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February 16, 2023

Dennis C. Linken, Esq.
Scarinci Hollenbeck, LLC
150 Clove Road, 9th Fl
Little Falls, NJ, 07424

Re: In the Matter of the Petition of Comcast of Monmouth County, LLC, for a Renewal Certificate of Approval to Continue to Construct, Operate and Maintain a Cable Television System in and for the Village of Loch Arbour, County of Monmouth, State of New Jersey – Docket No. CE21060913

Dear Mr. Linken:

The Office of Cable Television and Telecommunications ("OCTV&T") has conducted a review of the matter filed in the above referenced docket number, and while preparing the Loch Arbour Village ("Village") Renewal Certificate of Approval we noted inconsistencies with the application and the ordinance attached to the petition. As you are aware, Renewal applications should reflect and confirm any commitments made in the ordinance. Therefore, we would like the Company to address the following issues in order to complete the processing of the file for this matter:

1. APPLICATION - **Section VI. System Plant, Page 10, Subsection 4:** This section of the application requires a Map of the entire Municipality be attached as an appendix. In this case, the Company did not provide a map for the Renewal application. Staff notes that the Company must submit a current map that includes a Map Legend, Municipality Borders, all streets which are to receive services pursuant to the designated Primary Service Area, phases of construction, and all streets which will be served under a "Line Extension Policy" ("LEP"), if applicable.

Please submit a map that is legible and meets all of the following criteria;

- a. Map Legend
 - b. Municipal Borders
 - c. All of the streets should be labeled and note which are to receive service as the Primary Service Area and the Area Designated for LEP
 - d. Phases of construction
2. ORDINANCE - **SECTION 16. COMMITMENTS BY THE COMPANY (b):** This section of the ordinance states that Comcast will continue to provide basic cable service to various municipal facilities and the parameters for providing those services. Additionally, the provision also states that Comcast has the right to deduct the fair market value of those services from franchise fees and Comcast will notify the

Village if it intends to implement said offset and the fair market value of those services at least 60 days prior to doing so. The above provision is problematic for two reasons. The first is that the section does not include the clarification of the cost for the provision of basic cable service provided to the Village municipal locations. In the prior agreement, the above service was provided free. **If that is the case, Comcast should provide clarification as to the costs for the services to the municipality.**

Furthermore, the language allowing for possible deductions to the franchise fee is problematic as it appears to modify the franchise fee amount, which is outside of the purview of the parties under existing statutory provisions. While the Federal Communications Act requires the cable company to pay a franchise fee, it also states at 47 U.S.C. Sec. 542 (b): "For any twelve-month period, the franchise fees paid by a cable operator with respect to any cable system shall not exceed 5 percent of such cable operator's gross revenues derived in such period from the operation of the cable system to provide cable services." Additionally, N.J.S.A. 48:5A-30 requires the cable operator to pay the municipality a franchise fee of 2% or 3.5%, which in either instance, does not reach the federal maximum of 5 percent of such cable operator's gross revenues. In New Jersey, the Board, as the federally designated franchising authority, is the entity bearing the authority to enforce the provisions of cable television franchise agreements, and as such, must review any amendments to the franchise fees. While the Company may reserve its pass-through rights to the full extent permitted by law on external costs, it may not make changes to the franchise fee collected, which do not exceed the federal 5% cap without prior Board approval.

It is therefore recommended that the language providing for a possible change in the franchise fee be deleted from the ordinance. In the alternative, if the parties do not wish to amend the Ordinance, the Board will be required to address the deficiency in its review of the Application in the Certificate of Approval, wherein the OCTV&T may recommend to the Board that the language be stricken. **Staff is requesting that the Petitioner review the matter and provide information as to how it chooses to address the problematic provision.**

Please respond to this correspondence by March 2, 2023, so that Staff review of the matter can be completed and submitted to the Board for consideration at an upcoming Agenda meeting. If you have any questions, please contact me at (609) 341-9170 or nancy.wolf@bpu.nj.us.

Sincerely,



Nancy J. Wolf
Administrative Analyst 4

NJW/sk

c: Marilyn Simons, Village Clerk
William H. Healey, Village Attorney
Robert Clifton, Sr. Director of Govt. & Reg. Affairs, Comcast
Stan Barrett, Esq., Scarinci Hollenbeck
Stephanie Katz, OCTV&T