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March 7, 2023

Stan Barrett, Esq.
Scarinci Hollenbeck, LLC
One River Centre
331 Newman Springs Road
Building 3, Suite #310
Red Bank, NJ, 07701-5692

Re: In the Matter of the Petition of Comcast of New Jersey, LLC, for a Renewal Certificate of Approval to Continue to Construct, Operate and Maintain a Cable Television System in and for the Borough of Ocean Gate, County of Ocean, State of New Jersey - Docket No. CE22020108

Dear Mr. Barrett:

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 Ocean Gate Borough ("Borough") Renewal Certificate of Approval ("COA") 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 IV. System Design Subsection 3:** This section requires, in part, the Company to provide information as to the number, cable channel designation, type of access channels and their manner of operation and channel sharing. Staff notes the section states, "Comcast of New Jersey's public access channel is available to individuals, groups and organizations from the communities that Comcast serves for the cablecasting on non-commercial access programming." However, there was no channel listed for public access in the system channel allocation appendix. The adopted ordinance requires one governmental access channel. The application states that the Company will provide one government access channel, and two educational access channels. Please confirm if Comcast of New Jersey, LLC will continue to provide a shared public access channel that is available for Comcast's communities, and if so, provide a revised application page which includes the channel designation for same.
2. APPLICATION - **Section IV. System Design Subsection 4:** This section of the application requires the Company to list the type of channels, proposed inception, and cable channel designation that has been agreed upon between the municipality and Company. Staff notes that while information was provided in response to the question, however no information was provided for the public access channel indicated in Section IV. System Design Subsection 3 of the application. If the Company confirms it has a system-wide public access channel, please revise the application page appropriately to include the information for the public access channel.

3. APPLICATION - **Section IV. System Design Subsection 5:** This section requires the Company to provide information in narrative form, regarding production equipment and facilities to be made available by the applicant for the use of others in the community. Staff notes that this question was left blank in the application. Staff notes that section 11 of the current COA issued by the Board of Public Utilities (“Board”) in Docket No. CE05060518 states that the Company maintains a studio and remote production equipment and provides technical assistance and basic equipment training. Please provide a revised application page which includes information responsive to this section.
4. APPLICATION - **Section IV. System Design Subsection 6:** This section of the application requires, in part, the Company to describe in narrative form, any other services available to subscribers. This section of the application does not reference free services. Please revise the application page to indicate the same.
5. APPLICATION - **Section VII. System Design Standards Subsection 5(j):** This section asks if converters are used, and if yes to provide the type and manufacturer. Staff notes that a response of yes was provided, however the type and manufacturer information was not included with the answer. Please provide a revised application page that includes the information required by the question.
6. APPLICATION - **Section VII. System Design Standards Subsection 6:** This section requires equipment specification sheets. Staff notes that this question is not required for the Application for Renewal of Certificate of Approval and is only required for the System Wide Franchise Application. Please provide an updated application page that removes the question.
7. APPLICATION - **Section IX. Line Extension Policy:** The ordinance and application state that the OCTV&T’s Line Extension Policy (“LEP”) is applicable. However, no LEP was attached to the application as an Appendix. The current COA contains the OCTV&T’s LEP, which will be used in the Borough and is attached.
8. APPLICATION - **Index to Appendices:** This section requires a list of all the material contained in the appendices attached to the application. Staff notes that Appendix E. Bonding & Insurance is missing some of the pages for the bond. Please provide the OCTV&T with the full documents for the bond to include with the Appendix for the application.
9. ORDINANCE - **SECTION 14. COMMITMENTS BY THE COMPANY a:** This section of the ordinance states that Comcast will provide Basic Cable Service to various municipal facilities, the Ocean Gate School 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 Borough 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 Borough municipal locations and school. In the prior agreement, a similar tier 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 22, 2023. If you should have any questions, please contact me at (609) 341-9170 or email nancy.wolf@bpu.nj.gov.

Sincerely,



Nancy J. Wolf
Administrative Analyst 4

NJW/sk

Enclosure

c: Ileana Vazquez-Gallipoli, Municipal Clerk (w/ encl.)
James A. Gluck, Borough Attorney (w/ encl.)
Robert Clifton, Sr. Director of Govt. & Reg Affairs, Comcast (w/ encl.)
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