

**Ordinance No. 2015-13**

**ORDINANCE OF THE TOWNSHIP OF LOPATCONG, COUNTY OF WARREN, STATE OF NEW JERSEY REPLACING CHAPTER A249, "CABLE TELEVISION FRANCHISE," OF THE CODE OF THE TOWNSHIP OF LOPATCONG TO RENEW THE CABLE FRANCHISE ORDINANCE.**

**WHEREAS**, Service Electric Cable TV of Hunterdon, Inc., a Pennsylvania corporation (SECTV) has applied to the Township of Lopatcong pursuant to the provisions of the Cable Television Act, N.J.S.A. 48:5A-1 et seq. ("the Act") for renewal of the Township's consent to operate a cable television system in the Township of Lopatcong and to use the public roads of the Township for its cable television system.

**WHEREAS**, a public hearing concerning the franchise granted to the company was held on September 22, 2015 after proper public notice pursuant to the terms and conditions of the Act, the hearing having been fully opened to the public, and the Township having received at the hearing all comments regarding the qualifications of the company to receive a franchise.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and the Council of the Township of Lopatcong, County of Harmony, and State of New Jersey, as follows:

**SECTION I:**

Chapter A249, entitled "Cable Television Franchise" is hereby deleted and replaced in its entirety as follows:

**CHAPTER A249**

**CABLE TELEVISION FRANCHISE**

**A249-1 SHORT TITLE**

This ordinance shall be known and may be cited as the "Service Electric Cable TV of Hunterdon, Inc. Franchise Ordinance."

**A249-2 FINDINGS**

Service Electric Cable TV of Hunterdon, Inc., a Pennsylvania corporation (SECTV) has applied to the Township of Lopatcong pursuant to the provisions of the Cable Television Act, N.J.S.A. 48:5A-1 et seq. ("the Act") for renewal of the Township's

consent to operate a cable television system in the Township of Lopatcong and to use the public roads of the Township for its cable television system. A public hearing concerning the franchise granted to the company was held on September 22, 2015 after proper public notice pursuant to the terms and conditions of the Act, the hearing having been fully opened to the public, and the Township having received at the hearing all comments regarding the qualifications of the company to receive a franchise.

### **A249-3            DEFINITIONS**

For the purpose of this ordinance, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural.

*Application* shall mean the application for renewal of municipal consent filed with the Township.

*Board* shall mean The Board of Public Utilities of the State of New Jersey.

*Commitments* shall mean the commitments, terms and undertakings on the part of Service Electric set forth in this ordinance.

*Cable Communications System* shall mean any communications service other than cable television reception service delivered through the facilities of a CATV system and for which charges in addition to or other than those made for cable television reception service are made or proposed to be made.

*Cable Television Company* or *CATV Company* shall mean any person owning, controlling, operating or managing a cable television system. The term "person," as used herein, shall be construed, without limiting the generality thereof, to include specifically any agency or instrumentality of this state or of any of its political subdivisions; but this definition shall not include a telephone, telegraph or electric utility company regulated by the Board in a case where it merely leases or rents or otherwise provides to a CATV company wires, conduits, cables or pole space used in the redistribution of television signals to or toward subscribers or customers of such CATV company.

*Cable Television System* or *CATV System* shall mean any facility within this state which is operated or intended to be operated to perform the service of receiving and amplifying the signals broadcast by one or more television stations and redistributing such signals by wire, cable or other device or means for accomplishing such redistribution to members of the public who subscribe to such service or distributing through its facility any television signals, whether broadcast or not, or any part of such facility. The term "facility," as used in this definition, includes all real property, antennas, poles, wires, cables, conduits, amplifiers, instruments, appliances, fixtures and

other personal property used by a CATV company in providing service to its subscribers and customers.

*Company* shall mean the grantee of rights under this ordinance awarding a franchise and known as "Service Electric Cable TV of Hunterdon, Inc."

*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. § 521 et seq., or as that statute may be amended.

*Federal Regulations* shall mean 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.

*Highway* shall mean every street, road, alley, thoroughfare, way or place of any kind used by the public or open to use by the public.

*Person* shall mean any natural person, firm, partnership, associates, corporation, company or organization of any kind.

*State Act* shall mean that statute of the State of New Jersey relating to cable television, commonly known as the "Cable Television Act," N.J.S.A. 48:5A-1 et seq., or as that statute may be amended.

*State Regulations* shall mean those regulations of the Board 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.

*Subscriber Revenues* shall mean those revenues derived from all recurring charges in the nature of subscription fees paid by subscribers located within the Township for cable television reception service for which no separate or additional charge is made, i.e. basic cable service.

*Township* or *Municipality* shall mean the Township of Lopatcong, County of Harmony, State of New Jersey, and shall include, as appropriate, the governing body of the Township.

#### **A249-4 QUALIFICATIONS AND GRANT OF AUTHORITY**

The Township 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. The Township therefore grants the company a franchise, right and privilege 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 such poles, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the Township 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 right so granted includes 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 as provided by the Federal Act and State Act.

#### **A249-5 FRANCHISE TERM**

The nonexclusive franchise granted the company herein shall expire fifteen (15) years from the date of expiration of the previous certification of approval by the Board. The fifteen-year term shall be conditioned upon the company complying with a mutually negotiated agreement between the Township and the company for the expansion of the company's cable and internet service to the areas designated in §A249-8 of this Ordinance. The Township reserves the right at any time to enforce and/or terminate the franchise according to applicable laws, rules and regulations for the company's failure to perform any of its commitments and obligations as set forth in this ordinance. Prior to enforcement or termination, the Township shall give the company 60 days written notice to cure the noncompliance. In the event, noncompliance continues, the Township shall file a petition with the Board of Public Utilities seeking such relief as is appropriate under the circumstance.

#### **A249-6 EXPIRATION AND SUBSEQUENT RENEWAL**

If the company seeks successive consent, it shall, prior to the expiration of this consent, apply for municipal consent and certificate of approval in accordance with the Cable Television Act, N.J.S.A. 48:5A-11 and 48:5A-16, and applicable State and Federal Rules and Regulations. The company shall also petition the Board for 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.

**A249-7 PAYMENT TO TOWNSHIP**

A. 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 (2%) percent 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. The fee shall be paid on or before January 25 of each year and at the same time the company shall file with the chief financial officer of the municipality a statement showing the gross receipts upon which payment is based.

B. In the event applicable law hereafter permits a larger franchise fee to be collected, but does not fix the amount thereof, the Township and the company shall negotiate in good faith with respect to the amount. Additionally, in the event the relevant laws are amended in the future to allow additional fees and/or charges (collectively "fees") to be paid to the Township, the Township shall have the right to impose such fees in accordance with the applicable law. In the event the law does not state the amount the Township is allowed to impose, the parties shall negotiate in good faith with respect to the amount of the fee. In the event any of the fees provided for in this section cannot be agreed to after negotiations, then the Township shall have all rights available to it under law in order to establish the fee.

**A249-8 EXTENSION OF SERVICE**

A. The Company shall be required to offer service to any 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. Any additional extension of the system will be made in accordance with the proposal in the application.

B. New cable service or products made available to the residents of Phillipsburg shall be made available to all of Lopatcong Township.

C. Any future extensions of the system, or any extension of the system along private roads will be made in accordance with the company's line extension policy, where applicable.

**A249-9 CONSTRUCTION REQUIREMENTS**

A. 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.

- B. In the event that at any time during the term of this ordinance the Township shall lawfully elect to alter or change the grade of any street, alley or other public way, the company, upon reasonable notice by the Township, shall, at its expense, remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures.
- C. The company shall, on the request of any person holding a valid building moving permit issued by the Township, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the company shall have the authority to require such payment in advance. The company shall be given not less than 10 days' advance notice to arrange for temporary wire changes.
- D. 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 within the Township so as to prevent the branches of such trees from coming into contact with the wires and cables of the company. Such trimming shall be performed only to the extent necessary to maintain proper clearance for the company's wires and cables.
- E. The company shall cause any and all construction plans relating to work on any extension of the company plant or work which could have a significant impact on public works within the Township to be filed with the Township Engineer.
- F. All facilities and equipment of the company shall be constructed and maintained in accordance with the requirements and specifications of the applicable ordinances and regulations set forth by the Township and/or any other local, state or federal agencies.

#### **A249-10 TERRITORY**

The consent granted herein to the company shall apply to the entirety of the municipality and any property hereafter annexed.

#### **A249-11 LOCAL OFFICE AND COMPLAINT PROCEDURES**

During the term of this franchise and any renewal term, 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 in accordance with N.J.A.C. 14:18-5.1. All complaints shall be received and processed by the company pursuant to N.J.A.C. 14:17-6.5. The local office shall be open to receive inquiries and complaints and to receive payment of bills from subscribers during normal business hours, and in no event less than 9:00 a.m. to 5:00 p.m., Monday

through Friday. Any complaints from subscribers shall be investigated as soon as practicable, but at least within two business days of their receipt. The company shall keep a maintenance service log in the manner required by the regulations of the Office of Cable Television.

#### **A249-12 MUNICIPAL COMPLAINT OFFICER.**

The New Jersey Office of Cable Television (OCTV) is hereby designated as the complaint officer required by N.J.S.A. 48:5A-26 to receive and act upon complaints by subscribers to cable television reception service provided pursuant to this franchise.

#### **A249-13 COMMITMENTS BY COMPANY**

- A. Facilities and equipment. In transmitting its television signals to subscribers in the Township, the company shall 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 any requirements imposed by the Federal Regulations, any federal pronouncements and, to the extent not preempted by Federal Law, any state pronouncements relating to technical standards for the transmission of television signals, transmission quality or facilities and equipment.
- B. Emergency uses. The company is in compliance with the Federal Emergency Alert System ("EAS) and, as such, the company 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 municipality pursuant to state and federal requirements. The company shall in no way be held liable for any injuries suffered by the municipality or any other person, during an emergency, if for any reason the municipality is unable to make full use of the cable television systems as contemplated herein. The municipality shall utilize the state-approved procedures for such emergency uses.
- C. Customer service. At the request of the township, the company and township's designee shall meet at least semiannually 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.

#### **A249-14 RATES**

A. The Township acknowledges that, under the Federal Act, municipalities do not have the authority to regulate the rates the company charges subscribers for its services. Therefore, the Township will not regulate the rates the company may charge subscribers for its service; provided, that, in the event the Federal Act and other applicable law hereinafter is amended to permit the exercise of regulatory power over

rates by municipalities, the Township reserves the right to exercise the maximum power permitted by law.

B. The Township 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 Lopatcong residents.

#### **A249-15 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 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.

#### **A249-16 FREE SERVICES**

A. The company shall provide free installation and basic cable service through one service outlet to the following facilities: the municipal building, each Lopatcong Township School building, each police, fire, first aid, emergency management facility, Department of Public Works, and township-operated community center at no cost. This obligation shall apply to any new facilities in the preceding categories constructed during the term of municipal consent. The installation of each additional outlet shall be paid for by the institution on a material plus labor basis. Monthly service on such additional outlets shall be charged at the regular tariffed rates for additional outlets.

B. The company shall provide free installation of internet services to the same facilities listed in Section A. This obligation shall apply to any new facilities in the preceding categories constructed during the term of municipal consent. The company is not required to provide the monthly service fee free of charge.

#### **A249-17 LIABILITY AND INDEMNIFICATION**

A. The company shall indemnify, protect and save the Township harmless from and against losses and physical damage to property, including those properties owned or under the control of the Township, and bodily injury or death of persons, including payments made under any workmen'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 or arising out of the use, operation, maintenance or revocation for renewal of the system contemplated by this franchise.

- B. The company shall maintain at all times during the term of the franchise liability insurance naming the Township as an insured and providing insurance coverage against all claims, demands, actions, judgments, costs, expenses 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 \$1,000,000 and not less than \$1,000,000 as to any one accident and an excess liability (or “umbrella”) policy in the amount of \$5,000,000.
- C. The company shall also maintain any such insurance as it deems necessary to protect it from all claims under the workmen’s compensation laws in effect that may be applicable to the franchise.
- D. 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 Township Attorney to review for compliance with the above-mentioned limits of liability. The Township shall be a named insured on said policies. The insurer shall notice the Township at least 30 days prior of its intention to cancel any policy.

**A249-18 PERFORMANCE BOND**

During the life of the franchise, the company shall give a bond to the Township in accordance with N.J.S.A. 48:5A-28(d), which bond shall be in the minimum amount of \$25,000. Such bond shall be to insure the faithful performance of all undertakings of the company as represented in the application herein.

**A249-19 COMPANY RULES AND REGULATIONS**

The company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the company to exercise its rights and perform its obligations under this franchise and to assure uninterrupted service to each and all of its subscribers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with federal and/or state laws.

**A249-20 APPROVAL OF TRANSFER**

The company shall not sell or transfer its CATV system to another, nor transfer any rights under this franchise to another, except as provided in the State Act.

**A249-21      MODIFICATION OF FCC RULES**

Any modification of existing and applicable FCC rules resulting from amendment thereto by the FCC shall, to the extent applicable, be considered as part of this franchise as of the effective date of the amendment made by the FCC and shall be incorporated in this franchise by specific amendments thereto by the lawful action of the Township Council within one year from the effective date of the FCC's amendment or at the time of renewal to this franchise, whichever occurs first.

**A249-22      COMPLIANCE WITH STATE AND FEDERAL ACTS**

This ordinance and franchise are subject to all provisions of the State Act and Federal Act and to all lawful rules and regulations of the OCTV adopted pursuant thereto. The company shall at all times comply with the state regulations governing cable television operation, the State Act, the Federal Act and any other. In the event of a conflict between the State Act and state regulations and any FCC rules and regulations, the FCC rules and regulations shall prevail.

**A249-23      PROHIBITED ACTIVITIES**

The company shall not allow its cable or other operations to interfere with the television reception of persons not served by the company, nor shall the CATV system interfere with, obstruct or hinder in any manner the operation of the various utilities serving the residents of the Township.

**A249-24      ADDITIONAL SERVICES**

In the event, new cable services or products are made available to subscribers in the Town of Phillipsburg, the same or similar service or product shall be made available to all of Lopatcong Township.

**A249-25      AMENDMENTS**

Subject to the requirements of the Federal Act and approval by the Board, the Township reserves the power to amend any portion of this ordinance after public hearing for the purpose of requiring reasonable additions or greater standards of construction, operation, maintenance or otherwise on the part of the company. Said amendments shall be feasible and within the economic capabilities of the company.

**A249-26 COMPLIANCE WITH OTHER PROVISIONS**

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 any other valid statute, regulation, rule or promulgation.

**A249-27 COMPLIANCE WITH FUTURE PROVISIONS**

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 that 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, Section A249-27 shall apply.

**A249-28 RESERVATION OF RIGHTS**

The Township reserves the right to amend this ordinance in the event of any changes in state and/or federal law or regulations regarding cable television in a manner consistent with the regulations of the OCTV/BPU.

**A249-29 INCORPORATION OF FRANCHISE APPLICATION**

All of the statements and commitments contained in the application and any amendment thereto, or otherwise submitted in writing to the Township or its Governing body, 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 part hereof by reference to the extent that they do not conflict with state or federal law.

**SECTION II**

All Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistencies.

**SECTION III**

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.

**SECTION IV**

This Ordinance shall take effect immediately upon final publication as provided by law.

ATTEST:	<b>TOWNSHIP COUNCIL OF THE TOWNSHIP OF LOPATCONG</b>
Beth Dilts, Township Clerk	Thomas McKay, Mayor

DATED: \_\_\_\_\_

**NOTICE**

**NOTICE** is hereby given that the foregoing Ordinance was introduced to pass on first reading at a regular meeting of the Township Council of the Township of Lopatcong held on November 12, 2015, at 7:00 PM and ordered published in accordance with the law. Said Ordinance will be considered for final reading and adoption at a regular meeting of the Township Council to be held on December \_\_\_\_, 2015, at 7:00 PM, or as soon thereafter as the Township Council may hear this Ordinance at the Municipal Building, 232 South Third Street, Phillipsburg, New Jersey 08865, at which time all persons interested may appear for or against the passage of said Ordinance.

\_\_\_\_\_  
Beth Dilts, Township Clerk

**CERTIFICATION**

I, BETH DILTS, Clerk of the Township of Lopatcong, do hereby certify that the foregoing Ordinance was duly adopted by the Township of Lopatcong Council on the \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Beth Dilts, Township Clerk