

BOROUGH OF MADISON

ORDINANCE NO. 64-2007

ORDINANCE OF THE BOROUGH OF MADISON GRANTING MUNICIPAL CONSENT FOR THE OPERATION OF A CABLE TELEVISION SYSTEM WITHIN THE BOROUGH OF MADISON, NEW JERSEY TO CSC TKR, INC.

WHEREAS, the governing body of the Borough of Madison (hereinafter referred to as the "Borough") determined that CSC TKR, Inc. (hereinafter referred to as "the Company" or "Cablevision") had the technical competence and general fitness to operate a cable television system in the Borough, 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 Borough; and

WHEREAS, by application for renewal consent filed with the Borough and the Office of Cable Television on or about April 9, 2007, Cablevision has sought a renewal of the franchise; and

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

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

WHEREAS, imposition of the same burdens and costs on other franchised competitors by the Borough is a basic assumption of the parties;

NOW THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Madison, County of Morris, 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:

"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.

"Application" shall mean Cablevision's application for Renewal of Municipal Consent, which application is on file in the Borough's office and is incorporated herein by reference and made a part hereof, except as modified, changed, limited or altered by this Ordinance.

"Board" shall mean the Board of Public Utilities of the State of New Jersey or its successor agency.

"Borough" shall mean the governing body of the Borough of Madison in the County of Morris and the State of New Jersey.

"Company" shall mean CSC TKR, Inc. ("Cablevision"), the grantee of rights under this Ordinance.

"FCC" shall mean the Federal Communications Commission.

"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.

"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.

"Standard installation" shall mean the installation of drop cable to a customer's premises 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.

"State" shall mean the State of New Jersey.

"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 Borough 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 Borough 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 Borough of a cable television system, and for the provision of any communication service over 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 ten (10) years from the date of issuance of a Certificate of Approval by the Board.

SECTION 5. EXPIRATION AND SUBSEQUENT RENEWAL

If Cablevision seeks successive consent, 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-11 and N.J.S.A. 48:5A-16, and applicable state and federal rules and regulations. The Company shall also seek approval from the Board 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 Borough 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 Borough and any property hereafter annexed.

SECTION 7. PRIMARY SERVICE AREA

Cablevision shall be required to proffer service along any public right-of-way to any person's residence located in the portion of the franchise territory, as described in the

map attached to the Application at tariffed rates for standard and nonstandard installation. Such area designated shall constitute the primary service area.

SECTION 8. FRANCHISE FEE

Cablevision shall pay to the Borough, an annual franchise fee, in accordance with N.J.S.A 48:5A-30.

SECTION 9. FREE SERVICE

Upon enactment of this ordinance by the Borough and issuance of a Certificate of Approval by the Board, the Company shall provide, upon request and within ninety (90) days, free of charge, one (1) standard installation and monthly basic cable television service to all State or locally accredited public, private and parochial schools and all municipal buildings used for governmental purposes within the Borough. A preliminary schedule of said properties is attached hereto as Exhibit A.

Upon enactment of this ordinance by the Borough and issuance of a Certificate of Approval by the Board, the Company shall provide to one municipal location used for governmental purposes, without charge, the following within ninety (90) days: (1) one standard installation; (2) one cable modem per installation; and (3) basic cable modem service for the term of this Ordinance. The Borough shall be permitted to network, at its own cost, four personal computers terminals to the cable modem provided by the Cablevision. This offer shall be subject to the reasonable terms, conditions and use policies of the Company as those policies may exist from time to time.

Upon enactment of this ordinance by the Borough and issuance of a Certificate of Approval by the Board, the Company shall provide, upon request and within ninety (90) days, to state and locally accredited public and private and parochial elementary and secondary schools and municipal public libraries in the Borough, without charge, the following: (1) one standard installation per school and library; (2) one cable modem per installation; and, (3) basic cable modem service for the term of this Ordinance for each installation. Each school and library shall be permitted, at its own cost, to network up to 25 computers to the cable modem provided by Cablevision. This offer shall be subject to the reasonable terms, conditions and use policies of the Company, as those policies may exist from time to time."

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 Borough:

(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.

(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 Borough 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 Borough, 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 public trees upon and overhanging streets, alleys, sidewalks and public places of the Borough 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, and shall be coordinated and approved by the Borough of Madison Shade Tree Management Board.

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 Borough 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 Borough 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. Cablevision shall provide to the Borough at the commencement of this consent evidence of such insurance, which evidence shall, upon the request of the Borough, also be provided on an annual basis during the term hereof.

SECTION 15. PERFORMANCE BOND

Cablevision shall obtain and maintain, at its sole cost and expense, during the entire term of this Ordinance, a bond 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. The bond shall be filed with the Borough Clerk of the Borough.

SECTION 16. RATES

A. The rates of the Company for cable television service 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 broadcast basic level of cable television service rate to any person sixty-two (62) years of age or older, who subscribes to cable television services provided by the Company, subject to the following:

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,

Subscribers seeking eligibility for the discount must meet the income and residence requirements of the Pharmaceutical Assistance to Aged and Disabled (PAAD) program in the State pursuant to N.J.S.A. 30:4D-21;

The senior citizen discount herein relates only to the entry level basic rate of cable television service, and shall not apply to any additional service, feature, or equipment offered by the Company, including premium channel services and pay-per-view services.

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.

C. In the event that Cablevision shall be required to increase the franchise fee in accordance with N.J.S.A. 48-5A-30(d), then at such time as the new fee is instituted, Cablevision shall no longer be obligated to maintain or offer the senior discount specified in Section 17(B) above.

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

SECTION 18. EQUITABLE TERMS

In the event that the Borough approves or permits a cable system to operate in the community on terms more favorable or less burdensome than those contained in this Ordinance, such more favorable or less burdensome terms shall be applicable in this consent, subject to a petition to the Board of Public Utilities as provided for in accordance with N.J.S.A. 48:5A-47 and N.J.A.C. 14:17-6.7.

In the event that a non-franchised multi-channel video programmer provides service to residents of the Borough, Cablevision shall have a right to request franchise amendments to this Ordinance that relieve Cablevision of regulatory burdens that create a competitive disadvantage to the Company. In requesting amendments, Cablevision shall file with the Board of Public Utilities a petition for approval in accordance with N.J.S.A. 48:5A-47 and N.J.A.C. 14:17-6.7 seeking to amend the Ordinance. Such petition shall: i) indicate the presence of a non-franchised competitor(s); ii) identify the basis for Cablevision's belief that certain provisions of this franchise place it at a competitive disadvantage; and iii) identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage. The Borough shall not unreasonably withhold or object to granting the Company's petition.

In any subsequent municipal consent, the Borough shall require, at a minimum, the same terms and conditions of any other provider of multi-channel video programming subject to the Borough'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, the Borough 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

Cablevision shall continue to make available non-commercial public, educational and governmental (PEG) access as described in the Application for municipal consent.

The Borough agrees that the Company shall retain the right to use the PEG access channel, or portion thereof, for non-PEG access programming, during times when the Borough 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 Borough provision of PEG access programming on such channel.

Within ninety (90) days from the effective date of this franchise, Cablevision shall provide and maintain one access return line at Madison Public Library located at 39 Keep Street in Madison, NJ for the production of non-commercial educational and governmental access programming on the cable system. Upon request of the Borough, Cablevision shall provide access training at least once every year.

In consideration for the rights granted by this Ordinance, Cablevision shall provide the Borough with an initial one-time grant of ten thousand dollars (\$10,000.00) (the "Initial Grant"). Such amount shall be paid within sixty (60) days following the grant of the Certificate from the Board. The Grant may be used by the Borough for any cable and/or other telecommunications related purpose as the Borough, in its discretion, may deem appropriate. Beginning in year two of the franchise (measured by the Certificate of Approval) and annually thereafter through year ten of the franchise, Cablevision shall provide the Borough with an annual amount of one thousand five hundred dollars (\$1,500.00) (the "Annual Grant"). Cablevision shall not be obligated to make any additional payments beyond year ten of the franchise. The Annual Grant shall be payable to the Borough within sixty (60) days from receipt of the Borough's written request. Notwithstanding the foregoing, should Cablevision apply for a system-wide certification or otherwise convert its municipal consent to a system-wide certification in accordance with applicable law, it shall be relieved of any payments due and owing after the date of such conversion or award of a system-wide franchise, with the exception of the Initial Grant.

SECTION 21. INCORPORATION OF APPLICATION

All of the commitments contained in the Application and any amendment thereto submitted in writing to the Borough 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.

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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.

SECTION 25. WRITTEN REQUEST

The execution hereof by the Mayor of Madison shall fulfill the requirement to provide written notice as specified throughout the Agreement.

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

ADOPTED AND APPROVED
October 10, 2007

ELLWOOD R. KERKESLAGER, Mayor

Attest:

MARILYN SCHAEFER, Borough Clerk

Introduced and passed: September 10, 2007

Published, Madison Eagle: September 13, 2007

Hearing and final adoption: October 10, 2007

Published, Madison Eagle: October 18, 2007

Schedule A: Preliminary List of Properties per Section 10

Hartley Dodge Memorial Building

Madison Fire and Police Building

Madison Public Works Building

Madison Free Public Library Building

Madison Civic Center, 28 Walnut Street

Madison Housing Authority

Madison High School

Madison Junior High School

Kings Road School

Torey J. Sabatini School

Central Avenue School

Green Village Road School

Bayley Ellard School

Museum of Early Trades and Crafts

Madison Public Schools Administrative Building

St. Vincent Martyr School

22 Central Avenue

To be amended at 10/10/2007 meeting to include:

Madison Electric Department