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February 21, 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 Borough of Deal, County of Monmouth, State of New Jersey – Docket No. CE21060912

Dear Mr. Linken:

The Office of Cable Television and Telecommunications ("OCTV&T") is in receipt of the above captioned Petition for Renewal Certificate of Approval and attached application for the Borough of Deal ("Borough"). The following is a request for additional information the OCTV&T would like the Company to furnish prior to the completion of our review:

1. APPLICATION - **Section I. Organization and Management Subsection 13:** This section of the application requires the Company to list the address and telephone number of the designated local office or agent located within the system, available to receive, investigate and resolve any complaints the subscriber may encounter. Staff notes that the office listed in the application for the NJBPU Office of Cable Television, 44 S. Clinton Avenue – 3rd Floor, Trenton, New Jersey, is not the correct floor number for the OCTV&T's mailing address. Please provide a revised application page that clarifies the appropriate OCTV&T mailing address.
2. APPLICATION - **Section VIII. System Channel Allocation:** This section requires information for all signals carried. Staff notes that this section of the application has been removed. Below is the complete question in the application, which can be found on the BPU Website. Please revise the application page appropriately to include the information that was removed.

Provide the following for all signals carried: (1) (Attach additional sheets if necessary)

System Name: _____ Date effective: _____

Cable
Channel/

Pay (P) Tier (T)
FCC Must
Carry (MC)
Broadcast Basic

Lower Edge Frequency (MHz)	Converter Channel	Call Letters	Location	Reception Method	(BB) Non-Broadcast Basic (NBB), PEG Access (A) Local Origination (LO)	Nature of Programming

3. ORDINANCE - **SECTION 14. COMMITMENTS BY THE COMPANY Subsection a:** This section of the ordinance states that, "Comcast will provide basic cable service to Borough Hall, Deal Pump Station, Deal Borough Garage, Fire Department and the Municipal Beach Clubs (Deal Casino and W. Stanley Conover Pavillion) and has the right in accordance with applicable law to deduct the fair market value of those services from franchise fees." Additionally, the provision also states that, "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 for the above locations. 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 8, 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 S.K.

Nancy J. Wolf
Administrative Analyst 4

NJW/sk

c: Stephen R. Carasia, Borough Clerk/Administrator
Paul V. Fernicola, Borough Attorney
Robert Clifton, Sr. Director of Govt. & Reg. Affairs, Comcast
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