

# COMMUNICATIONS SYSTEM

## Chapter A86

### CABLE TELEVISION AND COMMUNICATIONS SYSTEM

- § A86-1. Purpose of the ordinance.
- § A86-2. Definitions.
- § A86-3. Statement of findings.
- § A86-4. Duration of franchise.
- § A86-5. Franchise fee.
- § A86-6. Franchise territory.
- § A86-7. Extension of service.
- § A86-8. Construction requirements.
- § A86-9. Customer service.
- § A86-10. Municipal Complaint Officer.
- § A86-11. Local office.
- § A86-12. Performance bonds.
- § A86-13. Subscriber rates.
- § A86-14. Commitments by the Company.
- § A86-15. Two-way services and interconnection.
- § A86-16. Emergency uses.
- § A86-17. Liability insurance.
- § A86-18. Incorporation of the application.
- § A86-19. Competitive equity.
- § A86-20. Severability.
- § A86-21. Third party beneficiaries.

**§ A86-22. Effective date.**

**[HISTORY: Adopted by the Township Committee of the Township of Barnegat 12-21-09 as Ord. No. 2009-36. Amendments noted where applicable.]**

**§ A86-1. Purpose of the ordinance.**

The municipality hereby grants to Comcast renewal of its non-exclusive municipal consent to place in, upon, across, above, over and under highways, streets, alleys, sidewalks, easements, public ways and public places in the municipality, poles, wires, cables, underground conduits, manholes and other television conductors, fixtures, apparatus and equipment as may be necessary for the construction, operation and maintenance in the municipality of a cable television and communications system.

**§ A86-2. 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 of the Federal Communications Commission ("FCC") rules and regulations, 47 C.F.R. Subsection 76.1 et seq., and the Cable Communications Policy Act, 47 U.S.C. Section 521 et seq., as amended, and the Cable Television Act, N.J.S.A. 48:5A-1 et seq., and shall in no way be construed to broaden, alter or conflict with the federal and state definitions:

- A. TOWN or MUNICIPALITY — The Township of Barnegat, County of Ocean, State of New Jersey.
- B. COMPANY — The grantee of rights under this ordinance and is known as Comcast of New Jersey.

- C. ACT or CABLE TELEVISION ACT — Chapter 186 of the General Laws of New Jersey, and subsequent amendments thereto, N.J.S.A. 48:5A-1, et seq.
- D. FCC — The Federal Communications Commission.
- E. BOARD or BPU — The Board of Public Utilities, State of New Jersey.
- F. OFFICE or OCTV — The Office of Cable Television of the Board.
- G. BASIC CABLE SERVICE — Any service tier, which includes the retransmission of local television broadcast signals as defined by the FCC.
- H. APPLICATION — The Company's application for renewal of municipal consent.
- I. PRIMARY SERVICE AREA or PSA — Consists of the area of the municipality currently served with existing plant as set forth in the map annexed to the company's application for municipal consent.

**§ A-86-3. Statement of findings.**

Public hearings conducted by the municipality, concerning the renewal of municipal consent herein granted to the Company were held after proper public notice pursuant to the terms and conditions of the Act and the regulations of the Board adopted pursuant thereto. Said hearings, having been fully open to the public, and the municipality, having received at said public hearings all comments regarding the qualifications of the Company to receive this renewal of municipal consent, the municipality hereby finds that the Company possesses the necessary legal, technical, character, financial and other qualifications and that the Company's operating and construction arrangements are adequate and feasible.

**§ A86-4. Duration of franchise.**

The nonexclusive municipal consent granted herein shall expire fifteen (15) years from the date of expiration of the previous certificate of approval issued by the Board (with a 10-year automatic renewal as provided by N.J.S.A. 48:5A-19 and 25, and N.J.A.C. 14:18-13.6).

In the event that the municipality shall find that the Company has not substantially complied with the material terms and conditions of this ordinance, the municipality shall have the right to petition the OCTV, pursuant to N.J.S.A. 48:5A-47, for appropriate action, including modification and/or termination of the certificate of approval; provided however, that the municipality shall first have given the Company written notice of all alleged instances of noncompliance and an opportunity to cure same within ninety (90) days of that notification.

**§ A86-5. 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 municipality two percent (2%) of the gross revenues from all recurring charges in the nature of subscription fees paid by subscribers for cable television reception service in the municipality or any higher amount permitted by the Act or otherwise allowable by law, whichever is greater.

**§ A86-6. Franchise Territory.**

The consent granted under this ordinance to the renewal of the franchise shall apply to the entirety of the municipality and any property subsequently annexed hereto.

**§ A86-7. Extension of service.**

The Company shall be required to proffer service along the public right-of-way to any person's residence or business located in those areas of the Primary Service Area as set forth in the Company's application. Any extension of plant beyond the Primary Service Area shall be governed by the Company's Line Extension Policy, as set forth in the Company's application.

**§ A86-8. Construction requirements.**

- A. Restoration. In the event that the Company or its agents shall disturb any pavement, street surfaces, sidewalks, driveways, or other surface in the natural topography, the Company shall, at its sole expense, restore and replace such places or things so disturbed in as good a condition as existed prior to the commencement of said work.
- B. Relocation. 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 municipality, shall remove, re-lay or relocate its equipment, at the expense of the Company.
- C. Removal or trimming of trees. During the exercise of its rights and privileges under this franchise, the Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks or other public places of the municipality so as to prevent the branches of such trees from coming in contact with the wires and cable of the Company. Such trimming shall be only to the extent necessary to maintain proper clearance of the Company's wire and cables.

**§ A86-9. Customer service.**

In providing services to its customers, the Company shall comply with N.J.A.C. 14:18-1, et seq. and all applicable state and federal statutes and regulations. The Company shall strive to meet or exceed all voluntary company and industry standards in the delivery of customer service and shall be prepared to report on it to the municipality upon written request of the Municipality Administrator or Clerk.

- A. The Company shall continue to comply fully with all applicable state and federal statutes and regulations regarding credit for outages, the reporting of same to regulatory agencies and notification of same to customers.
- B. The Company shall continue to fully comply with all applicable state and federal statutes and regulations regarding the availability of devices for the hearing impaired and the notification of same to customers.
- C. The Company shall use every reasonable effort to meet or exceed voluntary standards for telephone accessibility developed by the National Cable Television Association (NCTA).
- D. Nothing herein shall impair the right of any subscriber or the municipality to express any comment with respect to telephone accessibility to the Complaint Officer, or impair the right of the Complaint Officer to take any action that is permitted under law.

**§ A86-10. Municipal Complaint Officer.**

The Township of Barnegat shall remain as the Complaint Officer for the municipality. All complaints shall be received and processed in accordance with N.J.A.C. 14:17-6.5. The municipality shall have the right to request copies of records and reports pertaining to complaints by municipality customers from the OCTV.

**§ A86-11. Local office.**

During the term of this franchise, and any renewal thereof, the Company shall maintain a business office or agent in accordance with N.J.A.C. 14:18-5.1 for the purpose of receiving, investigating and resolving all local complaints regarding the quality of service, equipment malfunctions, and similar matters. Such a business office shall have a publicly listed toll-free telephone number and be open during standard business hours, and in no event (excepting emergent circumstances) less than 9:00 a.m. to 5:00 p.m., Monday through Friday.

**§ A86-12. Performance bonds.**

During the life of the franchise the Company shall give to the municipality a bond in the amount of twenty-five thousand dollars (\$25,000.). Such bond shall be to insure the faithful performance of all undertakings of the Company as represented in its application for municipal consent incorporated herein.

**§ A86-13. Subscriber rates.**

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

**§ A86-14. Commitments by the Company.**

- A. The Company shall provide Total Preferred cable television service on one (1) outlet at no cost to each school in the municipality, public and private, elementary, intermediate and secondary, provided the school is within one hundred seventy-five (175) feet of active cable distribution plant. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the school requesting service. Monthly service charges shall be waived on all additional outlets.

- B. The Company shall provide Total Preferred cable television service at no cost on one (1) outlet to each police, fire, emergency management facility and public library in the municipality, provided the facility is located within one hundred seventy-five (175) feet of active cable distribution plant. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the municipality. Monthly service charges shall be waived on all additional outlets.
- C. A one-time technology grant of sixty-five thousand dollars (\$65,000.) to be paid within 12-month of the BPU issuing the Certificate of Approval.
- D. Provide one (1) Government Access Channel and one (1) Educational Access Channel within 12-months of the BPU issuing the certificate of approval.

**§ A86-15. Two-way services and interconnection.**

In the event that the municipality determines that it is necessary and feasible for it to contract with the Company for the purpose of providing two-way or interconnection services, the Company shall be required to apply to the BPU for approval to enter into and establish the terms and conditions of such contract. All costs for such application to the BPU shall be borne by the municipality.

**§ A86-16. Emergency uses.**

The Company will comply with the Emergency Alert System ("EAS") rules in accordance with applicable state and federal statutes and regulations.

The Company shall in no way be held liable for any injury suffered by the municipality 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.



**§ A86-17. Liability insurance.**

The Company shall at all times maintain a comprehensive general liability insurance policy with a single limit amount of one million dollars (\$1,000,000.) covering liability for any death, personal injury, property damages or other liability arising out of its construction and operation of the cable television system, and an excess liability (or "umbrella") policy in the amount of five million dollars (\$5,000,000.).

**§ A86-18. Incorporation of the application.**

All of the statements and commitments contained in the application or annexed thereto and incorporated therein, and any amendment thereto, except as modified herein, is binding upon the Company as terms and conditions of this consent. The application and other relevant writings submitted by the Company shall be annexed hereto and made a part hereof by reference provided same do not conflict with applicable state or federal law.

**§ A86-19. Competitive equity.**

Should the municipality grant a franchise to construct, operate and maintain a cable television system to any other person, corporation or entity on terms materially less burdensome or more favorable than the terms contained herein, the Company may substitute such language that is more favorable or less burdensome for the comparable provision of this ordinance subject to the provisions of N.J.A.C. 14:17-6.7.

**§ A86-20. 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 its validity

or unconstitutionality shall not affect the validity of the remaining portions of the ordinance.

**§ A86-21. Third party beneficiaries.**

Nothing in this franchise or in any prior agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of such agreements or franchise.

**§ A86-22. Effective date.**

This ordinance shall take effect immediately upon issuance of a renewal certificate of approval from the BPU.