

CITY OF SOUTH AMBOY

ORDINANCE NO. 19-2005

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

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

**WHEREAS**, by application for renewal consent filed with the City and the Office of Cable Television on or about December 17, 2003 Cablevision has sought a renewal of the franchise; and

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

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

**NOW THEREFORE, BE IT ORDAINED** by the Mayor and Council of the City of South Amboy, County of Middlesex, 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 City 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) "City" shall mean the governing body of the City of South Amboy in the County of Middlesex, and the State of New Jersey.
- (e) "Company" shall mean CSC TKR, Inc. d/b/a Cablevision of Raritan Valley, Inc. ("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 City 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 City 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 City 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 fifteen (15) years from the date of issuance of a Certificate of Approval by the Board.

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

If Cablevision seeks a renewal of the consent provided herein, 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 City 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 City 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 located in the franchise territory at tariffed rates for standard and nonstandard installation.

## **SECTION 8. FRANCHISE FEE**

Pursuant to the terms and conditions of the Cable Television Act, Cablevision shall pay to the City, 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 City. In the event applicable law hereinafter permits a larger franchise fee to be collected, but does not fix the amount thereof, the City and Cablevision shall negotiate in good faith with respect to the amount thereof.

#### **SECTION 9. 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 elementary and secondary schools and all municipal public libraries, as well as municipal buildings located within the City as set forth in Exhibit A to this Ordinance.

Upon written request from the City, the Company shall provide to state or locally accredited elementary and secondary schools and municipal public libraries in the City, 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 City, the Company shall provide to South Amboy City 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.

Within ninety (90) days of the fifth (5<sup>th</sup>) anniversary of the effective date of this consent, the City may notify Cablevision in writing that it wishes to meet with Cablevision to discuss the scope of the free services provided by Cablevision, 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. This meeting shall not be open to the public. In considering any suggestions made by the City regarding the scope of free services offered, Cablevision may take into account the costs of such suggestions, the number of subscribers in the City, the impact of any changes to the free services given to the City 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 10 are limited to good faith discussions with the City.

#### **SECTION 10. 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 City:

(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, as determined by the City's engineer under the City's generally applicable laws, rules and regulations.

(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 City 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 City, 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 City 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 11. 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 12. 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 13. DESIGNATION OF COMPLAINT OFFICER**

The Office of Cable Television is hereby designated as the complaint officer for the City pursuant to the provisions of N.J.S.A. 48:5A-26. All complaints shall be reviewed and processed in accordance with N.J.A.C. 14:17-6.5.

## **SECTION 14. 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 City 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 15. PERFORMANCE BOND**

Cablevision shall obtain and maintain, at its sole cost and expense, during the entire term of this Agreement, a bond in form acceptable 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 16. 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.

## **SECTION 17. 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 City pursuant to state and federal requirements. The Company shall in no way be held liable for any injury suffered by the City 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 City shall utilize the state-approved procedures for such emergency uses.

## **SECTION 18. EQUITABLE TERMS**

In the event that another multi-channel video program provider's service within the City creates a significant competitive disadvantage to Cablevision, the Company shall have the right to request from the City 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 City 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 City 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 City shall be under no obligation to support Cablevision's request for such relief from the Board.

In any subsequent municipal consent, the City 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, City 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 19. 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 20. 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 City 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 City 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 City's provision of PEG access programming on such channel.
- C. In consideration for the rights granted in this Ordinance, the Company shall provide the City with a one-time grant of twenty thousand dollars (\$20,000.00), which may be used by the City for any cable and/or other telecommunications related purpose as the City, in its discretion, may deem appropriate.

**SECTION 21. INCORPORATION OF APPLICATION**

All of the commitments contained in the Application and any amendment thereto submitted in writing to the City 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 22. CONSISTENCY WITH APPLICABLE LAWS**

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

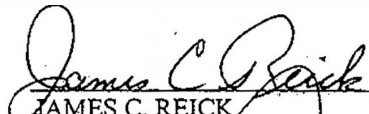
**SECTION 23. SEPARABILITY**

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 24. EFFECTIVE DATE**

This Ordinance shall take effect upon issuance of a Certificate of Approval as issued by the Board of Public Utilities.

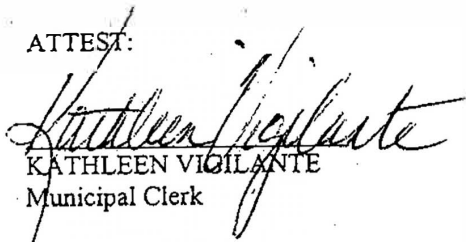
**BE IT FURTHER ORDAINED** that this Ordinance shall take effect upon the passage, and publication as required by law.

  
JAMES C. REICK  
Council President

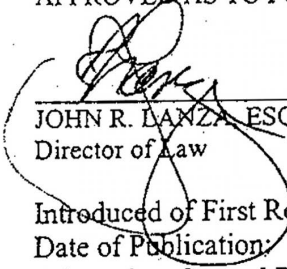
APPROVED:

  
JOHN J. O'LEARY  
Mayor

ATTEST:

  
KATHLEEN VIGILANTE  
Municipal Clerk

APPROVED AS TO FORM:

  
JOHN R. LANZA, ESQUIRE  
Director of Law

Introduced of First Reading: 7/20/05  
Date of Publication: 7/24/05  
Adopted on Second Reading: 8/17/05  
Date of Second Publication: 8/21/05

**EXHIBIT A**

**SOUTH AMBOY CITY HALL**

**SOUTH AMBOY POLICE DEPARTMENT**

**DR. CHARLES W. HOFFMAN SENIOR RESOURCE CENTER**

**SOUTH AMBOY FIRST AID & SAFETY SQUAD**

**MECHANICSVILLE FIRE HOUSE**

**PROTECTION FIRE HOUSE**

**INDEPENDENCE FIRE HOUSE**

**ENTERPRISE FIRE HOUSE**

**PROGRESSIVE FIRE HOUSE**

**SOUTH AMBOY PUBLIC WORKS DEPARTMENT**