

**BOROUGH OF SUSSEX
ORDINANCE 2016-09**

**AN ORDINANCE GRANTING MUNICIPAL CONSENT TO THE
ISSUANCE OF A FRANCHISE TO SERVICE ELECTRIC
CABLE T.V. OF NEW JERSEY, INC., TO CONSTRUCT, OWN,
OPERATE, EXTEND AND MAINTAIN A CABLE TELEVISION
SYSTEM IN THE BOROUGH OF SUSSEX, COUNTY OF
SUSSEX, SETTING FORTH CONDITIONS ACCOMPANYING
THE GRANT OF SAID MUNICIPAL CONSENT AND
PROVIDING FOR THE REGULATION AND USE OF SAID
SYSTEM.**

BE IT ORDAINED by the Governing Body of the Borough of Sussex, County of Sussex and State of New Jersey as follows:

SECTION 1. Introductory Provisions/ Purpose of the Ordinance.

The Municipality hereby grants to the company its non-exclusive 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.

SECTION 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. subsection 76.1 *et seq.*, and the Cable Communications Policy Act, 47 U.S.C. section 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:

- (a) "Municipality" or "Borough" is the Borough of Sussex, County of Sussex, State of New Jersey.
- (a) "Company" is the grantee of rights under this Ordinance and is known as Service Electric Cable T.V. of New Jersey, Inc.
- (b) "Act" or "Cable Television Act" is Chapter 186 of the General Laws of New Jersey, and subsequent amendment thereto, section 48:5A-1 *et seq.*

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SECTION 3. Statement of Findings.

A public hearing concerning the consent herein granted to the Company was held, after proper public notice, on March 15, 2015 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.

SECTION 4. Grant of Municipal Consent.

The Borough hereby grants to the Company consent to the issuance of a non-exclusive 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 Sussex, 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.

SECTION 5. Duration of Franchise and Extension of Service.

The consent herein granted shall expire on September 6, 2026, ten (10) years from the date of expiration of the current Certificate of Approval as issued by the Board of Public Utilities (BPU). The Company shall be required to proffer service to any persons, residents or businesses in conformance with its Tariff on file with the Office of Cable Television including any policies for line extension and/or non-standard installations.

SECTION 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 two percent (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.

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SECTION 7. Rates.

In accordance with N.J.S.A. 48:5A-11, the Board of Public Utilities, through the Office of Cable Television, shall, consistent with federal law, prescribe just and reasonable rates, charges and classifications for the services rendered by a cable television provider. The Borough acknowledges that under the Act, municipalities do not have the authority to regulate the rates the Company charges subscribers for its services.

The Borough is desirous of obtaining reduced rates for senior citizens, disabled residents and other parties for whom reduced rates may currently be available or may be available during the term of this ordinance. Therefore, if the company adopts reduced rates for senior citizens, disabled persons or other parties in the future in accordance with N.J.S.A. 48:5A-11.1 et seq. and the Federal Act or any other law or regulation, these special rates shall be offered to qualified Borough residents.

SECTION 8. Territory.

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

SECTION 9. Construction Requirements.

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.

Relocation: 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.

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.

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

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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.

SECTION 10. 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.

SECTION 11. 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-26(b).

All complaints shall be received and processed in accordance with N.J.A.C. 14:17-6.5.

SECTION 12. Performance Bond.

During the life of the franchise, the Company shall give bond to the Municipality, which bond shall be in the amount of \$25,000.00.

Such bond shall be to insure the faithful performance of all undertakings of the Company as represented in its Application and incorporated herein.

SECTION 13. 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.

SECTION 14. Free Services.

The Company shall provide services in accordance with its Tariff for cable television service approved by the Board of Public Utilities on January 1, 2016. In addition, the Company shall provide the following locations with complimentary, expanded basic cable service:

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1. One (1) cable connection for the Fire Department and Rescue Squad located at 25 Loomis Ave, Sussex NJ 07461.
2. One (1) cable connection for the Sussex Municipal Building located at 2 Main Street, Sussex NJ 07461.
3. One (1) cable connection for the Sussex DPW garage located at 33 Brookside Avenue, Sussex NJ 07461.

The complimentary services provided herein are for expanded basic cable service only. All subscribers, including those set forth herein, shall be fully responsible for the cost associated with any installation of service and with each digital box that the subscriber maintains, which fees are determined by the Company in accordance with the type of digital box(es) that the subscriber maintains.

SECTION 15. 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.

SECTION 16. Liability Insurance.

The Company shall indemnify, protect and hold the Borough harmless from and against losses and physical damage to property, including those properties owned or under the control of the Borough, and bodily injury or death of persons, including payments made under any workmen's compensation law, if such damage may arise out of or is caused by any act of the Company, its agents or employees.

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 one million dollars (\$1,000,000.00) combined single limit for bodily injury or death to one person, five hundred thousand dollars (\$500,000.00) for property damage resulting from any one accident, and an excess liability (or umbrella) policy in the amount of ten million dollars (\$10,000,000.00).

The contractor building the cable television lines shall file a worker's compensation certificate of insurance with the Borough Clerk prior to commencing any work.

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All insurance required by this ordinance shall be and remain in full force and effect for the entire life of this franchise. A certificate of insurance must be submitted to the Borough Attorney to review for compliance with the abovementioned limits of liability. The Borough shall be a named insured on said policies. The insurer shall notice the Borough at least 30 days prior of its intention to cancel any policy.

SECTION 17. Filing with Borough Engineer.

The Company shall cause all construction plans relating to work which could have significant impact on public works within the Borough, to be filed with the Borough Engineer's Office.

SECTION 18. 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.

SECTION 19. 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.

SECTION 20. 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 affect the validity of the remaining portions hereof.

SECTION 21. Consistency with Future Federal and State Statutes, Regulations, Rules and Orders.

This Ordinance is subject to all provisions of the Act and to all lawful rules and regulations of the Board of Public Utilities and the Office of Cable Television., adopted pursuant thereto. The Company shall at all times comply with the rules and regulations governing cable

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television operations lawfully promulgated and adopted by the Board of Public Utilities. 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, **SECTION 20**, shall apply.

SECTION 22. Effective Date of Consent.

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

NOTICE

NOTICE IS HEREBY GIVEN that the attached Ordinance #2016-09 was introduced at a regular meeting of the Mayor and Council of the Borough of Sussex, Sussex County, New Jersey, held on the 21th day of June, 2016, and passed on first reading, and that such Ordinance will be further considered for final passage and adoption at the regular meeting of the Mayor and Council to be held on the 19th day of July, 2016, at Borough Hall, 2 Main Street, in the Borough of Sussex, at 7:30 p.m., and that at such time and place all persons interested be given an opportunity to be heard concerning said Ordinance.

Mark Zschack,
Borough Clerk

Katherine Little, Mayor

Introduced: June 21, 2016
Adopted: