

Borough of Hamburg, NJ
Thursday, May 9, 2019

Chapter A236. Cable Television Franchise

[HISTORY: Adopted by the Mayor and Council of the Borough of Hamburg 3-7-2011 by Ord. No. 03-2011.^[1] Amendments noted where applicable.]

[1] *Editor's Note: This ordinance also superseded former Ch. A236, Cable Television Franchise, adopted 3-5-2007 by Ord. No. 01-2007.*

§ A236-1. Introductory provisions and purpose.

The Municipality hereby grants to the company its nonexclusive consent to place in, upon, along, across, above, over and under the highway, streets, alleys, sidewalks, public ways, and public places in the Municipality poles, wires, cables, and fixtures necessary for the maintenance and operation in the Municipality of a cable television system and cable communications system. Construction, pursuant to said consent, is conditioned upon prior approval of the Board of Public Utilities.

§ A236-2. Definitions.

For the purposes 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 given by the Federal Communications Commission (F.C.C.) Rules and Regulations, 47 C.F.R. 76.1 et seq., and the Cable Communications Policy Act, 47 U.S.C. § 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 federal or state definitions:

ACT or CABLE TELEVISION ACT

Chapter **186** of the General Laws of New Jersey, and subsequent amendments thereto, § 48:5A-1 et seq.

COMPANY

The grantee of rights under this ordinance and is known as Service Electric Cable T.V. of New Jersey, Inc.

MUNICIPALITY or BOROUGH

The Borough of Hamburg, County of Sussex, State of New Jersey.

§ A236-3. Statement of findings.

A public hearing concerning the consent herein granted to the company was held, after proper public notice, on December 6, 2010, 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 the company to receive this 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.

§ A236-4. Grant of municipal consent.

The Borough hereby grants to the company a nonexclusive consent to the issuance of a franchise by the New Jersey Board of Public Utilities to construct, erect, operate, modify and maintain in, upon, along, across, above, over, and under the highways, streets, alleys, sidewalks, public ways and public places now laid out or dedicated and all extensions thereof and additions thereto, in the Borough of Hamburg, such poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the Borough of a cable television system and cable communications system for the purpose of distributing television and radio signals, and other electronic impulses in order to furnish television and radio programs, and various communications and other electronic services to the public. The rights so granted include the right to use and occupy said highways, streets, alleys, public ways and public places, and all manner of easements for the purposes herein set forth and as provided by federal and state law, and are subject to the terms and conditions herein.

§ A236-5. Duration of franchise.

The consent herein granted shall expire 10 years from the date of expiration of the previous Certificate of Approval as issued by the Board of Public Utilities (BPU).

§ A236-6. 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 2% of the gross revenues from all recurring charges in the nature of subscription fees paid by subscribers to its cable television reception service in the Municipality, or any amount permitted by the Cable Television Act or otherwise allowable by law.

§ A236-7. Rates.

Rates shall be set by the New Jersey Board of Public Utilities as required by law or as otherwise specified by federal or state law, to the extent applicable.

§ A236-8. Borough remedies.

- A. In the event the company breaches its responsibilities herein, the Borough reserves the right to seek redress administratively through the Board of Public Utilities, or at law in a court of competent jurisdiction.
- B. The Company will restore any property damaged by the installation of its wires or facilities to its original condition at its own cost and expense. In the event that it fails to so restore said property upon the receipt of 30 days' written notice by the Borough to do so, the Borough may withdraw a portion of the performance bond posted with the Borough to compensate the owner for the restoration cost. In the event said funds are withdrawn, the company shall restore the balance of the performance bond of \$25,000 upon 30 days' written notice by the Borough to do so.

§ A236-9. Territory.

The consent granted herein to the company shall apply to the entirety of the Municipality, and any property hereafter annexed.

§ A236-10. Extension of service.

The Company shall be required to proffer service to any persons, residents or business in conformance with its tariff on file with the Office of Cable Television, including any policies for line extension and/or nonstandard installations.

§ A236-11. Construction requirements.

- A. Restoration. In the event that the company or its agents shall disturb any pavement, streets, surfaces, sidewalks, driveways or other surfaces in the natural topography, the company shall, at its sole expense, restore and replace such places or things so disturbed to as good a condition as existed prior to the commencement of said work.
- B. Relocation.
 - (1) 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 and relocate its equipment, at the expense of the company.
 - (2) The company shall temporarily move or remove appropriate parts of its facilities to allow for the moving of buildings and machinery, or in other similar circumstances. The expense shall be borne by the party requesting such action, except when required by the Municipality, in which case the company shall bear the cost.
- 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 and public places of the Municipality, so as to prevent the branches of such trees from coming in contact with the wires and cables of the company. Such trimming shall be only to the extent necessary to maintain proper clearance for the company's facilities.

§ A236-12. Local office.

During the term of this franchise, and any renewal thereof, the company shall maintain a local business office in Sussex County for the purpose of receiving, investigating and resolving all complaints regarding the quality of service, equipment, malfunctions, and similar matters. Said local business office shall be open during normal business hours, and in no event less than 9:00 a.m. to 5:00 p.m., Monday through Friday. Such local business office shall also have emergency services available 24 hours a day, seven days a week.

§ A236-13. Municipal complaint officer.

The Office of Cable Television is hereby designated as the complaint officer for the Municipality, pursuant to N.J.S.A. 48:5a-25(b). All complaints shall be received and processed in accordance with N.J.A.C. 14:17-7.1.

§ A236-14. Performance bond.

During the life of the franchise, the company shall give bond to the Municipality, which bond shall be in the amount of \$25,000. Such bond shall be to insure the faithful performance of all undertakings of the company as represented in its application and incorporated herein.

§ A236-15. Local programming and public educational and governmental access.

The company shall provide public, educational, and governmental (PEG) access channels and facilities in accordance with its Application for Renewal of Municipal Consent.

§ A236-16. Free services.

- A. The company shall provide services in accordance with its Tariff for Cable Television Service approved by the Board of Public Utilities on January 1, 2010.
- B. In addition, the company shall provide the following services to the Borough free of charge:
 - (1) Twenty-one cable connections for the Borough's school.
 - (2) One cable connection for the Hamburg Fire Department.
 - (3) One cable connection for the Borough's EMS station.
 - (4) One cable connection for the Hamburg Police Department.

§ A236-17. Programming.

Although nothing herein shall require the company to carry or transmit any particular television stations or programming source, the company shall provide the subscribers in the Borough with at least the same broad categories of programming, in approximately the same quantity, as are now provided, and which appear in the Application for Municipal Consent.

§ A236-18. Liability insurance.

- A. The company agrees to maintain and keep in full force and effect, at its sole expense, at all times during the term of this consent, sufficient liability insurance naming the Municipality as an insured and insuring against loss by any such claim, suit, judgment, execution or demand, in the minimum amount of \$1,000,000 combined single limit for bodily injury or death to one person and \$500,000 for property damage resulting from any one accident.
- B. The contractor building the cable television lines shall file a worker's compensation certificate of insurance with the Borough Clerk prior to commencing the work.

§ A236-19. Filing with Township Engineer.

The company shall cause all construction plans relating to work on any extensions of its plant, or work which could have significant impact on public works within the Borough, to be filed with the Borough Engineer's Office.

§ A236-20. Activities prohibited.

The Company shall not allow its cable or other operations to interfere with television reception or persons not served by the company, nor shall the system interfere with, obstruct or hinder in any manner the operation of the various utilities serving the residents of the Borough.

§ A236-21. Incorporation of the application.

All of the commitments and statements contained in the application and any amendment thereto submitted in writing to the Municipality by the company, except as modified herein, are binding upon the company as terms and conditions of this consent. The application and any other relevant writings submitted by the company shall be annexed hereto and made a part hereof by reference, as long as it does not conflict with state or federal law.

§ A236-22. Severability.

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 such holding shall not effect the validity of the remaining portions hereof.

§ A236-23. Consistency with future federal and state statutes, regulations, rules and orders.

Should any of the federal or state acts, regulations, or pronouncements applicable to the regulation of cable television service be modified in any way, such modification, to the extent it embodies required terms and conditions, and meaningfully can be incorporated into this ordinance, shall be so incorporated, consistent with any applicable effective dates specified in such modification. To the extent that any such modification(s) place(s) limits on permissible terms and conditions, and any provision of this ordinance becomes invalid by virtue of such modification(s), the preceding section, § **A236-22**, shall apply.

§ A236-24. Effective date.

This ordinance shall take effect upon its final passage and publication according to law.