



Agenda Date: 8/16/23
Agenda Item: 3D

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

OFFICE OF CABLE TELEVISION
AND TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF COMCAST) CERTIFICATE OF APPROVAL
OF NORTHWEST NEW JERSEY, LLC FOR A)
CERTIFICATE OF APPROVAL TO CONTINUE TO)
CONSTRUCT, OPERATE AND MAINTAIN A CABLE)
TELEVISION SYSTEM IN AND FOR THE)
TOWNSHIP OF LOPATCONG, COUNTY OF)
WARREN, STATE OF NEW JERSEY) DOCKET NO. CE23030105

Parties of Record:

Stan Barrett, Esq., Scarinci Hollenbeck, LLC, on behalf of Comcast of Northwest New Jersey, LLC
Margaret Beth Dilts, Clerk, Township of Lopatcong, New Jersey

BY THE BOARD:

On or about March 9, 2022, Comcast of Northwest New Jersey, LLC (“Petitioner”) filed an application for municipal consent with the Township of Lopatcong (“Township”), pursuant to N.J.S.A. 48:5A-23 and N.J.A.C. 14:18-11.1 et seq., seeking approval to construct a cable television system and place facilities in, along, beneath or over highways and other public places located within the Township.¹ On March 23, 2022, the Petitioner filed an application for municipal consent with the Office of Cable Television and Telecommunications (“OCTV&T”). On November 15, 2022, the OCTV&T conducted a preliminary review of the draft ordinance, pursuant to N.J.A.C. 14:18-11.18, and noted several areas of correction for the parties to address. The ordinance contained errors and omissions, which had the potential to impact several provisions of the ordinance, especially in relation to the provision of free service to municipal service properties and the system-wide public access channel.

¹ The Board previously approved a Cable Television Franchise for Service Electric Cable T.V. of Hunterdon, Inc. in the Township, which was renewed. See In re the Petition of Service Electric Cable T.V. of Hunterdon, Inc. for the Renewal of the Certificate of Approval for the Continued Construction, Operation and Maintenance of a Cable Television and Cable Communications System in the Township of Lopatcong, County of Warren, State of New Jersey, BPU Docket No. CE15121365, Order dated March 18, 2016.

On December 7, 2022, the Township, after public hearing, adopted an ordinance granting municipal consent to the Petitioner (“Ordinance”). The Petitioner formally accepted the terms and conditions of the Ordinance on February 20, 2023.

On March 1, 2023, the Petitioner filed a petition with the New Jersey Board of Public Utilities (“Board”) for an Initial Certificate of Approval (“Certificate”) for the construction, operation and maintenance of a cable television system in the Township, pursuant to N.J.S.A. 48:5A-15, 16, and 17, and N.J.A.C. 14:18-12.1 et seq. On April 21, 2023, the OCTV&T sent a letter to the Petitioner, indicating that the Ordinance did not contain the recommended amendments from the preliminary ordinance review letter of November 15, 2022. The Petitioner confirmed by written correspondence on May 11, 2023, that it would comply with the OCTV&T’s Ordinance review letter.

DISCUSSION AND FINDINGS

The Board has reviewed the application for initial municipal consent, the Ordinance, and the petition for a Certificate. Based upon this review and the recommendation of the OCTV&T, the Board **HEREBY FINDS** the following:

1. The Petitioner possesses the requisite legal, character, financial, and technical qualifications for the awarding of a Certificate. Further, these qualifications were reviewed by the Township in conjunction with the municipal consent process.
2. The design and technical specifications of the system shall ensure that the Petitioner provides safe, adequate, and proper service.
3. The franchise period as stated in the Ordinance is 10 years from the effective date of this Certificate, pursuant to N.J.S.A. 48:5A-19 and 25. The Board finds this franchise period reasonable.
4. The Township has reserved the right to review the Petitioner’s performance with regard to the Ordinance. In the event that the Township shall find that the Petitioner has not substantially complied with the material terms and conditions of the Ordinance, the Township shall have the right to petition the Board for appropriate administrative action, pursuant to N.J.S.A. 48:5A-47, provided, however, that the Township shall first have given the Petitioner written notice of all alleged instances of non-compliance and an opportunity to cure the same within 90 days of that notification. If, after such reasonable notice and opportunity to cure, the Petitioner has not cured any such findings of non-compliance, the Township may petition the Board for appropriate administrative action, including modification and/or termination of the Certificate.
5. The Petitioner shall proffer cable service to any residence or business along any public right-of-way in the Primary Service Area, at no cost beyond standard and non-standard installation charges, as set forth in the Petitioner’s application. The Petitioner shall utilize the line extension policy attached to the Certificate (Appendix “I”) for any extension outside of the Primary Service Area. The minimum homes per mile (“HPM”) figure is 35.
6. The Petitioner shall maintain an informational schedule 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 OCTV&T. All complaints shall be received and processed in accordance with any applicable rules.
8. During the term of this franchise, and any renewal thereof, the Petitioner shall maintain a local business office or agent for the purpose of receiving, investigating and resolving complaints regarding the quality of service, equipment malfunctions, and similar matters. The Petitioner currently maintains a local office located at 155 Port Murray Road, Port Murray, New Jersey.
9. The franchise fee to be paid to the Township is specified to be 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 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 access channels and facilities in accordance with its application and the Ordinance. Specifically, the Petitioner shall make available one (1) system-wide public access channel maintained by the Petitioner. The channel will be available to new customers, organizations and entities served by the Petitioner. Qualified individuals and organizations may utilize the public access channel for the purpose of cablecasting non-commercial access programming in conformance with the Petitioner's published public access rules.
11. The Petitioner shall provide courtesy cable television service on one (1) outlet to the municipal building, schools, fire department facility, first aid squad, library, community or senior center, and public works facility, provided each facility is within 200 feet of active cable distribution plant. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the Township or school requesting service. Monthly service charges shall be waived on all additional outlets except for equipment.
12. The Petitioner shall be required to complete all proposed construction within the service area as described in its application within one (1) year of the effective date of the Certificate. The timetable as represented in the application has been determined as reasonable by the Township. Upon completion, the Petitioner shall submit proof to the Office of Cable Television and Telecommunication indicating its compliance with this provision.

The Board notes that the Ordinance does not contain the recommended amendments from the ordinance review conducted by the OCTV&T. Specifically, the Ordinance is missing the following recommendations:

- a) Section 2(i) of the Ordinance regarding the definition for the Primary Service Area was recommended to be revised to state, in part, that the Primary Service Area consists of the areas of the municipality where the Petitioner shall provide service at standard and non-standard installation rates, as set forth in the map annexed to the Petitioner's application for municipal consent and as agreed to by the parties;

- b) Section 7 of the Ordinance regarding the line extension policy was recommended to specify that the HPM figure above shall be used in conjunction with the proposed line extension policy;
- c) Section 8 of the Ordinance contained an error in Subsections b. and c., where the Township was referred to as a City;
- d) Section 14(a) of the Ordinance did not include schools in the list of municipal service properties that will be provided with courtesy cable television service;
- e) Section 15 states the Petitioner shall continue to make available a system-wide public access channel and continue to provide a system-wide leased access channel, which is an error, as this is an initial application, and;
- f) the Ordinance did not contain a reference to the construction timetable, which language is stated in provision 12.

In lieu of amending the Ordinance, the Petitioner confirmed by written correspondence on May 11, 2023 that it would comply with the terms of the above-referenced recommendations as reflected above.

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, and 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 Certificate as evidence of Petitioner's authority to construct and operate a cable television system within the entirety of the Township.

This Certificate is issued on the condition that there be no sale, transfer, or lease of the Certificate, or assets of the Petitioner, until one (1) year after the completion and commencement of service within the initial service area. The Board will not approve any such transactions, including but not limited to, transfer of control or ownership of stock, until said period has expired.

The Petitioner shall provide the OCTV&T with construction status reports every 30 days beginning within 60 days of the effective date of this Certificate. The reports shall include, but not be limited to: a) account of the total miles of plant projected, both aerial and underground; b) the total miles of plant yet to be built, both aerial and underground; c) the number, dates of submission, and a percentage of the total make-ready surveys submitted to the utilities; d) the number, dates received, and a percentage of the total make-ready (e.g. total miles released by utilities); e) licenses received; f) miles of fiber stranded; g) miles of cable stranded; h) miles of aerial plant constructed; i) miles of underground fiber constructed; j) miles of underground plant constructed; k) total plant constructed; and l) miles of activated plant.

This Certificate is subject to all applicable State and federal laws, the rules and regulations of the OCTV&T, 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 OCTV&T and/or the terms, conditions, and limitations set forth herein may constitute sufficient grounds for the suspension or revocation of this Certificate.

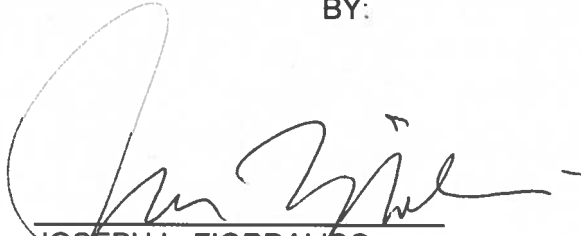
This Certificate is issued on the representation that the statements contained in the Petitioner's applications are true, and the undertakings therein contained shall be adhered to and be enforceable unless specific waiver is granted by the OCTV&T pursuant to the authority contained in N.J.S.A. 48:5A-1 to 64.

This Certificate shall expire on August 23, 2033.

This Order shall be effective on August 23, 2023.

DATED: August 16, 2023

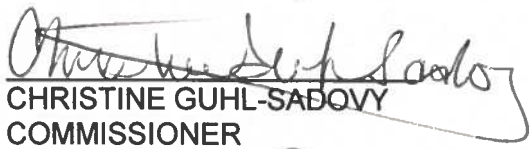
BOARD OF PUBLIC UTILITIES
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ATTEST:


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"
Office of Cable Television and Telecommunications
Line Extension Policy

Company: Comcast of Northwest New Jersey, LLC
Municipality: Township of Lopatcong, County of Warren

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. $\frac{\text{\# of homes in extension}}{\text{mileage of extension}} = \text{homes per mile ("HPM") of extension}$
2. $\frac{\text{HPM of extension}}{\text{Minimum HPM that company actually constructs in the system*}} = \text{ratio of the density of the extension to the minimum density that the company constructs in the system ("A")}$
3. $\text{Total cost of building the extension times "A"} = \text{company's share of extension cost}$
4. $\text{Total cost of building extension less company's share of extension cost} = \text{total amount to be recovered from subscribers}$
5. $\frac{\text{Total amount to be recovered from subs}}{\text{Total subscribers in extension}} = \text{each subscriber's share}$

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. CE23030105

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