



TOWNSHIP OF MONROE
MIDDLESEX COUNTY
CABLE TELEVISION ASCERTAINMENT REPORT

Submitted by

Cable Television Advisory Committee

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Introduction

This report is presented to the Monroe Township Council by the Monroe Township Cable Television Advisory Committee (CTAC, or the Committee). The Committee was created by ordinance in early 2018 and its members were appointed by Mayor Gerald W. Tamburro shortly thereafter. Over the last year, the Committee has familiarized itself with the franchise granted to Comcast in 2007, and with the various requirements established by that franchise. Through its own investigation as well as input provided at a public hearing, the Committee is now prepared to present its findings and recommendations to the Township Council.

Community Profile

The Township of Monroe, the southernmost municipality in Middlesex County, is approximately 43 square miles in land area. The Township's boundaries include the Boroughs of Spotswood, Jamesburg, and Helmetta, and the Townships of South Brunswick, Old Bridge, and East Brunswick in Middlesex County.

According to the 2010 Census, the Township's official population is 39,170. However, with the increasing residential development which has taken place since the Census was completed, it is estimated that the current Township population is approximately 45,000 persons. This number is expected to increase gradually over the next five to ten years.

Another interesting aspect about the Township's demographics is that 55% of our residents are more than fifty five years old. Many of them reside in one of the twelve Planned Residential active adult communities (PRCs) located in Monroe. Several more PRCs have also been approved and are awaiting construction.

Based on information provided by the Tax Assessor's office, as of October 2018 there are 20,222 residential dwelling units in the Township.

History of Cable Television in Monroe Township

The history of cable television in Monroe dates back to 1979, when the Township granted a 15-year franchise to Nassau Cable Television, Inc., and the Board of Public Utilities (BPU) ratified the grant. The initial grant was to run until March 1995. However, during this initial franchise period, Nassau Cable was acquired by Storer Cable. In 1993, Storer Cable, the new owner, applied for a renewal of the franchise. Shortly thereafter, however, Storer itself was acquired by Comcast. In 1994, the Township Council granted a ten-year renewal contract to Comcast, and in 1995 the BPU ratified the renewal.

In 2004, Comcast filed for another renewal. After year-long negotiations failed to produce an agreement, the renewal was denied. Comcast filed an appeal of the denial with the BPU. After one additional year of negotiations, a settlement was reached. In March 2007, the Township adopted an ordinance accepting the settlement. The settlement provides for a renewal term of fifteen years with an automatic ten year renewal thereafter. The fifteen years actually expires in March 2020, because the prior franchise expired in 2005.

In this context, the word “automatic” really means “conditionally automatic” because the right to automatic renewal is subject to forfeiture if the operator violates the cable statute, any BPU regulations or the terms of the municipal consent. Under BPU rules, a decision by the Township to oppose automatic renewal must be reached by March 19, 2019, a year before the expiration of the current franchise. This is the deadline for completing the ascertainment process.

Current Television Service in Monroe Township

Cable television service in Monroe Township is currently provided by Comcast and Verizon. Comcast offers service throughout the entire Township under the Township franchise referred to above. Verizon provides fiber optic services (FIOS) under a State-wide franchise authorized by the New Jersey Legislature in 2006. Satellite television is also available throughout the Township. A limited number of broadcast television signals also reach Monroe.

In terms of franchise fees paid to the Township, Comcast pays a 2% fee required by the State which is calculated based on revenues from basic cable service. According to the BPU Office of Cable Television (OCTV), in 2017, the Township received \$141,577.53 in franchise fees from Comcast. On the other hand, Verizon’s franchise fee is based on 3.5% of total revenues received for all cable TV services. As a result, Verizon paid the Township \$266,930.70 based on total revenues for the same time period. The Township does not receive any fees from satellite television providers.

The Comcast franchise fee would move to this higher amount once Verizon confirms that it is capable of providing service to at least 60% of the households in Monroe. As noted above, there are approximately 20,000 households in Monroe, meaning that Verizon would need to be capable of providing service to at least 12,000 households before the Township would be eligible to receive the higher fee from Comcast. However, the Committee has been stymied in its efforts to determine how close Verizon is to achieving this level. In response to a request by the Committee, Verizon informed us that it has 5,483 customers in Monroe, but it declined to disclose the areas of the Township which it serves because “its disclosure would cause substantial harm to the competitive position of Verizon NJ in the highly competitive video marketplace.”

If Verizon's success ratio is 40%, which is possible given the other alternatives available to households, then 5,483 customers would translate to 13,708 households that are capable of receiving service from Verizon, which would be more than the 12,000 threshold referred to above. If its success rate is 50%, 5,483 customers would translate to 10,966 households, or slightly below that same threshold. Given the important consequences stemming from being just below or just above the 60% threshold, the Committee has made many inquiries to state officials to seek a clear understanding of just where things stand in Monroe on this issue. While not directly relevant to the question of whether Comcast's franchise should be renewed, the Committee urges the Council to continue to press this inquiry.

Franchise Renewal Process: An Overview

Franchise renewal is the process whereby municipalities negotiate franchise agreements with their cable television operator. Typically, the franchise renewal process begins approximately three years before the franchise expires. The State's renewal process is divided into three phases: Ascertainment, Municipal, and Certificate of Approval (COA).

For purposes of State and Federal law, the "franchising authority" in New Jersey is the BPU, which acts through its Office of Cable Television (OCTV) as established by the New Jersey Cable Television Act, N.J.S.A. 48:5A-1 *et seq.* The ultimate decision to renew or deny a franchise in New Jersey rests with the BPU. The Township is responsible for adopting a municipal consent ordinance granting renewal that includes terms and conditions for the franchise. The Township can issue a resolution of denial (see page nine for a review of the OCTV denial criteria).

In accordance with Federal and State regulations, a municipality that seeks to substantially alter franchise commitments must do so by evaluating the record of the cable operator based on specific Federal tests. Once the Ascertainment process is completed, the municipality may begin negotiations with the cable operator. Negotiations must be based on the facts and findings of the Ascertainment phase. Upon completion of the municipal phase, a COA is issued by the BPU.

As noted above, the franchise granted to Comcast in 2007 included an automatic renewal provision. Comcast is entitled to an additional 10 years, from 2020 to 2030, if it can show that it has fully complied with the requirements it agreed to accept in 2007. As explained in more detail below, however, the Committee believes that Comcast is not entitled to automatic renewal. Therefore, it will be appropriate for the township to seek further conditions to any renewal of Comcast's franchise.

Franchise Renewal Process in Monroe Township

On March 5, 2018, the Township Council adopted Ordinance No. O-2-2018-001 establishing the Cable Television Advisory Committee (Committee or CTAC). The purpose of the Committee is to ascertain by means of survey or other investigations the needs of the community in relation to cable television, television, FIOS, internet and any other related needs and desires and make recommendations to the Township Council of the results of their findings in connection with these services provided by all companies licensed to operate in the Township. The Committee was also charged with monitoring the progress of all franchise providers to ensure compliance with franchise requirements and State regulations.

Previously, on June 6, 2017, special counsel for the Committee notified the Office of Cable Television (OCTV) and Comcast of the Township's desire to provide input with regard to the proposed renewal of the Comcast franchise.

At its March 2018 meeting, the Township Council adopted a resolution providing public notice of the opening of the Ascertainment phase which should be started 36 months prior to the expiration of a cable television franchise agreement. This is two year fact-finding period where the Township examines the past performance of the cable operator and determines the cable-related needs of the community.

The Committee consists of one representative of the Board of Education, Township Library, Mayor's Senior Advisory Committee, Township staff, four members of the general public, and one Township Council member who serves as the Chairperson. The Committee members are as follows: Councilwoman Miriam Cohen, Chairperson, Anthony Zarillo, Vice Chairperson, Reggie Washington, Irene Goldberg, Jeanne Crawley, Roslyn Brodsky, Richard Lans, Tricia DeRose, and Harold Klein, Secretary. James H. Laskey was hired by the Township to serve as special counsel to the Committee.

The Committee held six public meetings and one public hearing in 2018 to gather input from Township residents about the cable television service which Comcast provides.

The Committee also met with a representative of Comcast in May 2018 and with Assemblyman Wayne DeAngelo in June 2018.

Public Hearing

On September 26th, 2018, approximately sixty Township residents attended the public hearing. Comcast representatives were invited to attend but declined. The purpose of this hearing was to allow for public input on the cable franchise renewal.

The major concerns voiced by residents concerned the lack of competition in choosing a cable system, the cost of cable television services, and the lack of high speed internet service. Township officials responded by telling the attendees that there is a lack of competition because the costs of installing an overlapping system are prohibitively expensive, particularly in the case of Monroe Township which is 43 square miles in area. **With respect to the costs of cable television, unfortunately the Township has no control about the pricing for this service. It is part of the competitive marketplace.**

Improving high speed internet service is very important to residents and the Township, Board of Education and Library. Unfortunately, internet services are not regulated by the Federal or Township government. Currently, there is discussion about 5G which will allow for higher and faster data rates and better connections between mobile communications devices.

In August 2018, Councilwoman Cohen, the Chair of the Committee, wrote to Comcast detailing various deficiencies regarding Comcast's performance. In late November 2018, Comcast responded to this letter and broadly denied any deficiencies. For the reasons that follow, the Committee finds Comcast's response to be unsatisfactory.

This report of the Committee's findings and recommendations is submitted to the Township Council so that the Township Council can adopt a final position on or before March 19, 2019.

The Specific Requirements of the COA

The 2007 franchise and the subsequent COA enumerated numerous requirements for Comcast to adhere to. These are discussed below.

1. Quality of Service. Comcast was directed to provide safe, adequate and proper service. No issues of safety were brought to the attention of the Committee. However, numerous residents disputed that the service is adequate and proper, although others expressed satisfaction. Therefore, Comcast's grade on this element is a C.
2. Franchise Fee. As noted above, the franchise fee was specified to be 2% of gross revenues from all recurring charges in the nature of subscription fees paid by subscribers for cable television reception service. Comcast has made an annual payment. However, Comcast provides services to many PRC's as a bulk service under contract. The Committee has been unable to determine whether Comcast includes revenues under these bulk contracts when it determines its franchise fee. Therefore, Comcast's grade on this element is "incomplete." The Committee has asked the OCTV for assistance.

3. Extension of Service. Comcast committed to extend its service to anyone who requested it in accordance with a line extension policy. No issue was brought to the attention of the Committee on this point, so Comcast is awarded an A.
4. Construction Requirements. Comcast is required to restore pavement and sidewalks after completion of work, and relocate equipment to accommodate public road improvements. The Police and Department of Public Works reported no issues in this regard, so again Comcast is awarded an A.
5. Rates. Comcast is required to maintain informational schedules of prices, rates, terms and conditions for unregulated service, and promptly file any revision thereto. The Committee received numerous complaints regarding how difficult it is to obtain accurate pricing information, including equipment and fees. Therefore, Comcast's grade on this element is a C.
6. Local Business Office. At the time that the franchise was adopted, Comcast maintained a business office in East Windsor. That office has since been closed. Comcast maintains that the franchise did not specifically require this particular office, but the franchise incorporated all of the statements and commitments in the 2004 Application, and the East Windsor office was clearly part of this. The office that Comcast claims as an adequate substitute, in East Brunswick, is far less convenient than the one in East Windsor. Therefore, Comcast's grade on this element is an F.
7. Public, Educational and Governmental ("PEG") Access. The COA required PEG equipment and facilities as described in the 2004 Application and the ordinance. These commitments were summarized as "**one system- wide channel for local origination programming, one system-wide educational access channel, and one public access channel for use by community and educational entities for cablecasting non-commercial programming.**" (emphasis added) At the present time, Comcast provides only one local community and educational access channel (Channel 28). The Committee believes that Comcast decided unilaterally to remove the other system-wide channels without the permission of the BPU, and that a second public access channel must be provided.

Comcast claims that the franchise ordinance itself only referred to the one education channel. However, as noted above, the franchise ordinance incorporated by reference all of the commitments that Comcast had made in its 2004 Application, and that Application clearly referred to the multiple channels. This commitment was then reflected in the BPU's COA.

The need for a second channel is compelling. In addition to the Township's needs, the Committee ascertained the needs of the Board of Education. Representatives of the Board expressed a need for its own dedicated PEG channel for school district content. At

present, the Township and school district share scheduled programming. The school district staff also informed the Committee that it would need a minimum of \$35,000 for new equipment for this dedicated channel.

This same element of the COA required Comcast to maintain a studio and editing deck in East Windsor. Again, Comcast closed this facility without providing an alternative.

For all of these reasons, Comcast's grade on this element is an F.

8. Service Commitments

Comcast provides limited free cable television service in the Monroe public schools. However, the franchise required "preferred" cable television. While this term was not defined, the service that Comcast initially provided has actually gone **down** in quality, even though one would expect the quality of technology-based service to increase over time. From the time Comcast switched to digital cable (which requires a cable box) the schools are no longer able to get suitable cable into every classroom. They were given three cable boxes but this is clearly not sufficient for providing customizable cable television to all classrooms in our schools.

Comcast attempted to meet the literal requirement of the franchise agreement by providing internet to one computer in each school and the Library. However, the COA referred to "high-speed cable modem." While not defined, the speed provided in 2007 should no longer be considered "high speed." With today's modern technology the level of internet service provided by Comcast under the franchise is clearly inadequate.

Comcast was also required to provide free cable and internet service to all public and private schools in the Township. It is clear that Comcast made no attempt to publicize the availability of this service, and simply waited until its service deficiency was flagged.

There are only two private schools in Monroe: the Developmental Learning Center, 272 Rhode Hall Road and the Organization for the Furtherance of Traditional Ideas, 373 Schoolhouse Road. The Academy Learning Center, 145 Pergola Avenue, is a public school operated by the Middlesex County Educational Services Commission. Only after the Committee reached out to Comcast did Comcast make any attempt to contact these schools.

The franchise and COA also require Comcast to provide free cable and internet service to firehouses in the Township. The Township is served by three Fire Districts. Each District owns its building, vehicles, and equipment and the residents of each District pay a fire district tax to provide funds for the operating budget. In an email dated November 7, 2018, Comcast confirmed that it has not provided free internet service to any fire station, a clear breach of the franchise agreement, in particular with respect to Fire District #3 at the 359 Schoolhouse Road fire station and Fire District #2 located at 10

Halsey Reed Road. Fire District #1 has chosen Verizon as its provider for both of its locations.

For all of these reasons, Comcast's grade for its service commitments is an F.

9. Additional Concerns

Comcast is also required to comply with all applicable BPU rules and regulations and respond to complaints.

The following is a summary of Comcast's performance based on information gathered by the Committee, comments from residents at the public hearing, and complaints reported by the OCTV.

The OCTV has provided a list of complaints they received from Monroe residents from May 21, 2007 through June 13, 2018. There were a total of 1,726 complaints. The five major complaints were as follows:

1. Billing questions-504-29%
2. Poor quality of service-201-11.6%
3. Rates and Fees-114-6.6%
4. Service Appointments-99-5.7%
5. Miscellaneous-96-5.5%

Although there are no performance monitoring reports available, input at the public hearing leads the Committee to believe that Comcast has improved its response time to customers' needs for service over the two years.

BPU rules also require Comcast to properly maintain its outdoor plant and equipment, and to clearly mark its equipment with its name and telephone number. A spot check by Committee members revealed many deficiencies in this regard. Following the letter sent in August 2018, it appears that Comcast undertook some new labeling, but much of the equipment is still simply marked "television," without any company name or telephone number.

Review of OCTV Denial Criteria

If the Township decides to issue a resolution of denial, it must base its decision on the answers to the following questions:

- A. Has the cable operator substantially complied with the requirements of the existing franchise and applicable law? The Committee believes that Comcast has not complied with several important requirements.
- B. Has the quality of the cable operator's service including signal quality, response to complaints, and billing practices, been reasonable in light of community needs? The Committee believes that Comcast has been responsive to these issues.
- C. Does the cable operator have the financial, legal, and technical ability to provide the services, facilities, and equipment it is proposing to provide? The Committee believes Comcast meets these requirements.
- D. Is the cable operator's franchise renewal proposal reasonable to meet the future cable-related needs and interests of the Township, taking into account the cost of meeting such needs? The Committee believes that Comcast is not entitled to automatic renewal, but with revisions Comcast should be fully capable of meeting the Township's needs with respect to the provision of cable television services.

Conditions to Renewal of Existing Franchise

The foregoing demonstrates that Comcast is not entitled to automatic renewal. While the Committee is not recommending that the franchise be revoked, it has identified several commitments that Comcast should make before the franchise is allowed to renew next year.

- 1. As discussed above, the current cable franchise renewal provides for an automatic ten year renewal of the cable franchise. The Committee concludes that Comcast is not entitled to automatic renewal. However, the Committee recommends the approval of the ten year extension with the provision that there be a compliance review after five years. This compliance review will permit representatives of Comcast and the Township to review Comcast's performance during this five year period.
- 2. The Committee strongly believes that Comcast has failed to meet its most important obligation in the current franchise agreement by removing the system-wide public access channels without the prior consent of the Township or BPU. Comcast should be required to provide a second PEG channel and donate the funds needed for the equipment needed to run this station at the High School as requested by the Board of Education. The equipment cost has been estimated at \$35,000. This would be an especially reasonable requirement in light of the fact that Comcast unilaterally removed the studio facilities with video cameras and editing deck at the now defunct East Windsor office.

3. Comcast also moved its local business office from East Windsor to East Brunswick without any prior notification or approval. Comcast should provide a local office in Monroe.
4. Comcast should review its service obligations to the Township, public and private schools, and other public facilities to insure that they are providing the proper services. Comcast should submit an annual report of its compliance with its service obligations in writing to the Township.
5. Any services offered by Comcast to any other municipality in New Jersey (outside of what is uniquely included on a case-by-case basis as part of a franchise grant or renewal) should be made available to the Township at the same price as such service is made available to other municipalities.
6. Comcast should be committed to keeping pace with the technology of the cable industry in New Jersey with regard to product availability, signal integrity, availability of bundled services and system reliability.
7. Comcast should make every effort to deploy new or advanced technology and/or services in the Township that are commercially available, economically practical, and technically feasible.
8. Upon request from the Township, Comcast should agree to install additional outlets and provide addressable converter boxes at each of the applicable municipal buildings (schools, library, police, fire and other municipal buildings) for a fee based only upon the actual cost of materials plus labor, and Comcast should agree to provide the services, as described in the ordinance, free of charge to the additional outlets.
9. Comcast should provide an Emergency Override Capability for the Township OEM and Police Department with the ability to broadcast information via cable television in the event of an emergency.
10. Comcast should offer seniors a discount on their cable television bills. With more than 55% of our residents being over the age of 55 and many of them living on a fixed income, the increasing costs of cable and internet service are a very important concern. For many of them, cable and internet access are a necessity and not a luxury.
11. Comcast should also implement a seasonal rate for residents who live out of state for three or six month periods.
12. Comcast should offer a discount to military veterans.
13. Comcast should provide a notice on all bills informing customers about available discounts, credits, and rebates such as the rebate for missed service or installation appointments.