

CABLE TELEVISION FRANCHISE

Chapter A72

CABLE TELEVISION FRANCHISE

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[HISTORY: Adopted by the Mayor and Council of the Borough of Helmetta 7-12-1995 by Ord. No. 14-1995.¹ Amendments noted where applicable.]

§ A72-1. Definitions.

For the purposes of this ordinance, terms defined above² shall have the meanings there indicated, and the following additional terms shall have the following meanings:

BOARD — The Board of Public Utilities of the State of New Jersey.

BOROUGH — The Municipality of Helmetta, County of Middlesex, in the State of New Jersey.

COMMITMENTS — The commitments, terms and undertakings on the part of Comcast Cablevision set forth in § A72-10 below.

FEDERAL ACT — 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., or as that statute may be amended.

FEDERAL REGULATIONS — Those federal regulations relating to cable television service, 47 CFR. 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 CFR 76.3), or as such regulations may be amended.

¹ Editor's Note: This ordinance also superseded Former Ch. A72, Cable Television Franchise, adopted 11-8-1979.

² Editor's Note: Reference is made to the preamble of this ordinance, which is on file in the Borough Clerk's office.

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STATE ACT — 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., or as that statute may be amended.

STATE REGULATIONS — 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 14:18-1.1 et seq., or as such regulations may be amended.

§ A72-2. Statement of findings.

The Borough Council, having engaged in certain investigation and review of Comcast Cablevision's performance and Helmetta's cable-related needs, including polling of subscribers in the borough and communications with Comcast Cablevision to inquire as to the company's past performance and plans for the future; the borough then having held a hearing fully open to the public, after proper public notice pursuant to the requirements of law, concerning the borough's consent to a renewal, and the borough having received and considered all comments relating to its consent to a renewal of the franchise; the Borough Council herein finds:

- A. That Comcast Cablevision has substantially complied with its obligations under the franchise and applicable law, and has provided generally satisfactory service, and the borough has no reason to believe that in the future Comcast Cablevision would fail to comply with its obligations under a renewal of the franchise and under applicable law.
- B. That if Comcast Cablevision undertakes the commitments set forth in § A72-10 hereof, and performs thereunder, such shall provide a reasonable assurance of meeting the borough's future cable-related needs.

§ A72-3. Purpose.

The borough hereby consents to a renewal of the franchise, subject to the terms and conditions of this ordinance and upon the condition that Comcast Cablevision accept the provisions of this ordinance and confirm in writing that it shall comply with all of the commitments.

§ A72-4. Consent to renewal term of franchise. [Amended 3-27-1996 by Ord. No. 4-1996]

The Borough of Helmetta hereby consents to the renewal of the non-exclusive cable television franchise of Comcast Cablevision for a period of 15 years as measured from November 1, 1995. This consent shall permit the company to place and maintain in, upon, along, across, above, over and under the highways, streets, alleys, sidewalks, public highways and public places in the Borough of Helmetta poles, wires, cable, underground conduits, manholes and other cable television conductors and fixtures necessary for the maintenance and operation of a cable television system. This consent however, is subject to the provisions of this ordinance and further subject to the written acceptance by the company of all the terms and conditions of this ordinance. Pursuant to this grant of consent, the company shall continuously operate a cable television system in the Borough and shall continually furnish cable television reception service to all subscribers within the borough. In the event that the company violates any provision of this ordinance, the borough will give it notice of such violation and allow the company 90 days to cure the violation unless additional time is granted by the Borough Council. In the event that the company does not cure the violation in the prescribed time, the matter will be referred to the Office of Cable Television (OCT) for the appropriate action.

§ A72-5. Franchise territory.

The consent granted by this ordinance shall apply to the entirety of the Borough of Helmetta and any territories

hereinafter annexed and is defined in CCPA, Section 621(a)(2), also known as 47 USC § 541. All questions of municipal boundary location, rights and interests in property, federal, state, county and/or other governmental or quasi-governmental rights, privileges and/or interests in real estate, shall be investigated and researched at the company's own cost and expense; procedures necessary to gather relevant information and to resolve every such question shall be pursued in the company's own name, and the borough shall never be under any obligation to perform investigations or research, conduct or prosecute proceedings, expend legal fees or pay the charge of engineers, surveyors, title searchers or others, or otherwise take any steps to define, delineate, establish or clarify the boundaries or rights of the borough.

§ A72-6. Compliance with zoning and other ordinances.

The foregoing consent is and at all times shall be subject to the full and complete compliance with the borough zoning ordinances and regulations,³ and all rules, regulations and laws of the applicable jurisdictions as to all aspects of location, operation and maintenance of microwave or other receivers or transmitters, studio facilities, mobile equipment and vehicles, all other facilities, equipment, apparatus and the like, incidental to the origination of programming, the sending or receiving of signals, and offices, storage, power sources, power plant and the like, except to the extent such ordinances, resolutions, rules, regulations and laws have been preempted.

§ A72-7. No interest in borough property.

The municipal consent granted herein shall not be construed to grant any easement, right-of-way, title in fee, leasehold or other interest in real estate, or other interest in property of the borough, other than the specific uses set forth in § A72-4 hereof during the period of the franchise renewal granted herein.

³ Editor's Note: See Ch. 40, Land Development.

§ A72-8. Franchise fee.

Pursuant to the terms and conditions of the Act, and other conditions established by law, the company shall, during each year of operation under the renewal of municipal consent granted herein, pay to the borough 2% of the gross revenues calculated as provided by N.J.S.A. 48:5A-30a. In the event that applicable law shall, during the term hereof, fix a greater percentage or expand the basis upon which the percentage is applied or increase the sums payable to the borough in any other manner, the compensation shall be adjusted to such greater amount by the company immediately. Payment to the borough shall be made in annual installments, on the last day of July. The company will provide the total number of subscribers as of the end of the previous period for audit and statistical purposes.

§ A72-9. Extension of service.

- A. Comcast Cablevision shall be required to proffer service to any person's residence or business located in the municipality, in accordance with any line extension policy which may be promulgated as a regulation by OCT, and, to the extent not inconsistent with any federal or state law, regulation, or other pronouncement, Comcast Cablevision stated installation charges and line extension policy as set forth in the application or as the same hereafter may be amended.
- B. Comcast Cablevision shall wire any area of the borough which previously has not been wired upon payment therefor in accordance with the provisions of the preceding Subsection A.

§ A72-10. Commitments by Comcast Cablevision.

The borough's consent to the renewal of the franchise is subject to, and expressly contingent upon, Comcast Cablevision's written undertaking (which may be expressed by

means of an amendment to the application, by any separate proposal for renewal, or by Comcast Cablevision's written statement that it accepts the provisions of this ordinance) as to the following:

A. Facilities and equipment.

- (1) In transmitting its television signals to subscribers in Helmetta, Comcast Cablevision shall provide a quality of signal that is at least as good as that customarily provided under prevailing industry standards, and Comcast Cablevision shall comply with any requirements imposed by the Federal Regulations, any federal requirements and (to the extent not preempted by federal law) any state requirements relating to technical standards for the transmission of television signals, transmission quality or facilities and equipment.
- (2) By May 7, 1997, or within 30 months of issuance of a certificate of approval by the Board of Public Utilities, whichever shall later occur, Comcast Cablevision shall have completed an upgrade of its distribution system by installation of a coaxial cable/fiber optic hybrid system which will yield improved picture quality and enhance signal reliability as well as increase channel capacity for the residents of the borough. **[Amended 3-27-1996 by Ord. No. 4-1996]**
- (3) The system shall at no time offer fewer than the total number of channels currently furnished, and the system shall by May 7, 1997, or within 30 months of issuance of a renewal certificate of approval by the Board of Public utilities, whichever shall later occur, offer at least 60 channels of capability. **[Amended 3-27-1996 by Ord. No. 4-1996]**
- (4) Present converters used by customers shall be replaced with converters offering the following

features and services, which shall be made available to subscribers at the rates and charges specified in Comcast's tariff on file with the Board of Public Utilities: capacity for at least 60 channels of programming; parental control device options; pay-per-view capacity/compatibility; wireless remote control; favorite channel recall; and VCR programming compatibility.

- (5) In addition to the system described in the application, Comcast Cablevision shall provide a cable system which meets all federal and state technical requirements.
- (6) As soon as practicable after any source of television programming or signals ("programming source") carried by Comcast Cablevision reaches a point at which it shall transmit an MTS (stereo) signal at least 85% of its broadcast time, Comcast Cablevision shall, unless compelling reasons dictate otherwise, complete any necessary steps to effect its retransmission of such programming source with an MTS signal. Comcast Cablevision shall have the right to discontinue MTS retransmission for good cause shown, such as changes in technology or subscriber demand.
- (7) Comcast Cablevision shall cause any and all construction plans relating to work on any extensions of its plant or work which could have a significant impact on public works within the borough to be filed with the borough's Engineer. Nothing herein shall create any rights or obligations with respect to construction work which are inconsistent with any regulations or regulatory authority of the OCT or the Board.

B. Customer service.

- (1) Standards.

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- (a) 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"), Comcast Cablevision shall do the following:
- [1] Comcast Cablevision shall, within 60 days of issuance of a certificate of approval by the Board of Public Utilities, submit to the borough its written goals and its plan for meeting these goals with respect to telephone accessibility and shall use its best efforts to comply with any OCT guidelines relating to the foregoing.
 - [2] The company will comply with all federal and state requirements with regard to installations, disconnections and relocations. If the company fails to keep a scheduled appointment or cancels an appointment prior to the close of the normal business day, the company will make its best efforts to provide the subscriber priority in rescheduling.
 - [3] The company shall comply with all Federal and State regulations, including but not limited to N.J.A.C. 14:18-3.5, with regard to service outages.
 - [4] The company shall comply with all federal and state regulations, including but not limited to N.J.A.C. 14:18-3.17, with regard to notification to subscribers and municipalities concerning changes in programming.
- (b) Nothing herein shall impair the right of any subscriber or the municipality to express any comment or complaint with, respect to

telephone accessibility to the complaint officer (as designated in § A72-12 hereof) or impair the right of the complaint officer to take any action which is appropriate under law.

- (2) During the renewal term, Comcast Cablevision shall maintain a local office as required and as set forth in Article IX of the Initial Term Consent Ordinance.⁴
- (3) Comcast Cablevision shall comply with all federal and state regulations, including but not limited to N.J.A.C. 14:18-3-18, with respect to the provision of notices to subscribers.
- (4) At the request of the borough, Comcast Cablevision and the borough's designee shall meet at least annually to review all matters relating to cable television in the borough, with the minutes of such meetings to be delivered to Comcast Cablevision and to be filed with the Borough Clerk.

C. Access programming.

- (1) Comcast Cablevision shall make available a channel for purposes such as public, educational and government ("PEG") use to the borough or the borough's designees (the "PEG designees"). Comcast Cablevision shall be deemed to have satisfied this obligation if such a PEG channel is shared by the borough with another municipality (the "sharing municipality"). Subject only to the requirements of law, any Comcast Cablevision requirements that PEG programming be of a noncommercial nature, and any need for the sharing municipality and/or their designees to cooperate in programming origination, the borough and its designees shall have full discretion and flexibility with respect to use of the PEG channels. It shall be understood that

⁴ Editor's Note: Reference is made to § A72-9, Local business office; hours, of former Ch. A72, Cable Television Franchise, adopted 1-8-1979. Said former Ch. A72 was superseded by this chapter.

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views expressed on PEG channels shall not be deemed to be the views of Comcast Cablevision, and Comcast Cablevision shall not be responsible for the content of PEG programming or for views expressed on programming produced by the PEG designees.

- (2) Comcast Cablevision shall take any steps which are necessary to ensure that the signals originated on the PEG channels are carried without material degradation and that to the extent the PEG channels' programming is originated with a signal whose quality meets accepted standards and is equal to that of other channels Comcast Cablevision transmits, the PEG channels' broadcast quality shall meet accepted standards and be equal to that of other channels Comcast Cablevision transmits.
- (3) Comcast Cablevision shall provide scheduled technical assistance at any PEG designee's hub site and studio, who will visit and provide adjustment and diagnostic service not less than once per month if reasonably required.
- (4) Comcast Cablevision shall employ a procedure for designating a Comcast Cablevision employee as responsible for taking and addressing comments or complaints with respect to the quality of the PEG designees' transmissions.
- (5) Comcast Cablevision shall provide:
 - (a) Free installation and basic service to the following locations within the borough:
 - [1] The Nutrition Center at St. George's Church.
 - [2] The recreation hall at Holy Trinity Church.
 - [3] The municipal Fire Department building.
 - [4] The Municipal Building, with two drops (connections), one each to the municipal

Council Chamber and the Police Department.

- [5] Any senior citizen center, library, rescue squad building or other municipal building constructed within the borough in the future.
- (b) A twenty-seven inch color television set for the following locations:
- [1] The Nutrition Center at St. George's Church.
 - [2] The Municipal Building.
 - [3] A one-half inch VCS for use by the Borough of Helmetta in its Municipal Building.
- (6) In the event that the municipality shall have, during the term of this franchise, constructed a municipal access studio before disposing of any usable video production equipment, Comcast Cablevision shall advise the borough or its PEG designee and anyone else it deems advisable of such equipment's availability and the price (if any) to be received by Comcast Cablevision therefor, and, to the extent practicable, shall offer it for PEG purposes somewhere within the areas Comcast Cablevision serves upon the same terms and for the same consideration (if any) that Comcast Cablevision would receive upon its disposition of such equipment. Nothing herein shall be deemed to grant the borough, any of the PEG designees or any other person any right of first refusal or any other legal right or claim to obtain such equipment.
- (7) In the event that the municipality shall have, during the term of this franchise, constructed a municipal access studio, subject to the proviso herein, Comcast Cablevision shall lend to the PEG designees, for PEG broadcasts, videotapes of

programming relating to the borough or matters of particular interest to the borough (including, but not limited to, interviews with municipal officials) which are in Comcast Cablevision possession or control and which have been previously shown on Comcast Cablevision programming or any channel Comcast Cablevision uses for its own originated programming; provided that Comcast Cablevision may withhold such videotapes on reasonable grounds, including, but not limited to, the rights of copyright holders or its other commitments with respect to such programming.

- (8) In the event that the municipality shall have, during the term of this franchise, constructed a municipal access studio, Comcast Cablevision shall continue to transmit the signal for the PEG designee communities on cable (so long as that organization or a successor to it continues to be the borough's PEG designee) on Comcast Cablevision channel. It is understood, however, that channel designation may change from time to time and shall be left within the discretion of Comcast Cablevision.
 - (9) Upon reasonable request, Comcast Cablevision shall offer, at locations within the borough or any adjoining borough where studio facilities may exist, advice on the production of television programming for the training of personnel who will assist in productions originated by the PEG designees, and shall similarly offer advice providing such training at schools to which the borough is a sending district.
- D. Compliance law. Notwithstanding any specific mention of applicable federal or state statutes or regulations above, Comcast Cablevision 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 any other valid statute, regulation, rule or promulgation, specifically including,

but without limitation, those relating to equal employment opportunity.

§ A72-11. Construction requirements.

- A. Restoration. In the event that Comcast Cablevision or its agents shall disturb any pavement, street surfaces, sidewalks, driveways or other surfaces in the natural topography, Comcast Cablevision 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.
- B. Relocation. 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, Comcast Cablevision, upon reasonable notice by the borough, shall at its expense, remove, re-lay and relocate its equipment.
- C. Temporary removal of cables. Comcast Cablevision shall, upon request of the borough, at Comcast Cablevision expense, temporarily raise, lower or remove its lines in order to facilitate the moving of buildings or machinery or in other like circumstances.
- D. Removal or trimming of trees. During the exercise of its rights and privileges under this franchise, Comcast Cablevision 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 contact with the wires and cable of Comcast Cablevision. Such trimming shall be performed only after Comcast Cablevision uses its best efforts to obtain approval of the borough's Shade Tree Commission, if any,⁵ and only to the extent necessary to maintain proper clearance for Comcast Cablevision's wires and cables.

⁵ Editor's Note: See Ch. 16, Shade Tree Commission.

§ A72-12 CABLE TELEVISION FRANCHISE § A72-15

§ A72-12. Municipal complaint officer.

The OCT is hereby designated as the complaint officer for the municipality pursuant to N.J.S.A. 48:5A-26b. All complaints shall be received and processed in accordance with N.J.A.C. 14:17-6-5.

§ A72-13. Programming.

Comcast Cablevision shall comply with any state law or regulation with respect to maintaining space for a statewide interconnect channel. This § A72-12 shall not be deemed to require or preclude any commitment on the part of Comcast Cablevision to provide any additional PEG channel.

§ A72-14. Performance bond.

To secure its faithful performance of its obligations under a renewal of the franchise during the renewal term, Comcast Cablevision shall provide a performance bond, in the penal sum of \$25,000. Such bond shall specifically secure the faithful performance of all undertakings of Comcast Cablevision as represented in the Application and in the commitments. The borough reserves the right by resolution to require a reasonable increase in the amount of said bond, subject to review by the OCT and approval by the Board.

§ A72-15. Rates; emergency uses.

The borough will not regulate the rates Comcast Cablevision may charge subscribers for its service; provided that, in the event that the Federal Act and other applicable law hereafter is amended to permit the exercise of regulatory power over rates by municipalities, the borough reserves the right to exercise the maximum power permitted by law.

§ A72-16. Emergency override.

Comcast Cablevision shall be required to participate in the Statewide Emergency Alert System ("EAS") so as to have the capability to override at the head end the audio portion of its television signals. Comcast's participation in the EAS shall commence upon completion of the EAS in cooperation with the New Jersey State Police.

§ A72-17. Liability insurance.

Comcast Cablevision shall at all times maintain a comprehensive general liability insurance policy with a single limit amount of \$1,000,000 covering liability for any death, personal injury, property damages or other liability arising out of its construction and operation of the cable television system, and an excess liability (or "umbrella") policy in the amount of \$3,000,000. The Borough of Helmetta shall be named as an additional insured under said policy.

§ A72-18. Incorporation of application.

All of the statements and commitments contained in the application and any amendment thereto, or otherwise submitted in writing by Comcast Cablevision to the borough, except as modified herein, are binding upon Comcast Cablevision as terms and conditions of this consent. The application and any other relevant writings submitted by Comcast Cablevision shall be annexed hereto and made a part hereof by reference.

§ A72-19. Number of subscribers irrelevant.

Comcast Cablevision shall be bound by the terms and provisions of this ordinance irrespective of the number of subscribers to its system.

§ A72-20 CABLE TELEVISION FRANCHISE § A72-23

§ A72-20. Amendments. [Amended 3-27-1996 by Ord. No. 4-1996]

This ordinance may be amended by the filing of a petition for approval of any modification or amendment of the terms or conditions hereof in accordance with the provisions of N.J.A.C. 14:17-6.7.

§ A72-21. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid, preempted or unconstitutional by any court or federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision of this ordinance, and such holding shall not affect the validity of the remaining portions hereof.

§ A72-22. Consistency with future regulations.

Should any of the federal or state statutes, regulations, or pronouncements applicable to the regulation of cable television be modified in any way, such modifications, to the extent they embody 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 places limits on permissible terms and conditions, and any provision of this ordinance becomes invalid by virtue of such modification, the preceding § A72-20 shall apply.

§ A72-23. Effective date of consent.

This municipal consent ordinance shall become effective 20 days following final passage and publication according to law and further as of the date upon which the Borough receives written notification that Comcast Cablevision accepts the

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provisions of this ordinance, including the Commitments set forth in § A72-10 hereof.