

Draft 7.18.11

**ORDINANCE NO. 10-11 AN ORDINANCE GRANTING MUNICIPAL CONSENT FOR THE RENEWAL OF A CABLE TELEVISION FRANCHISE TO CABLEVISION OF OAKLAND, LLC FOR THE SUPPLYING OF CABLE TELEVISION SERVICES IN THE BOROUGH OF KINNELON, COUNTY OF MORRIS, STATE OF NEW JERSEY**

WHEREAS, by Ordinance 7-73, as amended, the Mayor and Council of the Borough of Kinnelon (the "Borough") granted a non-exclusive franchise for cable television services to Micro Cable Communications Corp., d/b/a UA-Columbia Cablevision of New Jersey ("UACC"), for a period of fifteen (15) years; and

WHEREAS, by Ordinance 7-89, as amended, the Mayor and Council of the Borough, granted a non-exclusive consent for the renewal of the cable television franchise to UACC for a period of ten (10) years; and

WHEREAS, on June 25, 1990, the cable operator became United Artists Cable of New Jersey; in 1991 the cable operator became United Artists Cable Company, a TCI Company; in November 1992, the cable operator became TCI of Northern New Jersey; and, as of March 4, 1998, the cable system was transferred to Cablevision of Oakland, Inc. and on December 26, 2001 the cable system was transferred to Cablevision of Oakland, LLC (the "Company"); and

WHEREAS, by Ordinance 8-99, as amended, the Mayor and Council of the Borough granted a non-exclusive consent for the renewal of the Cable Television Franchise to the Company for a period of ten (10) years; and

WHEREAS, the Company has filed with the Borough of Kinnelon an Application for Municipal Consent for the renewal of the non-exclusive cable television franchise in accordance with the law; and

WHEREAS, on March 19, 2009 and April 16, 2009 a public hearing concerning the renewal of the franchise for the placement, operation and maintenance of a cable television system was duly held, after proper public notice, pursuant to the terms and conditions of the Communications Act of 1934 and its amendments (47 U.S.C. 521, et seq. and N.J.A.C. 14:18-1, et seq.), the New Jersey Cable Television Act (N.J.S.A. 48:5A-1, et seq.) and administrative regulations promulgated thereunder (N.J.A.C. 14:17-1.1, et seq.), and other applicable law; and all comments and presentations regarding the qualifications of the Company for renewal of the franchise having been received and considered; and

WHEREAS, the Borough, by its governing body, hereby makes and finds the following determinations with respect to the Application for Municipal Consent (the "Application") of the Company:

- a. The Company has substantially complied with the material terms of the existing franchise and applicable law;
- b. The quality of the Company's service has been reasonable in light of community needs;
- c. The Company possesses the financial, legal, and technical ability to provide the services, facilities and equipment set forth in its Application and proposal, the terms of which are incorporated herein;
- d. The Company's Application and proposal is reasonable to meet the future cable-related community needs and interest, taking into account the cost of meeting such needs and interests.

WHEREAS, the Borough desires to grant the renewal of the franchise for cable television services to the Company under the terms and conditions as set forth in this Ordinance.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Council of the Borough of Kinnelon, County of Morris, State of New Jersey, as follows:

**SECTION 1. GRANT OF NON-EXCLUSIVE FRANCHISE.** The Borough hereby grants to the Company its non-exclusive consent to place in, upon, along, across, above, over and under

the highways, streets, alleys, sidewalks, public ways, and public places in the Borough poles, wires, cables, and fixtures necessary for the maintenance and operation in the Borough of a cable television system or other communications facilities and for the provision of any communication service over such facilities. Operation and construction, pursuant to said consent, is conditioned upon prior approval of the Board of Public Utilities.

**SECTION 2. DEFINITIONS.** For the purposes of the 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.; 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:

- a. "Borough" is the Borough of Kinnelon, County of Morris, State of New Jersey.
- b. "Company" is the grantee of rights under this Ordinance and is known as Cablevision of Oakland, LLC.
- c. "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.
- d. "Federal Act" is the Communications Act of 1934, and its amendments, 47 U.S.C. 521, et seq., and the Communications Act of 1996, and its amendments.
- e. "Board" is the New Jersey Board of Public Utilities of the State of New Jersey or its successor agency.
- f. "Office of Cable Television" is the New Jersey Board of Public Utilities, Office of Cable Television.
- g. "Application" is the Application for Municipal Consent, Borough of Kinnelon, dated December 17, 2008 and received by the Borough on December 22, 2008, submitted by Cablevision of Oakland, LLC.

h. "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.

**SECTION 3. STATEMENT OF FINDINGS.** On March 19, 2009 and April 16, 2009, 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. Said hearings having been held and fully open to the public, and the Borough having received all comments regarding the qualifications of the Company to receive this consent, the Borough hereby finds 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. DURATION OF FRANCHISE.** The consent herein granted 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 the Company seeks a 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-16, and applicable state and federal rules and regulations. In accordance with N.J.S.A. 48:5A-25.1, both the Borough and Cablevision shall be bound by the terms of this municipal consent until such time as Cablevision converts the municipal consent (and any Certificate of Approval) into a system-wide franchise.

**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 Borough 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 Borough or any amount mandated by the Cable Television Act or otherwise required by law in excess thereof. The Company will charge the franchise fee to users as permitted by law.

**SECTION 7. TERRITORY.** The consent granted herein to the Company shall apply to

the entirety of the Borough and any property hereafter annexed.

**SECTION 8. PROVISION OF SERVICE.** The Company shall be required to proffer service along any public right-of-way to any person's residence located in those areas of the franchise territory described herein, in accordance with the proposal for the provision of services as described in the Application. Commercial entities will be proffered service in accordance with the Company's commercial line extension policy as identified in the Application.

**SECTION 9. CONSTRUCTION REQUIREMENTS.** Cablevision shall perform construction and installation of its plant and facilities in accordance with applicable State and federal law. In the event that the Company or its agents shall disturb any pavement, street 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 in as good condition as existed prior to the commencement of said work.

If at any time during the period of this consent, the Borough 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, re-lay and relocate its equipment, at the expense of the Company.

Upon at least 14 days' notice, the Company shall temporarily move or remove appropriate parts of its facilities to allow for the 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 Borough, in which case the Company shall bear the costs.

During the exercise of its rights and privileges under this franchise, the Company, upon notice to the Borough Clerk, emergency situations excepted, shall have the authority to trim 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 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. TECHNICAL AND CUSTOMER SERVICE STANDARDS.** Cablevision shall comply with the technical and customer service standards established for the cable industry

under applicable State and federal laws, rules and regulations.

**SECTION 11. LOCAL OFFICE.** During the term of this franchise, and any renewal thereof, the Company shall maintain a local business office or agent for the purpose of receiving, investigating, and resolving all complaints regarding the quality of service, equipment malfunctions and similar matters as prescribed in N.J.S.A. 48:5A-26(d). Such local business office shall be open between 9:00 a.m. and 5:00 p.m. Monday through Friday, with the exception of Holidays.

**SECTION 12. INSTALLATION OF SERVICES.** The Company shall provide installation and service to any subscriber's residence within a reasonable time period under normal operating conditions in accordance with State and Federal regulations.

**SECTION 13. QUALITY OF SIGNAL.** The Company agrees to provide quality signals in accordance with State and Federal regulations.

**SECTION 14. ALTERATION OF BASIC SERVICE.** Subject to Federal Law, the Company shall not alter its basic service, including rate and channel changes, without prior notice to the Office of Cable Television and the Borough as required by applicable State law.

**SECTION 15. ANNUAL SYSTEM STATUS REPORT.** Upon request by the Borough, but no more than one time per year, a company representative shall attend a Borough Council meeting to discuss any changes, improvements, new procedures or to answer any concerns the Borough may have with the provision of cable television service in the Borough.

**SECTION 16. MUNICIPAL COMPLAINT OFFICER.** The Office of Cable Television is hereby designated as the complaint officer for the Borough, 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 17. PERFORMANCE BOND.** During the life of the franchise the company shall maintain a bond with the Borough 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 18. CABLE RATE.** The rates of the Company shall be subject to regulation as permitted by federal and state law.

**SECTION 19. FREE INSTALLATION AND SERVICE.** The Company shall provide the installation of one outlet and basic monthly cable television reception service at no charge in the Municipal Building, Department of Public Works, Kinnelon Free Public Library, Police Department, all Fire Department buildings and all public and private accredited K-12 school buildings in the Borough provided they are standard installations. Each additional outlet installed, if any, shall be paid for, by the institution requesting the same on a materials plus labor basis.

**SECTION 20. ACCESS CENTER; MODULATOR LOCATION.** The Borough has agreed to have access capability at the Kinnelon High School Studio Facility. The Borough and the Company have agreed to utilize the High School as the designated modulator location within the Borough and the High School Studio Facility will be the Borough's Access Center and will be used by the Police Department and Fire Department for emergency announcements. All access programming shall be of a non-commercial nature.

**SECTION 21. ADMINISTRATION OF ACCESS CENTER.** The mechanism for scheduling use of the Borough's Access Center shall be established by the Kinnelon Board of Education with the advice and consent of the Borough. The policy and rules and regulations with regard to the operation of the Borough's Access Center and programming availability guidelines, including by way of example and not limitation, scope of announcements, program schedule, use of facilities by various groups and organizations, advocacy of legislative, budgetary or other issues, equal time and fairness doctrines shall be established solely by the Borough. Such guidelines and policy shall be strictly applied to the operation of the Borough's Access Center by the Kinnelon Board of Education. All programming produced at the Borough's Access Center shall be of a non-commercial nature. Users of the Borough's Access Center shall comply with Cablevision's public educational and government access ("PEG") Guidelines to the extent applicable.

**SECTION 22. FREE INTERNET SERVICE.** Upon written request from the Borough, the Company shall provide to state and locally accredited elementary and secondary schools and municipal public libraries in the Borough, 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 Borough, the Company shall provide to (1) one municipally owned facility, 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.

**SECTION 23. SENIOR DISCOUNTS.** The Company voluntarily offers a discount for senior citizens meeting the eligibility requirements pursuant to the State's Pharmaceutical Aid for the Aged and Disabled program. The Company reserves the right to alter or discontinue the discount at any point during the term of this Ordinance.

**SECTION 24. INSURANCE.** 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 Borough as an additional insured and insuring against loss by any such claim, suit, judgment, execution or demand in the minimum amounts of \$1.5 million combined single limit for bodily injury or death to one person or resulting from any one accident and for property damage resulting from any one accident. The Company shall also provide workers compensation insurance at the State mandated limited. The insured will protect, defend, indemnify, and hold harmless, the Borough from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities arising out of or resulting from the operation, construction or maintenance of the cable system provided that any such claims, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of the tangible property including the loss of the use resulting therefrom and is caused in whole or in part by any negligent or willful act or omission of the Company.

**SECTION 25. EMERGENCY USES AND SERVICES.** The Borough shall adhere to the State Emergency Plan as established in accordance with Part 11 of the FCC regulations.



**SECTION 27. LEVEL PLAYING FIELD.** In the event that the Borough approves or permits a cable system to operate in the Borough on terms more favorable or less burdensome than those contained in this ordinance, then such more favorable or less burdensome terms shall be applicable to this franchise, pursuant to approval of a petition to amend the Certificate of Approval filed with the Board of Public Utilities as provided for under N.J.A.C. 14:17-6.7.

**SECTION 28. PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ACCESS.**

A. Cablevision shall continue to make available non-commercial public, educational and governmental ("PEG") access services available to the residents of the Borough as described in the Application for municipal consent. All Cablevision support for PEG access shall be for the exclusive benefit of Cablevision's subscribers.

B. The Borough 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 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's provision of PEG access programming on such channel.

C. Cablevision shall have discretion to determine the format and method of transmission of the PEG access programming provided for in Section 21 of this Ordinance.

D. In consideration for the rights granted in this Ordinance, the Company shall provide the Borough with a grant in the amount of Thirteen Thousand Dollars (\$13,000.00). Cablevision shall provide an initial grant payment of Four Thousand Dollars (\$4,000.00) within ninety (90) days of the issuance of the Certificate of Approval by the Board of Public Utilities. The remaining grant of Nine Thousand Dollars (\$9,000.00) shall be provided in annual installments of One Thousand Dollars (\$1,000.00) upon written request by the Borough. The Annual Grant may be used by the

Borough for any cable and/or other telecommunications related purpose as the Borough, in its discretion, might deem appropriate. Cablevision shall not be obligated to make any additional payments beyond year ten (10) of the franchise. 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 state-wide franchise. The Borough agrees that all amounts provided pursuant to this Section, shall be used for the exclusive support of PEG access equipment and facilities.

E. The Company shall have no further obligation to provide any PEG grant payments due and payable after the date upon which the Company converts the municipal consent granted herein to a system-wide franchise in accordance with N.J.S.A. 48:5A-25.1.

**SECTION 29. REQUEST FOR NON-FRANCHISED COMPETITIVE RELIEF.** In the event that a non-franchised multi-channel video programmer provides service to residents of the Borough, the Company shall have a right to request amendments to this Ordinance and any Certificates of Approval that relieve the Company of regulatory burdens that create a competitive disadvantage to the Company. In requesting amendments, the Company shall file with the Board a petition for approval seeking to amend the ordinance. Such petition shall: i) indicate the presence of a non-franchised competitor(s), ii) identify the basis for the Company's belief that certain provisions of the Certificate of Approval place the Company 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 object to granting the Company's petition and so amending the franchise ordinance, subject to approval of the petition by the Board of Public Utilities filed hereunder pursuant to N.J.A.C. 14:17-6.7.

**SECTION 30. REMOVAL OF FACILITIES.** Upon the expiration, termination or revocation of this franchise, the Company, at its sole cost and expense and upon the direction of the Borough, shall remove the cables and appurtenant devices herein, unless the Company, its affiliated entities or assigns, 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 telecommunication services. The Company shall seek approval from the Board of Public Utilities prior to dismantling its cable system in the Borough.

**SECTION 31. INCORPORATION OF APPLICATION.** All of the commitments and statements contained in the Application and any amendment thereto submitted in writing to the Borough 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 considered a part hereof by reference as long as they do not conflict with state or federal law.

**SECTION 32. CONFLICTING PROVISIONS.** In the event any portion of the Application or this Ordinance is in conflict with the provisions of the Cable Television Act (N.J.S.A. 48:5A-1, et seq.), the Cable Communications Policy Act and its amendments (47 U.S.C. 521, et seq.), and/or F.C.C. Rules and Regulations (76.1, et seq.), as amended, such portion shall not be construed as effective and shall be severable. The remainder of the Application and/or this Ordinance not so affected shall remain in full force and effect.

**SECTION 33. 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 34. INCONSISTENT ORDINANCES.** Ordinances, resolutions, and regulations or parts of ordinances, resolutions, and regulations inconsistent herewith, are hereby repealed to the extent of such inconsistency.

**SECTION 35. EFFECTIVE DATE.** This Ordinance shall take effect upon passage and publication according to law and the Company's written acceptance thereof within ten (10) days. If the Company does not accept the terms and conditions hereof, then the actions of the Borough 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.

ATTEST:

BOROUGH OF KINNELON

\_\_\_\_\_  
Elizabeth M. Sebrowski, Borough Clerk

\_\_\_\_\_  
Robert Collins, Mayor

**CERTIFICATION**

I, Elizabeth M. Sebrowski, Borough Clerk of the Borough of Kinnelon, County of Morris, State of New Jersey, do hereby certify the foregoing to be a true copy of an Ordinance introduced, read by title and passed on the first reading at a regular meeting of the Borough held on \_\_\_\_\_, 2010 and adopted by the Governing Body at a regular meeting of the Borough held on \_\_\_\_\_, 2010.

\_\_\_\_\_  
Elizabeth M. Sebrowski, Borough Clerk