

**BOROUGH OF MANVILLE**

**ORDINANCE NO. 2008-1070**

**AN ORDINANCE GRANTING MUNICIPAL CONSENT FOR THE OPERATION OF A CABLE TELEVISION SYSTEM WITHIN THE BOROUGH OF MANVILLE, NEW JERSEY TO CSC TKR, Inc. d/b/a CABLEVISION OF RARITAN VALLEY**

**WHEREAS**, the governing body of the Borough of Manville (hereinafter referred to as the "Borough") determined that CSC TKR, Inc. d/b/a Cablevision of Raritan Valley, (hereinafter referred to as "the Company" or "Cablevision") had the technical competence and general fitness to operate a cable television system in the Borough, 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 Borough; and

**WHEREAS**, by application for renewal consent filed with the Borough and the Office of Cable Television on or about November 4, 2003, Cablevision has sought a renewal of the franchise; and

**WHEREAS**, the Borough having held public hearings has made due inquiry to review Cablevision's performance under the Franchise, and to identify the Borough'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 Borough's future cable-related needs and interests; and

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

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

- (e) “Company” shall mean CSC TKR, Inc. d/b/a Cablevision of Raritan Valley (“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) “Standard installation” shall mean the installation of drop cable to a customer’s premise where the distance from the point of entry into the building being served is less than 150 feet from the active cable television system plant.
- (j) “State” shall mean the State of New Jersey.
- (k) “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 Borough 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 Borough 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 municipality poles, wires, cables, and fixtures necessary for the maintenance and operation in the Borough 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 ten (10) years from the date of issuance of a Certificate of Approval by the Board.

Within ninety (90) **days** of the fifth (5<sup>th</sup>) anniversary of the effective date of this consent, the Borough may notify Cablevision in writing that it wishes to meet with Cablevision to discuss the terms

of this consent, and Cablevision shall meet with members of the Town Board and/or the Town Attorney within a reasonable time period from the date of the request. In considering any suggestions made by the Borough regarding this consent, Cablevision may take into account the costs of such suggestions, the number of subscribers in the Borough, the impact of any changes to the consent on Cablevision's municipal consent negotiations elsewhere in the State and such other business considerations as Cablevision determines in its sole discretion are relevant. The parties agree that Cablevision's obligations under this Section 4 are limited to good faith discussions with the Borough. Nothing herein shall be construed as imposing any legal obligation on Cablevision or the Borough to seek or agree to amendment of this consent or amendment of Cablevision's Renewal Certificate of Approval before the BPU, pursuant to N.J.S.A. 48:5A-47 and N.J.A.C. 14:17-6.7, it being the parties' intent in this Section 4 only to provide a mechanism for **the Town to discuss** its suggestions or concerns with the terms of the consent with Cablevision.

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

If Cablevision seeks successive consent, 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 Borough 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 Borough and any property hereafter annexed.

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

Cablevision shall be required to proffer video programming service along any public right-of-way to any person's residence within the portion of the franchise territory, as described in the Application for municipal consent, at tariffed rates for standard and nonstandard installation.

#### **SECTION 8. EXTENSION OF SERVICE**

Cablevision shall extend service along any public right of way outside its service area to those residences within the franchise territory which are located in areas that have a residential density of twenty-five (25) homes per mile or greater, or areas with less than twenty-five (25) homes per mile where residents agree to share the costs of such extension in accordance with the line extension formula as provided by the Company in its Application for municipal consent.

#### **SECTION 9. FRANCHISE FEE**

Pursuant to the terms and conditions of the Cable Television Act, Cablevision shall pay to the Borough, 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 Borough. In the event applicable law hereinafter permits a larger franchise fee to be collected, but does not fix the amount thereof, or changes to mandate the inclusion

of revenue received by the Company for the provision of cable modem service provided over the system into the franchise fee payment authorized under the applicable cable television law, then the Borough and Cablevision shall negotiate in good faith with respect to the amount thereof.

#### **SECTION 10. 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 Borough as set forth in Exhibit A to this Ordinance.

Upon written request from the Borough, the Company shall provide to state and locally accredited elementary and secondary schools and municipal public libraries in the Borough, without charge, the following: (1) one standard installation per school or library; (2) one cable modem per installation; and, (3) basic cable modem service for the term of this Ordinance for each installation. This offer shall be subject to the terms, conditions and use policies of the Company, as those policies may exist from time to time.

Upon written request from the Borough, the Company shall provide to Manville Borough Hall, without charge, the following: (1) one standard installation; (2) one cable modem per installation; and (3) basic cable modem service for the term of this Ordinance for each installation. This offer shall be subject to the terms, conditions and use policies of the Company as those policies may exist from time to time.

#### **SECTION 11. 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 Borough:

(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.

(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 Borough 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 Borough, 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 of the Borough 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 12. 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 13. 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 14. DESIGNATION OF COMPLAINT OFFICER**

The Office of Cable Television is hereby designated as the complaint officer for the Borough pursuant to the provisions of N.J.S.A. 48:5A-26 and any complaints by local subscribers to cable television reception or service shall be filed directly with the said office. All complaints shall be reviewed and processed in accordance with N.J.A.C. 14:17-6.5.

## **SECTION 15. 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 Borough 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 16. PERFORMANCE BOND**

Cablevision shall obtain and maintain, at its sole cost and expense, during the entire term of this Agreement, a bond 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 17. 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 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.

C. In the event that Cablevision shall be required to increase its annual franchise fees in accordance with N.J.S.A. 48:5A-30(d), then such time as the new fee is instituted, Cablevision shall no longer be obligated to maintain or offer the senior discount specified in Section 17B above.

## **SECTION 18. 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 Borough pursuant to state and federal requirements. The Company shall in no way be held liable for any injury suffered by the

Borough 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 Borough shall utilize the state-approved procedures for such emergency uses.

## **SECTION 19. EQUITABLE TERMS**

In the event that the service of another multi-channel video program provider not subject to the Borough's regulatory authority within the Borough creates a significant competitive disadvantage to Cablevision, the Company shall have the right to request from the Borough 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 Borough 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 Borough 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 Borough shall be under no obligation to support Cablevision's request for such relief from the Board.

In any subsequent municipal consent, the Borough shall require, at a minimum, the same terms and conditions of any other provider of multi-channel video programming subject to the Town's regulatory authority as those contained in the instant **consent**. In the event such subsequent consent does not contain the same terms and conditions as the instant consent, Borough agrees to support the Company's petition to the Board for modification of the consent in accordance with NJSA 48:5A-47 and NJAC 14:17-6.7 to relieve the Company of competitive disadvantages identified in the Company's petition.

## **SECTION 20. 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 21. 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 Borough agrees that Cablevision shall retain the right to use the PEG access channel, or portion thereof, for non-PEG access programming, during times when the Borough 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-PEG

programming shall be subordinate to the Borough's provision of PEG access programming on such channel.

C. In consideration for the rights granted in this Ordinance, the Company shall provide the Borough with a grant in the amount of Fifteen Thousand Dollars (\$15,000.00). Such amount shall be paid in annual installments of One Thousand Five Hundred Dollars (\$1,500.00) within sixty (60) days following receipt of a written request from the Borough each year. The grant may be used by the Borough for any cable and/or other telecommunications related purpose as the Borough, in its discretion, may deem appropriate. Cablevision shall not be obligated to make any additional payments beyond year ten (10) of the franchise. Notwithstanding the foregoing, should Cablevision apply for a system-wide certification or otherwise convert its municipal consent to a system-wide certification in accordance with applicable law, it shall be relieved of any payments due and owing after the date of such conversion or award of a system-wide franchise.

## **SECTION 22. INCORPORATION OF APPLICATION**

All of the commitments contained in the Application and any amendment thereto submitted in writing to the Borough 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 23. CONSISTENCY WITH APPLICABLE LAWS**

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

## **SECTION 24. 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 25. PURPOSE OF CAPTIONS**

Captions contained in this ordinance have been inserted only for the purpose of facilitating reference to the various sections, and are not intended and shall not be utilized to construe the intent and meaning of the text of any section.

## **SECTION 26. CONSTRUCTION**

Where consistent with the context in which used in this ordinance, words importing the singular shall include the plural; words importing the plural shall include the singular; and, words importing one gender shall include all other genders.

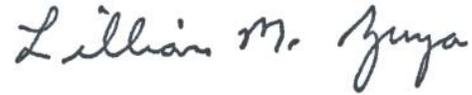
## **SECTION 27. EFFECTIVE DATE**

This ordinance shall be effective immediately upon final adoption, approval, publication in accordance with law and issuance of a Certificate of Approval as issued by the Board of Public Utilities.

### **STATEMENT OF PURPOSE**

The purpose of this Ordinance is to renew a cable television franchise.

BOROUGH OF MANVILLE

A handwritten signature in black ink that reads "Lillian M. Zuza". The signature is written in a cursive style with a large initial "L" and a prominent "Z".

Lillian M. Zuza, Mayor

**ORDINANCE #2008-107 0**

**FIRST READING:**

Introduced	Seconded	Council	Yes	No	Abstain	Absent
		ASHER	√			
		KOMOROSKI				√
√		OTRIMSKI	√			
		PETROCK				√
		QUICK	√			
	√	SZABO	√			
		MAYOR ZUZA				

**PASSED** this 14<sup>th</sup> day of July, 2008.

Attest:

Philip E. Petrone, Borough Clerk

**SECOND READING:**

Introduced	Seconded	Council	Yes	No	Abstain	Absent
		ASHER	√			
		KOMOROSKI	√			
		OTRIMSKI	√			
	√	PETROCK	√			
√		QUICK	√			
		SZABO	√			
		MAYOR ZUZA				

**PASSED** this 11<sup>th</sup> day of August, 2008.

Attest:

Philip E. Petrone, Borough Clerk

