

**TOWNSHIP OF BERKELEY**

**ORDINANCE NO. 22-04-OAB**

**AN ORDINANCE OF THE TOWNSHIP OF BERKELEY, COUNTY OF OCEAN, STATE OF NEW JERSEY GRANTING MUNICIPAL CONSENT FOR THE OPERATION OF A CABLE SYSTEM WITHIN THE TOWNSHIP OF BERKELEY, NEW JERSEY TO CABLEVISION OF MONMOUTH, INC.**

January 24, 2022

**WHEREAS**, the governing body of the Township of Berkeley (hereinafter referred to as the "Township") determined that Cablevision of Monmouth, Inc., (hereinafter referred to as "the Company" or "Cablevision") has the technical competence and general fitness to operate a cable system in the Township, and by prior ordinance granted its municipal consent for Cablevision to obtain a non-exclusive franchise for the placement of facilities and the establishment of a cable television system in the Township; and

**WHEREAS**, by application for renewal consent filed with the Township and the Office of Cable Television on or about May 11, 2020 Cablevision has sought a renewal of the franchise; and

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

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

**NOW THEREFORE, BE IT ORDAINED** by the Mayor and Council of the Township of Berkeley, County of Ocean, 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 Township 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) "Township" shall mean the governing body of the Township of Berkeley in the County of Ocean, and the State of New Jersey.

- (e) "Company" shall mean Cablevision of Monmouth, Inc. ("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) "State" shall mean the State of New Jersey.
- (j) "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 Township 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 Township 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 franchise territory poles, wires, cables, and fixtures necessary for the maintenance and operation of a cable television system, and for the provision of any communication service over the such system as may be authorized by federal or State regulatory agencies. 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 fifteen (15) years from the date of issuance of a Certificate of Approval by the Board.

## **SECTION 5. EXPIRATION AND SUBSEQUENT RENEWAL**

If Cablevision seeks a renewal of the consent provided herein, 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. The Company shall also petition the Board for approval authorizing continued operation during the period following expiration of the



consent granted herein, and until such a time that a decision is made by the Township and the Board relative to the renewal of said consent.

#### **SECTION 6. FRANCHISE TERRITORY**

The consent granted under this Ordinance to Cablevision shall apply to the entirety of the barrier island portion of the Township (commonly known as South Seaside Park) including the Pelican Island portion of the Township.

#### **SECTION 7. SERVICE AREA**

Cablevision shall be required to proffer video programming service along any public right-of-way to any person's residence located in the franchise territory at tariffed rates for standard and nonstandard installation.

#### **SECTION 8. FRANCHISE FEE**

Pursuant to the terms and conditions of the Cable Television Act, Cablevision shall pay to the Township, 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 Township. In the event applicable law hereinafter permits a larger franchise fee to be collected, but does not fix the amount thereof, the Township and Cablevision shall negotiate in good faith with respect to the amount thereof.

#### **SECTION 9. FREE SERVICE**

Cablevision shall, upon request, provide free of charge, one (1) standard installation and monthly cable television reception service to all State or locally accredited public elementary and secondary schools and all municipal public libraries, as well as municipal buildings located within the franchise territory that are used for municipal governmental purposes.

#### **SECTION 10. 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 plant and facilities in the Township:

(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, as determined by the Township's engineer under the Township's generally applicable laws, rules and regulations.

(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 Township 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 Township, 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 within the franchise territory of the Township 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 11. 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 12. 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 13. 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 14. 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 Township 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 15. PERFORMANCE BOND**

Cablevision shall obtain and maintain, at its sole cost and expense, during the entire term of this Ordinance, a bond in form acceptable 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 16. RATES**

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

B. Cablevision shall implement a senior citizen discount in the amount of a minimum of ten percent (10%) off the monthly rate of the broadcast basic level of cable television reception



service to any person sixty-two (62) years of age or older who subscribes to the Company's cable television service, subject to the following:

- (i) Such discount shall only be available to eligible senior citizens who do not share the subscription with more than one person in the same household who is less than sixty-two (62) years of age; and,
- (ii) In accordance with N.J.S.A. 48:5A-11.2, subscribers seeking eligibility for the discount must meet the income and residence requirements of the Pharmaceutical Assistance to the Aged and Disabled program pursuant to N.J.S.A. 30:4D-21; and,
- (iii) The senior discount herein relates only to the broadcast basic level of cable television service, and shall not apply to any additional service, feature, or equipment offered by the Company, including any premium channel services and pay-per-view services; and,
- (iv) Senior citizens who subscribe to a level of cable television service beyond expanded basic service, including any premium or per channel a la carte service, shall not be eligible for the discount.

#### **SECTION 17. 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 Township pursuant to state and federal requirements. The Company shall in no way be held liable for any injury suffered by the Township 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 Township shall utilize the state-approved procedures for such emergency uses.

#### **SECTION 18. EQUITABLE TERMS**

In the event that another multi-channel video program provider's service within the franchise territory of the Township creates a significant competitive disadvantage to Cablevision, the Company shall have the right to request from the Township 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 Township 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 Township 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 Township shall be under no obligation to support Cablevision's request for such relief from the Board.

Cablevision represents and acknowledges that as of the date of its acceptance of this municipal consent, competition within the franchise territory of the Township has not yet risen to the level of creating a significant competitive disadvantage sufficient to enable the Company to seek relief under this Section.

## **SECTION 19. 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 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 20. PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ACCESS**

A. Cablevision shall continue to make available non-commercial public, educational and governmental (PEG) access as described in the Application for municipal consent.

B. The Township agrees that Cablevision shall retain the right to use the PEG access channel, or portion thereof, for non local PEG access programming, during times when the Township 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 local PEG programming shall be subordinate to the Township's provision of PEG access programming on such channel.

C. In consideration for the rights granted in this Ordinance, Cablevision will provide the Township with the equipment detailed in Exhibit A (or its reasonable equivalent) for the purpose of allowing the Township to operate a community bulletin board for Cablevision customers located in the franchise territory. The Township's community bulletin board will be displayed on the current public access/local programming channel or any subsequent channel to which public access/local programming is relocated. Throughout the term of this Ordinance the Company will be responsible for the ongoing maintenance and repair of the equipment provided in this subsection.

## **SECTION 21. INCORPORATION OF APPLICATION**

All of the commitments contained in the Application and any amendment thereto submitted in writing to the Township 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 22. CONSISTENCY WITH APPLICABLE LAWS**

This consent shall be construed in a manner consistent with all applicable federal, State and local laws.

## **SECTION 23. 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 24. EFFECTIVE DATE**

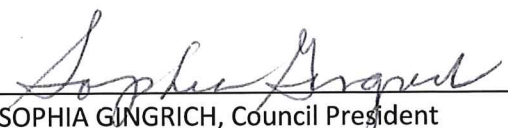
This Ordinance shall take effect upon issuance of a Certificate of Approval as issued by the Board of Public Utilities.

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

Signed this 28<sup>th</sup> day of February, 2022.



CARMEN F. AMATO, JR., Mayor



SOPHIA GINGRICH, Council President  
JOHN BACCHIONE, Council Vice President

**NOTICE**

**NOTICE IS HEREBY GIVEN** that the foregoing ordinance was introduced and passed on first reading at a regular meeting of the Township Council of the Township of Berkeley, in the County of Ocean, State of New Jersey, held on January 23, 2022, and will be considered for second reading and final passage at the regular meeting of said Governing Body to be held on the **28<sup>th</sup>** day of **February 2022**, at 6:00 p.m., or as soon thereafter as this matter can be reached, at the meeting room of the Municipal Building located at 627 Pinewald-Keswick Road, Bayville, New Jersey, at which time all persons interested shall be given an opportunity to be heard concerning this ordinance.



BEVERLY M. CARLE, RMC

Township Clerk, Township of Berkeley

**EXHIBIT A**



## **Schedule "A"**

### **List of Equipment for PEG Station**

Fiber Optic Based Feed from Cablevision's network, all construction costs associated with feed and termination in the Town's premises in South Seaside Park

Media Converters / Transceivers or other devices needed to implement Video Equipment integration with Cablevision's network.

Digital encoding device/s capable of accepting input from standard computer outputs (HDMI, or DP, or VGA) and formatting it so that it can be broadcast on the provided channel.

Digital encoding device/s capable of accepting live or recorded feed from Video Camera below for broadcasting Council Meetings.

1 Video camera capable of providing a live and or recorded feed of Town Council meetings on the provided channel.