

## CHAPTER XXIX

### CABLE TELEVISION FRANCHISE

#### 29-1 SHORT TITLE.

This ordinance shall be known and may be cited as the “Cablevision of Morris, Franchise Ordinance.”  
(Ord. #03-21 § 1)

#### 29-2 DEFINITIONS.

The purpose 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 of the Federal Communications Commission, F.C.C. Rules and Regulations, 47 C.F.R. Subsection 76.1 et seq. and the Cable Communications Policy Act of 1984, 47 U.S.C. 521 et seq., as amended and shall in no way be construed to broaden, alter or conflict with the Federal or State definitions.

*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 Township Clerk’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.

*Company* shall mean CSC TKR, Inc. d/b/a/ Cablevision of Morris (“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.

*Needs Assessment Report* shall mean the Township of Rockaway Cable Television Performance Review and Needs Assessment Report dated May 2, 2000.

*Office of Cable Television* shall mean the New Jersey Board of Public Utilities, Office of Cable Television.

*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.

*Technologically current* shall mean the ability to support multiple analog and digital television services, Internet service and other two-way services.

*Township* shall mean the Governing Body of the Township of Rockaway in the County of Morris, and the State of New Jersey.  
(Ord. #03-21 § 2)

### **29-3 STATEMENT OF FINDINGS AND GRANT OF AUTHORITY.**

A public hearing concerning the consent herein granted to the Company was held after proper public notice pursuant to the terms and conditions of the Act on November 28, 2000. Additional public hearings were held on February 6, 2001, March 27, 2001, April 3, 2001, April 24, 2001 and May 1, 2001. Said hearings having been held and fully open to the public, and the Township having received at such hearing comments regarding the qualifications of the company to receive this consent, the Township hereby finds the Company possesses the necessary legal, technical, character, financial and other qualifications and that Cablevision's operating and construction arrangements are adequate and feasible.

The Township hereby grants to the Company 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 Township, poles, wires, cables, and fixtures necessary for the maintenance and operation in the Township 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.  
(Ord. #03-21 § 3)

**29-4 DURATION OF FRANCHISE.**

The consent granted herein shall expire ten (10) years from the date of expiration of the last Certificate of Approval as issued by the Board of Public Utilities.  
(Ord. #03-21 § 4)

**29-5 EXPIRATION AND SUBSEQUENT RENEWAL.**

If the Company seeks a successive consent, it shall, prior to the expiration of this consent, apply for a municipal consent and 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 municipal Governing Body relative to the renewal of said consent.  
(Ord. #03-21 § 5)

**29-6 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 Township two (2%) percent of the gross revenues received from all recurring charges in the nature of subscription fees paid by subscribers for its cable television reception service in the Township or any greater amounts mandated by the New Jersey Cable Television Act or otherwise required by law, immediately upon the effective date thereof.

In the event applicable law hereinafter permits a larger franchise fee to be collected, but does not fix the amount thereof, the Township and Cablevision shall negotiate in good faith with respect to the amount thereof.  
(Ord. #03-21 § 6)

**29-7 FRANCHISE TERRITORY.**

The consent granted under this Ordinance to Cablevision shall apply to the entirety of the Township and any property hereinafter annexed.  
(Ord. #03-21 § 7)

**29-8 CONSTRUCTION TIMETABLES.**

The Company shall be required to complete any proposed construction within the service areas described in its application. The timetable as presented in the application incorporated herein has been determined to be reasonable by the Township of Rockaway.  
(Ord. #03-21 § 8)

**29-9 EXTENSION OF SERVICE.**

Cablevision shall extend service along any public right-of-way at no cost to the customer to the point in the right-of-way fronting any person's residence or business located within its primary service area (as described in the application). The actual connection of the customer from the public right-of-way shall be at tariffed rates for standard and nonstandard installation. (Ord. #03-21 § 9)

**29-10 CONSTRUCTION/SYSTEM REQUIREMENTS.**

The Company 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 Township.

- a. *Restoration.* In the event that the Company or its agents shall disturb any street pavement, sidewalks, curbs, lawn areas or other surfaces, the Company shall at its sole expense restore and replace such places or things in as good a condition as existed prior to the commencement of said work and in accordance with applicable ordinances.
- b. *Relocation.* If at any time during the period of this consent, the Township shall alter or change the grade of any street, alley or other way or place, the Company, upon reasonable notice by the Township shall remove or relocate its equipment, at the expense of the Company.

The Company shall temporarily move or remove appropriate parts of its facilities to allow moving of buildings, machinery or in other similar circumstances. The expense shall be borne by the party requesting such action except when requested by the Township, 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 Township 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.

- d. The Company shall adhere to all appropriate local regulations including but not limited to road opening permits. The Company is exempt from the payment of any fee to the Township for the road opening permits.

(Ord. #03-21 § 10)

#### **29-11 INSTALLATION TO INDIVIDUAL SUBSCRIBERS.**

The Company shall provide installation to any person's residence or business located along public rights-of-way within the Township based upon the price schedule set forth in the application, prices subject to change, within a reasonable time period under normal operating conditions in accordance with State and Federal regulations. Pursuant to N.J.A.C. 14:18-3.16, the Company shall notify all subscribers that are affected thirty (30) days prior to a price change.

(Ord. #03-21 § 11)

#### **29-12 LOCAL OFFICE OR AGENT.**

During the term of this Franchise, the Company 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. Such 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 and at least one (1) evening to respond to customer calls. Such local office shall be in compliance with N.J.S.A. 48:5A-26(d). The Company agrees to maintain adequate staffing to ensure high level of telephone accessibility and prompt repair service.

(Ord. #03-21 § 12)

#### **29-13 MUNICIPAL COMPLAINT OFFICER.**

The Office of Cable Television is hereby designated as the complaint officer for the Township of Rockaway's subscribers pursuant to N.J.S.A. 48:5A-26(b), but will only become involved in disputes that cannot be resolved by the Company and the Township. All complaints shall be reviewed and processed in accordance with N.J.A.C. 14:17-6.5.

(Ord. #03-21 13)

#### **29-14 LIABILITY, INDEMNIFICATION AND INSURANCE.**

- a. The Company shall indemnify, protect and hold the Township harmless from and against losses, including reasonable attorney's fees and costs, and physical damage to property, including these properties owned or under the control of the Township, and bodily

injury or death to persons, including payments made under any Worker's Compensation Law, which may arise out of or be caused by the erection, maintenance, presence, use or removal of said attachments on poles, antennas within the Township or by any act of the Company, its agents or employees arising out of the use, operation, maintenance or revocation for renewal of the system contemplated by this Franchise. The Company shall not be required to indemnify the Township for any claim or other cause of action arising (i) from any access programming produced by or on behalf of the Township, or (ii) in circumstances where the Township, its agents, or employees have been found or agree to liability for more than fifty (50%) percent of the loss, damage or injury attributable to such claim or cause of action. Nothing in this section shall be considered to relieve the Company of responsibility to pay for its percentage of liability for the loss occurred.

- b. The Company further agrees to maintain the following insurance:
  1. The Company shall carry insurance to protect the parties hereto from and against all claims, demands, actions, judgments, costs expense, and liabilities which may arise or result, directly or indirectly from or by reason of such loss, injury, or damage. The amounts of such insurance against liability due to physical damages to property or bodily injury or death to any one person shall not be less than one million (\$1,000,000.00) dollars and not less than one million (\$1,000,000.00) dollars as to any one accident and an excess liability (or "umbrella") policy in the amount of five million (\$5,000,000.00) dollars. The Township shall be named as an additional insured under such policy.
  2. The Company shall also carry such insurance it deems necessary to protect it from all claims under the Worker's Compensation Laws in effect, that may be applicable to the Franchise.
  3. All insurance required by this ordinance shall be and remain in full force and effect for the entire life of this Franchise. The insurer shall provide to the Township at least thirty (30) days prior notice of its intention to cancel any policy. If any policy is canceled, it shall be replaced forthwith with insurance that meets the requirements of this ordinance so that there is no lapse in coverage. No later than forty-five (45) days after the effective date of this Franchise and upon any significant change to the policy(s), Cablevision shall

furnish to the Township certificates of insurance in conformity with the requirements of this ordinance. The insurer further shall certify to the Township the fact of renewal of every such insurance policy at least fifteen (15) days prior to the expiration date.

(Ord. #03-21 § 14)

**29-15 RATE STRUCTURE FOR CATV RECEPTION SERVICES.**

- a. The rates of the Company for cable television service shall be subject to regulations to the extent permitted by Federal and State law.
- b. Cablevision shall implement a senior citizen and a disable citizen discount in the amount of ten (10%) percent off the rate for the monthly basic level of cable television reception service to any person sixty-two (62) years of age or older or to any disable person, who subscribes to cable television reception services provided by the Company, subject to the following:
  1. Such discount shall only be available to eligible senior citizens and to disabled citizens who do not share the subscription with more than one (1) person in the same household who is less than sixty-two (62) years of age or who is not disabled.
  2. 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; and
  3. The senior citizen/disable citizen discount herein relates only to the entry level basic rate of cable television reception 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.

(Ord. #03-21 § 15)

**29-16 BASIC SERVICE.**

To the extent required by Federal Law, the basic service includes those channels which the Company is required to carry by FCC rules and any channel which the Company carries without a separate additional charge.

(Ord. #03-21 § 16)

**PUBLIC EDUCATIONAL AND GOVERNMENTAL ACCESS.**

- a. Cablevision shall provide and maintain, without charge for its use, a composite designated, public governmental and educational access channel ("PEG access") for use by the residents of the Township, its government representatives, and State accredited institutions within the Township. This channel may only be used for non-commercial programming. The Township understands and acknowledges that other municipalities currently share the PEG access channel in the Company's Morris County system and use shall not be exclusively for the Township. Cablevision shall be responsible for developing, implementing, interpreting and enforcing reasonable rules for PEG access channel use, in accordance with applicable law.

The Township 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 Township 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 Township's provision of PEG.

Due to the special needs of the Township's growing congregate senior population, Cablevision shall provide an opportunity for such communities to negotiate for one (1) local access channel to be free of charge for security and general information purposes to all congregate senior residences, where such service is required, including but not limited to Mt. Pleasant Village and Fox Hills Adult Community. Notwithstanding the foregoing, nothing herein shall be construed to obligate the Company to provide local access channels, free of charge, to congregate senior communities for security or general information purposes.

- b. Cablevision shall provide a simple and convenient method to allow the Township to periodically override and preempt such channel described in Section 29-17a. with discrete noncommercial educational and governmental access programming developed by the Township and its schools, which programming shall be made available solely to Cablevision subscribers within the Township. Should the Township elect to use this channel for such purposes, it shall be responsible for developing, implementing, interpreting and enforcing its own rules for such use. Administration of any regional public access programming produced by the Township

residents for dissemination of the countywide PEG channel, however, shall remain the responsibility of Cablevision.

- c. Franchise agrees to install and maintain an operational return feed for upstream transmission of programming from a Township designated building, to be used for the local origination of noncommercial government and educational and narrowcast access programming. Cablevision shall install such access return line within thirty (30) days following written receipt of a request from the Township designating the location to receive such installation.
- d. In consideration for the rights granted by this municipal consent, Cablevision shall provide the Township with a one-time payment of twenty-seven thousand five hundred (\$27,500.00) dollars to be used, at the Township's discretion, for any cable-related purpose including, but not limited to the production and promotion of noncommercial PEG access programming within the Township. This payment shall be made within sixty (60) days after the grant of the Certificate of Approval by the New Jersey Board of Public Utilities.
- e. The Company shall take reasonable steps to ensure that the signal originated by Cablevision on the PEG access channel meets acceptable industry standards, including the technical specifications and regulations required by the FCC.
- f. The Company shall offer to make available to the Township for use on its discrete public, educational and governmental access channel, local origination programming produced by Cablevision relating directly to the Township, including, but not limited to interviews with Township officials, sporting events involving the Township's schools or other programming of particular interest to the Township, provided however that the Company may withhold such material on reasonable grounds, including, but not limited to, the rights of the copyright holders (including copyrights of other affiliated companies) and/or the Company's other commitments with respect to such programming.
- g. At the request of the Township, the Company shall provide reasonable production training courses free of charge to access users in the Township. Training will be provided on a first come, first serve basis. Any training group shall have a minimum of five (5) persons. Cablevision shall not be obligated to provide more than four (4) training sessions per year. Topics may include, but

not be limited to, television production, servicing and equipment use and maintenance.

(Ord. #03-21 § 17)

**29-18 COMPLIANCE WITH LAW.**

Notwithstanding any specific mention of applicable Federal or State statutes or regulations above, the Company shall comply with all of the requirements of the Federal Act, the Federal regulations, the State Act and State regulations (to the extent not preempted) and other valid statute, regulation, rule or promulgation, specifically including, but without limitation, those relating to equal employment opportunity.

(Ord. #03-21 § 18)

**29-19 PROGRAMMING.**

- a. 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 Township with at least the same broad categories of programming in approximately the same quantity, as are now provided and which appear in the application.
- b. The Company shall comply with any State law or regulation with respect to maintaining space for a statewide interconnect channel.
- c. The Company shall comply with applicable Federal law pertaining to the distribution of obscene or sexually explicit adult video programming including, but not limited to, 47 USC 559 and 561 including, without limitation, the effective scrambling for both audio and video content.
- d. In addition, the Company shall take under consideration provision of the survey preferences as set forth in the Needs Assessment Report.
- e. The Company shall not provide less than eight-two (82) channels during the term of this ordinance.

(Ord. #03-21 § 19)

**29-20. FREE SERVICE.**

- a. The Company shall upon request provide free of charge, one (1) standard installation and basic and expanded monthly cable television reception service and high-speed internet service to all State and local accredited public schools, and all municipal public

libraries, and the Township's Municipal Building (the "designated building"). The Township shall be permitted, at its own cost, to network up to three (3) additional personal computer terminals in the designated building (four (4) computers in total) to the cable modem provided by the Company.

(Ord. #03-21 § 20)

**29-21. COMMITMENTS BY COMPANY.**

- a. *Facilities and Equipment.* In accordance with the applicable provisions of its application for a municipal consent filed with the Township, the Company shall, in transmitting its television signals to subscribers in the Township, provide a quality of signal that is at least as good as that customarily provided under prevailing industry standards; and the Company shall comply with the requirements imposed by the Federal regulations, all Federal pronouncements, and (to the extent not preempted by Federal law) any State pronouncement, relating to technical standards for the transmission of television signals, transmission quality, or facilities and equipment.
- b. *Customer Service.*
  1. In order to maintain its level of telephone accessibility for calls relating to maintenance and repairs ("service") and to improve it for calls relating to installation, addition or deletion of programming services, and other customer inquiries ("business"), the Company shall do the following:
    - (a) The Company shall comply with any and all properly adopted rules and regulations of the Office of Cable Television insofar as they apply to telephone accessibility.
    - (b) The Company shall submit to the Township as may be reasonably requested by the Township, its written report on telephone accessibility including a discussion of its efforts and progress in improving such accessibility. Nothing herein shall impair the right of any subscriber of the Township to express any comments or complaint with respect to telephone accessibility to the Complaint Officer (as designated in Section 29-13 thereof), or impair the right of the Complaint Officer to take any action which is appropriate under law.

- (c) Cablevision shall comply with all State and Federal regulations pertaining to telephone call answering and response including, but not limited to, 47 CFR 309, as may be amended during the term of this Ordinance.
- 2. During the renewal term, the Company shall maintain a local office in the Township, as required under the existing Franchise and as set forth in the initial Municipal Consent Ordinance; provided that the Company shall be relieved of such obligation upon condition that:
  - (a) During the renewal terms, the Company continues to maintain a telephone number by which subscribers wishing to communicate with the Company for any reason can reach it, by toll-free telephone call, and as to which the provisions of N.J.S.A. 48:5A-26(d) shall apply; and
  - (b) Publish its toll free number in every monthly bill.
- 3. The Company shall comply with all applicable Federal and State law and regulation pertaining to periodic notification to subscribers, including, but not limited to, N.J.A.C. 14:18-3.18, as may be amended during the term of this Ordinance.
- 4. At the request of the Township and upon reasonable advance notice, the Company and the Township's designee shall meet to review all matters relating to cable television in the Township, with the minutes of such meetings to be delivered to the Company and to be filed with the Township.

(Ord. #03-21 § 21)

**29-22            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 Township pursuant to State and Federal requirements. The Company shall in no way be held liable for any injury suffered by the Township 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 Township shall utilize the State-approved procedures for such emergency uses.

(Ord. #03-21 § 22)

**29-23            INCORPORATION OF APPLICATION.**

All of the statements and commitments contained in the application and any amendments thereto submitted in writing to the Township by the Company, are binding upon Company as terms and conditions of this consent. The application and any written amendments thereto submitted by the Company shall be annexed hereto and made part hereof by reference. If any of the incorporated documents or materials conflict with State or Federal law, the same will not be effective.  
(Ord. #03-21 § 23)

**29-24                    TECHNOLOGICALLY CURRENT.**

The Company agrees that the capabilities of the cable system and any ancillary cable television technologies shall be maintained as technologically current throughout the duration of the franchise, as compared with other cable television systems operated by the Company of comparable size, measured by the number of subscribers in the system and to the extent economically reasonable and commercially practicable.  
(Ord. #03-21 § 24)

**29-25                    TECHNICAL AND CUSTOMER SERVICE STANDARDS.**

The Company shall comply with the technical and customer service standards established for the cable industry under applicable Federal and State laws, rules and regulations. Cablevision shall introduce a complaint tracking system to record and monitor receipt and disposition of complaints and calls for repair.  
(Ord. #03-21 § 25)

**29-26                    PERFORMANCE BOND.**

The Company shall obtain and maintain at its sole cost and expense, during the entire term of this Agreement, a bond to the municipality in the amount of twenty-five thousand (\$25,000.00) dollars. Such bond shall be to insure the faithful performance of its obligations as provided in this Franchise. Should the Company undertake any significant construction within the municipality, the bond amount shall be increased to fifty thousand (\$50,000.00) dollars for the duration of the project. Upon completion of the project, to the satisfaction of both the Township and the Office of Cable Television, the bond amount will be reduced to the original amount of twenty-five thousand (\$25,000.00) dollars.  
(Ord. #03-21 § 26)

**29-27                    EQUITABLE TERMS.**

In the event that another multi-channel video program provider's service within the Township creates a significant competitive disadvantage to

Cablevision, the Company shall have the right to request from the Township 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 Township 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 Township 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 Township shall be under no obligation to support nor precluded from opposing the Company's request for such relief from the Board.

The Company represents and acknowledges that as of the date of its acceptance of this municipal consent, competition within the Township has not yet risen to the level of creating a significant competitive disadvantage to enable the Company to seek relief under this section.  
(Ord. #03-21 § 27)

**29-28                   CONSISTENCY WITH APPLICABLE LAWS.**

This consent shall be construed in a manner consistent with applicable Federal, State and local laws.  
(Ord. #03-21 § 28)

**29-29                   SEVERABILITY.**

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.  
(Ord. #03-21 § 29)

**29-30                   INCONSISTENT ORDINANCE.**

All ordinances, resolutions and regulations of the Township or parts thereof inconsistent with the provisions herewith of the Ordinance are hereby repealed to the extent of such inconsistency.  
(Ord. #03-21 § 30)

**29-31****EFFECTIVE DATE.**

This Ordinance shall take effect upon passage and publication according to law and the Company's written acceptance thereof with ten (10) days. If the Company does not accept the terms and conditions hereof, then the actions of the Township and Company shall be governed by and subject to the provisions of the Act, the regulations related thereto and the actions of the Board and Office of Cable Television.

(Ord. #03-21 § 31)