

ORDINANCE 173

AN ORDINANCE GRANTING MUNICIPAL CONSENT TO FUTUREVISION CABLE ENTERPRISES, INC., ITS SUCCESSORS OR ASSIGNS, TO OWN, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE VILLAGE OF LOCH ARBOUR, COUNTY OF MONMOUTH, AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF MUNICIPAL CONSENT.

BE IT ORDAINED AND ENACTED by the Board of Trustees of the Village of Loch Arbour, County of Monmouth and State of New Jersey,

Section I. Short Title.

This Ordinance shall be known and may be cited as the "Futurevision Cable Enterprises, Inc., Municipal Consent Ordinance".

Section 2. Definitions.

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number; and words in the singular number shall include the plural number. The word "shall" is always mandatory and not merely directory.

- (a) "Municipality" is the Village of Loch Arbour, County of Monmouth and State of New Jersey.
- (b) "Company" is the grantee of rights under this Ordinance and is known as Futurevision Cable Enterprises, Inc.
- (c) "Act" or "Cable Television Act" is L.1972,c.186; R.S.48:5A-1 et seq.
- (d) "FCC" is the Federal Communications Commission.
- (e) "OCT" is the Office of Cable Television, a unit of the New Jersey Department of Public Utilities.

All other terms used in this Ordinance for which definitions are, or may be set forth in the Act, the rules and regulations of the OCT or the FCC shall have the meanings set forth in those sources.

Section III. Qualification of Grantee and Grant of Authority

A public hearing concerning the grant of the Consent herein grant to the Company, conforming to the FCC Rules and Regulations concerning cable television operations, was held pursuant to the terms and conditions of the Act. Notice of said hearing having been published in advance and the hearing held as above stated, and said hearing having been fully open to the public, and the Village having received at said hearing, all comments regarding the qualifications of the Company to receive this Consent, the Village hereby finds that the Company possesses the necessary legal, technical, character, financial and other qualifications requisite of a proper cable television franchisee, and that the Company's operating and construction arrangements are adequate and feasible, and that therefore, the Village hereby grants to the Company a non-exclusive Consent, right and privilege to construct, erect, operate, modify and maintain, in upon, along, across, above, over and under the highways, streets, alleys, sidewalks, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto, in the Village, poles, wires, cables. Underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation within the village of a Cable Television system and Cable Communications System for the purpose of distributing television and radio signals, and other electronic impulses in order to furnish television and radio programs, and various communications and other electronic services to the public. The right so granted includes the right to use and occupy said highways, streets, alleys, public ways and public places and all manner of easements for the purpose herein set forth.

Section IV. Duration of Consent.

The consent granted to the Company herein shall terminate fifteen (15) years from the effective date of this Ordinance, subject to renewal for a period of ten (10) years, in accordance with the Act and FCC Rules in effect at the time of renewal, including a public proceeding affording due process if therein required.

Section V. Payments to the Village.

Pursuant to the terms and conditions of the Act, the Company shall, during each year of operation under the Consent granted herein, pay to the Village, two (2%) percent of the annual gross subscriber revenues received by the Company for cable television reception service rendered to subscribers located within the Village.

Section VI. Territory to which Applicable.

The Consent granted herein to the Company shall apply to the entire territory of the Village, to include any territories hereinafter annexed.

Section VII. System Construction.

The Company shall have completed significant construction within one year of the date upon which it receives a certificate of Approval in

accordance with the provisions of N.J.S.A. 48:5A-15 and has filed a registration statement with the FCC. Thereafter, the Company shall construct reasonable amounts of cable television plants, so as to complete construction within the Village in all areas having a density of housing as set forth in Section VIII, within five (5) years of the date upon which it shall have both received its certificate of approval and filed its registration statement.

Section VIII. Extension of Service.

The Company shall be required to offer service to any residence or business located within the territory of the Village which is within reasonable proximity to the cable television system.

Section IX. Local Office-Complaint Procedures.

During the term of this Consent, and any renewal thereof, the Company shall maintain a business office or agent for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions and similar matters. Such business office shall be open during normal business hours.

Section. Complaint Officer.

The Office of Cable Television is hereby designated as the Complaint Officer for the Village pursuant to the provisions of N.J.S.A. 48:5A-26b. All complaints shall be received and processed in accordance with the provisions of New Jersey Administrative Code 14:17-7.1.

Section XI. Performance Bond.

The Company shall, prior to commencement of any construction, give to the Village, a bond which shall be in the penal sum of not less than \$25,000, which bond shall be kept in effect during the entire period of construction and during the entire life of the franchise. This bond shall insure the faithful performance of all undertakings by the Company as represented in its application for the Consent herein granted, and shall also insure that if the system is abandoned, the Village will have the benefit of the bond to dismantle the system.

Section XII. Rates.

The Company's initial rates for service shall conform to the rates set forth in the application for municipal consent which is incorporated herein by reference. Monthly service charges for converters, when and if required, will be determined by the particular equipment required and the fair market value of said equipment. No increase in rates charged to subscribers for cable television reception service shall be made except as provided for by the Act and by the Rules and Regulations of the OCT and pursuant to the requirements of the Rules of the FCC.

Section XIII. Compliance with FCC Rules and Regulations.

The Company shall, at all times, comply with the Rules and Regulations governing cable television operations promulgated by the FCC, specifically those set out in Section 76.31 of the FCC Rules and Regulations. This shall include adherence by the Company to FCC Rules regarding technical and engineering specification involved in any additional construction of the CATV System and signal carriage therein.

Section XIV. Modification of FCC Rules.

Consistent with the requirements of Rule 76.31 (a) (6) of the FCC, any modification of Rule 76.31 resulting from amendment thereto by the FCC shall, to the extent applicable, be considered as a part of this Consent as of the effective date of the amendment made by the FCC, and shall be incorporated into this Consent Ordinance by specific amendment thereto by the lawful action of the Board of Trustees within one (1) year from the effective date of the FCC's amendment or at the time of renewal of this Consent, whichever occurs first.

Section XV. Compliance with Act.

This Ordinance is subject to all provisions of the act and all lawful rules and regulations of the Office of Cable Television of the Department of Public Utilities of the State of New Jersey, adopted pursuant thereto. The Company shall, at all times, comply with the rules and regulations governing cable television operations promulgated by the State of New Jersey as provided by the Act.

Section XVI. Company Rules and Regulations.

The Company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this Consent, and to insure uninterrupted service to each and all of its subscribers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof, or of Federal and State law.

Section XVII. Separability

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

Section XVIII. Effective Date of the Ordinance.

The Consent herein shall become effective as of the date upon which the Village receives written notification that the Company accepts the terms and conditions set forth herein.

Section XIX. Ordinance Repealed.

All Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

CERTIFICATION

I, Claire Weintraub, Clerk of the Village of Loch Arbour, County of Monmouth, State of New Jersey do hereby certify that the foregoing Ordinance was adopted on the first reading on March 14, 1980 and introduced for final reading on April 18, 1980 and was adopted as finally read at that time.

RESOLUTION

WHEREAS, Ordinance No. 173 of the Village of Loch Arbour was introduced on first reading on March 14, 1980; and

WHEREAS, such Ordinance must be approved by the State of New Jersey, Department of Energy, Board of Public Utilities, Office of Cable Television; and

WHEREAS, subsequent to the passage upon first reading of Ordinance No. 173, the Office of Cable Television advised that it would require two changes to the Ordinance as a condition of approval;

NOW, THEREFORE, BE IT RESOLVED, by Board of Trustees of the Village of Loch Arbour, County of Monmouth and State of New Jersey, on this 18th day of April, 1980, as follows:

1. Section II (e) of Ordinance No. 173 shall be amended to read as follows:

“(e) OCT is the Office of Cable Television, a unit of the New Jersey Department of Energy.”

2. Section 8 of Ordinance No. 173 shall be amended to read as follows:
Section 8. Extension of service.

The Company shall be required to offer services to any residents or business located within the territory of the Village.”

3. The foregoing changes are deemed to be insubstantial amendments to the wording of the Resolution, and therefore, Ordinance No. 173 shall be published upon approval on second reading as required by law, together with a copy of this Resolution.