 further provides that a municipal consent is generally necessary for the issuance of a COA. An applicant may avoid the necessity of first obtaining municipal consent if the municipality has arbitrarily refused to grant

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such consent. N.J.S.A. 48:5A-17d. The COA is the governing franchise document and sets forth the terms and conditions applicable to each municipal franchise. The maximum period for which a COA can be issued is fifteen (15) years for an initial term "but provision may be included for automatic renewal at the expiration thereof for an additional term not exceeding ten (10) years...." N.J.S.A. 48:5A-25.

The 1998 COA, under which Comcast operates in Downe was issued for an initial term of fifteen (15) years, with provision for an automatic renewal term of ten (10) years following expiration of the initial term. Under the Board's regulatory scheme, following a petition to the Board, the renewal period automatically "kicks in" unless either the cable operator or the municipality has timely and adequately notified the other party and the OCTV&T of its intention not to proceed with the renewal process.

Specifically, N.J.A.C. 14:18-13.6(a)(1) mandates that, in order to negate the effect of an automatic renewal provision in a cable franchise,

[a]t least 60 days prior to the expiration of the initial term, either the municipality or the cable television company must serve both the other party and the Office of Cable Television with a notice of intention not to accept renewal in order to deny renewal.

Additionally, N.J.A.C. 14:18-13.6(a)(2) further provides that:

[p]rior to giving notice of intention not to accept automatic renewal, a municipality must hold a public hearing with a record of the hearing made in the manner in which the municipality causes its general public hearing records to be made upon 30 days' notice to the public and the cable television company.

The Board has noted that "the procedural rules provided at N.J.A.C. 14:18-13.6, unless expressly waived by this Board, must be satisfied prior to the issuance of a notice of intention not to accept an automatic renewal." I/M/O Petition of SCS TKR, Inc. d/b/a Cablevision of Raritan Valley for Renewal of a Certificate of Approval to Continue to Operate and Maintain a Cable Television System in the Borough of Sayreville, County of Middlesex, State of New Jersey, BPU Docket No. CE06110787 (August 22,

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2007) (denying request of the Borough of Sayreville to not issue a Certificate of Automatic Renewal in light of Borough's failure to provide sixty(60) days' notice and to hold the requisite public hearing).

Here, the Township neither provided the mandatory sixty (60) days' notice prior to the expiration of the term of the franchise, nor did it copy the OCTV&T on its (defective) notification, nor did the Township hold a public hearing, all in contravention of both N.J.A.C. 14:18-13.6(a)(1) and (2).<sup>2</sup> The 1998 COA was due to expire on December 30, 2012. A notice of intention not to renew, therefore, to be valid, was required to have been issued no later than October 31, 2012. The Township's letter was not issued, however, until December 5, 2012.

The Township asserts that pursuant to the 1998 Renewal Certificate of Approval, Comcast agreed to extend cable services at its own cost one mile each year for five years and that this has not been accomplished. Additionally, the Township points out that recently proposed residential communities and the County Office of Emergency Management facility require additional considerations by Comcast. These arguments and factual assertions, however, are precisely the issues intended to be discussed and considered at a public hearing.

I **CONCLUDE** that the Township's December 5, 2012, letter failed to comply with N.J.A.C. 14:18-13.6(a)(1), in that it was not timely issued and was not served upon the OCTV&T. I further **CONCLUDE** that there was no express waiver issued by the BPU with respect to the Township's failure to comply with the provisions of N.J.A.C. 14:18-13.6.

Moreover, the Township failed to conduct a public hearing prior to issuing its December 5, 2012, letter, as required by N.J.A.C. 14:18-13.6(a)(2). Consequently, there was no "substantial evidence in the record [of the hearing required to be conducted by Downe] leading to a finding that the cable television operator has not met the criteria of N.J.A.C. 14:18-13.7(a)(1) through (4)". Therefore, I **CONCLUDE** that the

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<sup>2</sup> Nor did Comcast provide such a notice.



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Township failed to meet the requirements necessary under N.J.A.C. 14:18-3.6 to not accept the automatic renewal provision contained in the 1998 COA. Comcast is therefore entitled to implement the automatic renewal provision of its 1998 COA, effective December 30, 2012, the scheduled expiration date of the 1998 COA's initial term.

**ORDER**

Accordingly, I **ORDER** that Comcast is hereby entitled to implement the automatic renewal provision of its 1998 COA, effective December 30, 2012, the scheduled expiration date of the 1998 COA's initial term.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, OF THE OFFICE OF CABLE TELEVISION, BOARD OF PUBLIC UTILITIES, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0350**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

10/12/18  
DATE

  
JOHN S. KENNEDY, ALJ

Date Received at Agency:

October 12, 2018

Date Mailed to Parties:

October 12, 2018

JSK/dm

**WITNESSES**

**For Appellant:**

None

**For Respondent:**

None

**EXHIBITS**

**For Appellant:**

- P-1 Petitioner's Motion for Summary Decision, filed June 15, 2016
- P-2 Petitioner's rebuttal brief, filed December 8, 2018

**For Respondent:**

- R-1 Respondent's letter brief in opposition to petitioner's Motion for Summary Decision, filed October 26, 2018

IN THE MATTER OF THE PETITION OF COMCAST OF SOUTH JERSEY, LLC FOR A  
RENEWAL CERTIFICATE OF APPROVAL TO CONTINUE TO CONSTRUCT, OPERATE AND  
MAINTAIN A CABLE TELEVISION SYSTEM IN AND FOR THE TOWNSHIP OF DOWNE,  
COUNTY OF CUMBERLAND, STATE OF NEW JERSEY

BPU DOCKET NO. CE13010007  
OAL DOCKET NO. CTV 03657-16

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