

## ORDINANCE 263

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

BE IT ORDAINED by the Board of Trustees of the Village of Loch Arbour, county of Monmouth, New Jersey as follows:

### Section 1. Short Title and Introduction

This Ordinance shall be known and may be cited as the "Comcast Cable Municipal Consent Renewal". The Village of Loch Arbour hereby grants to Comcast Cable Communications of Monmouth County, Inc. its non-exclusive consent to place in, upon, along, across, above, over and under the 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 Village of a cable television system and cable communication system. Construction, pursuant to said consent, is conditioned upon prior approval of the Board of Regulatory Commissioners.

### Section 2. Definitions

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. Such meaning or definition of terms is supplemental to those definitions given by the Federal Communications Commission F.C.C. Rules and Regulations, 47 C.F.R. Subsection 76.1 et seq., and the Cable Communications Policy Act of 1984, 47 U.S.C. Subsection 521 et seq., as amended, and the Cable Television Act, N.J.S.A. 48:5A-1 et seq. as amended, and shall in no way be construed to broaden, alter or conflict with federal or state definitions. The word "shall" is always mandatory and not merely directory.

- (a) "Municipality" or "Village" is the Village of Loch Arbour, County of Monmouth, New Jersey.
- (b) "Comcast" is the grantee of rights under this Ordinance and is known as Comcast Cable Communications of Monmouth County, Inc.
- (c) "Act" or "Cable Television Act" is Chapter 186 of the General laws of New Jersey, and subsequent amendments thereto, Section 48:5A-1 et seq.
- (d) "Board" is the Board of Public Utilities.

### Section 3. Statement of Findings

A public hearing concerning the consent herein granted to Comcast 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 Comcast to receive this consent, the Village of Loch Arbour hereby finds Comcast Cable Communications of Monmouth county, Inc., possesses the necessary legal, technical, character, financial and other qualifications and that the Company's operating and construction arrangements are adequate and feasible.

### Section 4. Duration of Franchise

The consent hereby granted shall expire ten (10) years from the date of expiration (August 15, 1995) of the previous Certificate of Approval issued by the Board of Public Utilities.

### Section 5. Franchise Fee

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 percent (2%) of the gross revenues from all recurring charges in the nature of subscription fees paid by subscribers to its cable television reception service in the Village or any amount permitted by the Cable Television Act or otherwise allowable by law.

### Section 6. Construction Timetable

The Village requires completion of the proposed rebuild/upgrade to a minimum 60 channel capacity within 30 months from the effective date hereof.

Section 7. Service Conditions

- (a) Comcast shall immediately advise all customers in the Village by mail that wireless converter boxes are available and that each customer shall be entitled to as many converter boxes as outlets.
- (b) Comcast shall comply with all existing customer service rules as mandated by the Board of Public Utilities and comply with any rules adopted after the date hereof.
- (c) Comcast shall conduct periodic subscriber surveys in the Village. The Village will be given a reasonable opportunity to review these surveys prior to being conducted.
- (d) Comcast shall annually report in December to the governing body of the Village with respect to any and all obligations of Comcast under this renewal of municipal consent and, in said report, shall disclose the results of any survey undertaken during the year.
- (e) Comcast shall provide public service announcements on a county-wide basis.
- (f) Comcast shall provide the installation of one outlet and basic monthly service to the Village's Municipal Building; Comcast shall also provide direct service to the Village Beach pavilion by May 15, 1996.

Section 8. Territory

The consent granted herein to Comcast shall apply to the entirety of the Village and any property hereafter annexed.

Section 9. Extension of Service

Comcast shall be required to proffer service along any public right-of-way to any person's residence or business located in the Village as set forth and in accordance with its Application for Renewal of Municipal Consent. Any additional extension of the system will be made in accordance with the line extension policy set forth in Comcast's Application.

Section 10. Construction Requirements

**Restoration:** In the event that Comcast or its agents shall disturb any pavement, street surfaces, sidewalks, driveways or other surfaces in the natural topography, Comcast shall, at its sole expense, restore and replace such places or things so disturbed in as good condition as existed prior to the commencement of said work.

**Relocation:** If at any time during the period of this consent, the Village shall alter or change the grade of any street, alley or other way or place, Comcast, upon reasonable notice by the Village, shall remove, re-lay and relocate its equipment, at its own expense.

Comcast shall temporarily move or remove appropriate parts of its facilities to allow for the moving of buildings, and machinery, or in other similar circumstance. The expense shall be born by the party requesting such action, except when requested by the Village, in which case Comcast shall bear the cost.

**Removal or Trimming of Trees:** During the exercise of its right and privileges under this franchise, Comcast shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the Village so as to prevent the braches of such trees from coming in contact with wires and cables of Comcast. Such trimming shall only be to the extent necessary to maintain proper clearance for Comcast's facilities.

Section 11. Local Office

During the terms of this franchise, and any renewal thereof, the Company shall maintain a local business office or agent for the purpose of receiving, investigating and resolving all complaints regarding the quality of service, equipment malfunctions and similar matters. Such local business office shall be open during normal business hours, and in no event less than 9:00AM to 5:00PM, Monday through Friday.

Section 12. Municipal Complaint Officer

The Office of Cable Television is hereby designated as the complaint officer for the Village of Loch Arbour, pursuant to N.J.S.A. 48:5a-26(b).

All complaints shall be received and processed in accordance with N.J.A.C.14:17-6.5.

Section 13. Performance Bond

During the life of the franchise, Comcast shall give a bond to the Village, which bond shall be in the amount of \$25,000. Such a bond shall be to insure the faithful performance of all undertakings of Comcast as represented in its application and incorporated herein.

Section 14. Rates

The rates of Comcast shall be subject to regulation as permitted by federal and state law.

Section 15. Liability Insurance and Indemnification

Comcast agrees to maintain and keep in full force and effect at its sole expense at all times during the of this consent, sufficient liability insurance naming the Village as an insured and insuring against loss by any such claim, suite, judgment, execution or demand in the minimum amount of \$1,000,000 for bodily injury or death to any one person and \$1,000,000 for bodily injury or death resulting from any one accident; \$300,000 for property damage resulting from any one accident; \$1,000,000 for all other types of liability. Comcast shall carry workers' compensation insurance with statutory limits and employers' liability insurance with limits of not less than \$250,000 which shall cover all operations performed by Comcast as a result of this Ordinance.

Comcast shall furnish the Village with copies of certificates of insurance of the policies set forth above naming the Village as an additional insured.

Section 16. Incorporation of the Application

All of the commitments and statements contained in the application and any amendment thereto submitted in writing to the Village by Comcast except as modified herein, are binding upon Comcast as terms and conditions of this consent. The application and any other relevant writings submitted by Comcast shall be annexed hereto and made a part hereof by reference as long as it does not conflict with state or federal law.

Section 17. 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 federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not effect the validity of the remaining portions hereof.

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