

Cape May Court House, NJ
March 1, 2010
REGULAR MEETING
FLAG SALUTE
THIS MEETING IS BEING RECORDED:

I hereby declare that notice has been given to the Herald Times, the Atlantic City Press and posted on the bulletin board of the Middle Township Municipal Building, stating the time and place of the following meeting, as required in P.L. 1975, Chapter 231 of the State of New Jersey. (Sunshine Law).

The Township Committee met on the above date at 6:00 PM at the Middle Township Municipal Building. Members present were Mayor DeLanzo, Committeemember Doughty, Committeemember Lockwood, Township Business Administrator Mark Mallett, Township Clerk Kimberly Tomkinson, Municipal Solicitor James Pickering, and Township Engineer Vincent Orlando.

1. PROCLAMATION – YOUTH ART MONTH
2. QUESTION/ANSWER PERIOD ON AGENDA *(This question and answer session shall relate only to items as outlined and pending on current agenda. Issues and concerns not related to agenda item shall be withheld to public comment portion at the conclusion of meeting.)*
3. RESOLUTION – APPROVING PAYMENT FOR BILLS – BILL LIST A – On motion by _____ and passed on roll call, the following resolution was adopted.
NOW THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Middle, the governing body thereof, that payment for the following bills in the amounts indicated are hereby approved:

<i>Current Acct.</i>	<i>\$ 2,532,834.66</i>
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4. RESOLUTION – APPROVING PAYMENT FOR BILLS – BILL LIST B – On motion by _____ and passed on roll call, the following resolution was adopted.
NOW THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Middle, the governing body thereof, that payment for the following bills in the amounts indicated are hereby approved:

<i>Current Acct.</i>	<i>\$ 57,940.50</i>
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5. REPORTS: The following departments have submitted their reports for the months indicated:
6. ORDINANCE NO. 1338-10 – AN ORDINANCE OF THE TOWNSHIP OF MIDDLE, COUNTY OF CAPE MAY AND STATE OF NEW JERSEY ESTABLISHING GUIDELINES AND FEES FOR STREET VACATIONS – Following second reading, hearing, and consideration for adoption, Ordinance 1338-10 was adopted on motion by _____ seconded by _____ and passed on roll call. Complete Ordinance is on file in the Clerk’s Office.
WHEREAS, Township Committee finds, determines and declares that N.J.S.A. 40:67-1, et seq. was enacted by the Legislature of the State of New Jersey, among other goals, to enable municipalities to determine the location and boundaries of all Township streets; and
WHEREAS, New Jersey Statute 40:67-19 states that when it shall appear to the governing body that the public interest will be better served by releasing the lands or any part from such dedication, the governing body may by ordinance release and extinguish the public right arising from said dedication as to the whole or any part of those lands, and thereupon said lands or the part thereof so released shall be effectually discharged therefrom as though the dedication had not taken place; and
WHEREAS, any such ordinance vacating a street requires noticing in compliance with New Jersey Statute Section 40:49-2, which notice requirements are also modified by New Jersey Statute Section 40:49-6, which requires that a street vacation ordinance, after being introduced and having passed a first reading, shall be published at least once not less than ten days instead of one week prior to the time fixed for further consideration for final passage. That Section also requires that at least one week prior to such time fixed for further consideration for final passage of such ordinance, a copy of the proposed ordinance, together with a notice of the introduction thereof, and the time and place when and where the ordinance will be further considered for final passage, shall be mailed to every person whose lands may be affected by the ordinance, so far as the same may be ascertained, directed to his or her last known post-office address. The owner of any lands may file with the clerk of the municipality, or other official designated by the governing body by resolution or ordinance, a list of lands owned by him with a post-office address to which notice shall be directed. Failure to mail the notice herein provided for shall not invalidate any ordinance, proceeding or assessment; and
WHEREAS, after a street vacation ordinance is approved, the Municipal Clerk also has additional duties, specifically, he or she shall within sixty days after such ordinance becomes effective file a copy of such ordinance, certified by him or her, under the seal of the municipality, to be a true copy of such ordinance or other proceeding, together with a copy of the proof of publication thereof, in the office where conveyances of lands are recorded with the County Clerk where such certified copy shall be recorded in a book with proper index to be provided for the purpose and entitled “vacations”; and

WHEREAS, to properly prepare a street vacation ordinance, the street or portion thereof to be vacated needs to be surveyed and a metes and bounds description prepared and made part of the street vacation ordinance; and

WHEREAS, in most situations, a request for a street vacation must be reviewed by the Municipal Solicitor and an ordinance prepared; and

WHEREAS, the tax map must also be revised, and the properties impacted reassessed.

WHEREAS, Township Committee finds that this process consumes much in the way of municipal resources and time, and costs the municipality significant sums; and

WHEREAS, Township Committee finds it right and proper that the property owner(s) who make the request for a street vacation should pay for the expense of the street vacation ordinance, including review, preparation, surveying, noticing and recording, and therefore desires to codify the requirement that certain funds be paid by the property owner(s) who request a street vacation; NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Middle, County of Cape May and State of New Jersey that the municipal code shall be amended to add the following section:

TITLE: VACATION OF STREETS

SECTION 1. Purpose.

The Township Committee enacts this Ordinance to present a uniform set of guidelines, consistent with N.J.S.A. 40:67-1, et seq., governing the vacation of Township streets.

SECTION 2. Guidelines for Vacations of Township Streets

(A) *A request for the vacation of any street or portion of any street which has been dedicated by not accepted, must be made in writing and addressed to the Township Clerk and accompanied by a non-refundable \$250.00 administrative fee, and funds to be held in escrow by the Township of Middle in the amount of \$2,500.00.*

(B) *The municipal engineer and attorney shall review the request, and make a determination if the request can be granted.*

(C) *A surveyor shall survey the area of the proposed vacated street or portion of street, and provide a metes and bounds description.*

(D) *Any street vacation ordinance shall be noticed and recorded in accordance with State law by the municipal clerk.*

SECTION 3. Fees and Expenses.

(A) *Any and all expenses associated with the consideration and/or completion of a street vacation request are to be paid by the property owner who makes the request. These expenses include, but are not limited to, engineering fees, attorney fees, survey fees, publication and mailing expenses, recording fees, and tax map revision fees. Any and all expenses shall be paid by the property owner who makes the request, even if Township Committee decides not to consider an ordinance, or if an ordinance fails to be approved. The Township and its professional's bills shall be paid from the escrow fees. It is anticipated that this process will work similarly to the escrow posted by an applicant to a land use board. Any interest shall accrue to the benefit of the Township of Middle.*

(B) *If total costs are less than the funds placed in escrow, the balance shall be refunded. If total costs are more than the funds placed in escrow, the property owner who requested the street vacation shall pay the remainder into the escrow funds. The municipal clerk shall not record the street vacation unless all expenses are paid.*

SECTION 4. Reservations

Any street vacation is made subject to the following reservations and restrictions:

(A) *All rights and privileges then possessed by public utilities, as defined in R.S. 48:2-13, and by any cable television company, as defined in the "Cable Television Act," P.L. 1972, c. 186, (C. 48:5A-1 et seq.), to maintain, repair and replace their existing facilities in, adjacent to, over or under the street, highway, lane, alley, square, place or park, or any part thereof, to be vacated.*

(B) *To the Township of Middle, for itself, its successors and assigns, the right to construct, install, build, operate, maintain, use, repair, replace and relocate such public utilities and cable television facilities, within the described premises, which it may, at any time hereafter, deem necessary for the public health, safety, convenience and welfare; and further, the right to use, maintain, repair, replace and relocate all existing utilities and cable television facilities owned or controlled by it located in, adjacent to, upon or through said land; and further, an easement over, under, through and across the portion of the land described as may be necessary or expedient for the purpose of maintaining, replacing, relocating, installing, leveling, constructing and repairing its utilities, mains and appurtenances, if any, wherever there exists a pipeline and appurtenances thereto beneath the surface of the aforesaid described land; and further, to its own benefit and the benefit of any utility or cable television company the right to maintain, repair, and replace utilities or facilities installed by them in, adjacent to, over or through the aforesaid land. All of the aforesaid rights are to be exercised solely at the option and discretion of the Township of Middle and this is not an obligation of the Township of Middle to provide such services.*

(C) *To the rights of any others in the property.*

(D) *The property owner(s) who is to take title to any land vacated by the ordinance takes said land in "as is" condition. The Township makes no representation as to the condition of the same, nor does the Township make any warranty, implied or expressed, conditional or unconditional, regarding said land.*

SECTION 4. *Should any section, paragraph, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid for any reason, the remaining portions of this ordinance shall not be affected thereby and shall remain in full force and effect, and to this end the provisions of this ordinance are hereby declared to be severable.*

SECTION 5. *This ordinance shall become effective immediately upon final passage and publication, according to law.*

7. ORDINANCE NO. 1342-10 – AN ORDINANCE GRANTING RENEWAL OF MUNICIPAL CONSENT TO COMCAST OF AVALON LLC TO CONSTRUCT, CONNECT, OPERATE AND MAINTAIN A CABLE TELEVISION AND COMMUNICATIONS SYSTEM IN THE TOWNSHIP OF MIDDLE, NEW JERSEY – On motion by _____ seconded by _____ and passed on roll call, Ordinance No 1342-10 passed first reading. Second reading, public hearing and consideration for adoption will be held on 04/05/2010 at 6:00 p.m.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWNSHIP OF MIDDLE, as follows:

SECTION 1. PURPOSE OF THE ORDINANCE

The municipality hereby grants to Comcast renewal of its non-exclusive Municipal Consent to place in, upon, across, above, over and under highways, streets, alleys, sidewalks, easements, public ways and public places in the municipality, poles, wires, cables, underground conduits, manholes and other television conductors, fixtures, apparatus and equipment as may be necessary for the construction, operation and maintenance in the Municipality of a cable television and communications system.

SECTION 2. DEFINITIONS

*For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. Such meaning or definition of terms is supplemental to those definitions of the Federal Communications Commission ("FCC") rules and regulations, 47 C.F.R. Subsection 76.1 *et seq.*, and the Cable Communications Policy Act, 47 U.S.C. Section 521 *et seq.*, as amended, and the Cable Television Act, N.J.S.A. 48:5A-1 *et seq.*, and shall in no way be construed to broaden, alter or conflict with the federal and state definitions:*

- a. *"Township" or "Municipality" is the Township of Middle, County of Cape May, State of New Jersey.*
- b. *"Company" is the grantee of rights under this Ordinance and is known as Comcast of Avalon LLC.*
- c. *"Act" or "Cable Television Act" is Chapter 186 of the General Laws of New Jersey, and subsequent amendments thereto, N.J.S.A. 48:5A-1, *et seq.**
- d. *"FCC" is the Federal Communications Commission.*
- e. *"Board" or "BPU" is the Board of Public Utilities, State of New Jersey.*
- f. *"Office" or "OCTV" is the Office of Cable Television of the Board.*
- g. *"Basic Cable Service" means any service tier, which includes the retransmission of local television broadcast signals as defined by the FCC.*
- h. *"Application" is the Company's Application for Renewal of Municipal Consent.*
- i. *"Primary Service Area" or "PSA" consists of the area of the Municipality currently served with existing plant as set forth in the map annexed to the Company's Application for Municipal Consent.*

SECTION 3. STATEMENT OF FINDINGS

Public hearings conducted by the municipality, concerning the renewal of Municipal Consent herein granted to the Company were held after proper public notice pursuant to the terms and conditions of the Act and the regulations of the Board adopted pursuant thereto. Said hearings, having been fully open to the public, and the municipality, having received at said public hearings all comments regarding the qualifications of the Company to receive this renewal of Municipal Consent, the Municipality hereby finds that the Company possesses the necessary legal, technical, character, financial and other qualifications and that the Company's operating and construction arrangements are adequate and feasible.

SECTION 4. DURATION OF FRANCHISE

The non-exclusive Municipal Consent granted herein shall expire 15 years from the date of expiration of the previous Certificate of Approval issued by the Board (with a 10-year automatic renewal as provided by N.J.S.A. 48:5A-19 and 25, and N.J.A.C. 14:18-13.6). In the event that the Municipality shall find that the Company has not substantially complied with the material terms and conditions of this Ordinance, the Municipality shall have the right to petition the OCTV, pursuant to N.J.S.A. 48:5A-47, for appropriate action, including modification and/or termination of the Certificate of Approval; provided however, that the Municipality shall first have given the Company written notice of all alleged instances of non-compliance and an opportunity to cure same within ninety (90) days of that notification.

SECTION 5. FRANCHISE FEE

Pursuant to the terms and conditions of the Act, the Company shall, during each year of operation under the consent granted herein, pay to the Municipality two percent (2%) of the gross revenues from all recurring charges in the nature of subscription fees paid by subscribers for cable television reception service in the Municipality or any higher amount permitted by the Act or otherwise allowable by law, whichever is greater.

SECTION 6. FRANCHISE TERRITORY

The consent granted under this Ordinance to the renewal of the franchise shall apply to the entirety of the Municipality and any property subsequently annexed hereto.

SECTION 7. EXTENSION OF SERVICE

The Company shall be required to proffer service to any residence or business along any public right-of-way in the Primary Service Area, as set forth in the Company's Application. Any extension of plant beyond the Primary Service Area shall be governed by the Company's Line Extension Policy, as set forth in the Company's Application.

SECTION 8. CONSTRUCTION REQUIREMENTS

Restoration: In the event that the Company or its agents shall disturb any pavement, street surfaces, sidewalks, driveways, or other surface in the natural topography, the Company shall, at its sole expense, restore and replace such places or things so disturbed in as good a condition as existed prior to the commencement of said work.

Relocation: If at any time during the period of this consent, the Municipality shall alter or change the grade of any street, alley or other way or place the Company, upon reasonable notice by the Municipality, shall remove, re-lay or relocate its equipment, at the expense of the Company.

Removal or Trimming of Trees: During the exercise of its rights and privileges under this franchise, the Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks or other public places of the municipality so as to prevent the branches of such trees from coming in contact with the wires and cable of the Company. Such trimming shall be only to the extent necessary to maintain proper clearance of the Company's wire and cables.

SECTION 9. CUSTOMER SERVICE

In providing services to its customers, the Company shall comply with N.J.A.C. 14:18-1, et seq. and all applicable state and federal statutes and regulations. The Company shall strive to meet or exceed all voluntary company and industry standards in the delivery of customer service and shall be prepared to report on it to the municipality upon written request of the Municipality Administrator or Clerk.

- a. *The Company shall continue to comply fully with all applicable state and federal statutes and regulations regarding credit for outages, the reporting of same to regulatory agencies and notification of same to customers.*
- b. *The Company shall continue to fully comply with all applicable state and federal statutes and regulations regarding the availability of devices for the hearing impaired and the notification of same to customers.*
- c. *The Company shall use every reasonable effort to meet or exceed voluntary standards for telephone accessibility developed by the National Cable Television Association (NCTA).*
- d. *Nothing herein shall impair the right of any subscriber or the Municipality to express any comment with respect to telephone accessibility to the Complaint Officer, or impair the right of the Complaint Officer to take any action that is permitted under law.*

SECTION 10. MUNICIPAL COMPLAINT OFFICER

The Office of Cable Television is hereby designed as the Complaint Officer for the Municipality pursuant to N.J.S.A. 48:5A-26(b). All complaints shall be received and processed in accordance with N.J.A.C. 14:17-6.5. The Municipality shall have the right to request copies of records and reports pertaining to complaints by Municipality customers from the OCTV.

SECTION 11. LOCAL OFFICE

During the term of this franchise, and any renewal thereof, the Company shall maintain a business office or agent in accordance with N.J.A.C. 14:18-5.1 for the purpose of receiving, investigating and resolving all local complaints regarding the quality of service, equipment malfunctions, and similar matters. Such a business office shall have a publicly listed toll-free telephone number and be open during standard business hours, and in no event (excepting emergent circumstances) less than 9:00 A.M. to 5:00 P.M., Monday through Friday.

SECTION 12. PERFORMANCE BONDS

During the life of the franchise the Company shall give to the municipality a bond in the amount of twenty-five thousand (\$25,000.00) dollars. Such bond shall be to insure the faithful performance of all undertakings of the Company as represented in its application for municipal consent incorporated herein.

SECTION 13. SUBSCRIBER RATES

The rates of the Company shall be subject to regulation as permitted by federal and state law.

SECTION 14. COMMITMENTS BY THE COMPANY

- a. *The Company shall provide free Expanded Service cable television service on one (1) outlet at no cost to each existing and future school in the Municipality, public and private, elementary, intermediate and secondary, provided the school is within 175 feet of active cable distribution plant. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the school requesting service. Monthly service charges shall be waived on all additional outlets.*
- b. *The Company shall provide free Expanded Service cable television service at no cost on one (1) outlet to each existing and future police, fire, emergency management facility, community center including the Martin Luther King Center, senior center and public library located in the Municipality and operated by the Municipality or the County of Cape May, provided the facility is located within 175 feet of active cable distribution plant. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the Municipality. Monthly service charges shall be waived on all additional outlets.*
- c. *The Company shall provide free basic Internet service, via high-speed cable modem, to one (1) non-networked personal computer in each qualified existing and future public school in the Municipality, elementary, intermediate and secondary, at no charge provided the facility is located within 175 feet of active cable distribution plant. The Internet service shall be installed on a personal computer that is accessible to the students and not for administrative use only.*
- d. *The Company shall provide free basic Internet access via high-speed cable modem on one (1) non-networked personal computer in each qualified existing and future public library, including the library within the Martin Luther King Center, located in the Municipality, and operated by the Municipality or the County of Cape May at no charge provided the facility is located within 175 feet of active cable distribution plant. The Internet service shall be installed on a personal computer that is accessible to library patrons and not for administrative use only.*

SECTION 15. EDUCATIONAL AND GOVERNMENTAL ACCESS

- a. *The Company will continue to provide one shared channel for educational and governmental ("EG") access for the shared use by the residents of Middle Township, Wildwood, North Wildwood, West Wildwood, Wildwood Crest, West Cape May, Cape May, Cape May Point, and Lower Township. (collectively, "Municipalities") on the most basic tier of service offered by*

the Company in accordance with the Cable Act, Section 623, and as further set forth below. Educational access video programming shall be provided by the governing bodies of Middle Township, Wildwood, North Wildwood, West Wildwood, Wildwood Crest, West Cape May, Cape May, Cape May Point, and Lower Township or a designated educational institution. Currently, this designee is the Richard M. Teitleman School and the Cape May County Technical High School. Government video programming shall be provided by the governing bodies of Middle Township, Wildwood, North Wildwood, West Wildwood, Wildwood Crest, West Cape May, Cape May, Cape May Point, and Lower Township. Unused capacity may be utilized by the Company subject to the provisions for "fallow time" below.

b. The Company does not relinquish its ownership of or ultimate right of control over a channel by designating it for EG use. An EG access user – whether an educational or government user – acquires no property or other interest by virtue of the use of a channel so designated, and may not rely on the continued use of a particular channel number, no matter how long the same channel may have been designated for such use.

c. The Company shall not exercise editorial control over any educational or governmental use of channel capacity, except Company may refuse to transmit any educational or governmental access program or portion of an educational or governmental access program that contains obscenity, indecency, or nudity.

d. The governing bodies of Middle Township, Wildwood, North Wildwood, West Wildwood, Wildwood Crest, West Cape May, Cape May, Cape May Point, and Lower Township shall be responsible for developing, implementing, and enforcing rules for EG Access Channel use which shall insure that the EG Access Channel and the EG Access Equipment, which shall be provided by the Municipalities, will be available on a first-come, first served, non-discriminatory basis.

e. Educational Access. "Educational Access" shall mean noncommercial use by educational institutions such as public or private schools, but not "home schools," community colleges, and universities.

f. Government Access. "Government Access" shall mean noncommercial use by the governing bodies of Middle Township, Wildwood, North Wildwood, West Wildwood, Wildwood Crest, West Cape May, Cape May, Cape May Point, and Lower Township for the purpose of showing the public local government at work.

g. Company Use of Fallow Time. Because blank or under utilized EG channels are not in the public interest, in the event the Municipalities or other EG access users elect not to fully program their EG access channel, Company may program unused time on those channels subject to reclamation by the Municipality upon no less than 60 days written notice.

h. Indemnification. The Municipalities shall indemnify Company for any liability, loss, or damage it may suffer due to violation of the intellectual property rights of third parties on the EG channel and from claims arising out of the Municipalities' rules for or administration of access.

i. The Company will provide an additional PEG access channel, upon a demonstration by the Municipalities, that utilization of the existing governmental/educational access channel exceeds forty-eight (48) hours per week of original, non-commercial, first-run, locally produced, full motion video programming over a period of eighteen (18) consecutive weeks, if existing bandwidth allows for the addition of said channel.

SECTION 16. EMERGENCY USES

The Company will comply with the Emergency Alert System ("EAS") rules in accordance with applicable state and federal statutes and regulations.

The Company shall in no way be held liable for any injury 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 system as contemplated herein.

SECTION 17. LIABILITY INSURANCE

The Company 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 \$5,000,000.

SECTION 18. INCORPORATION OF THE APPLICATION

All of the statements and commitments contained in the Application or annexed thereto and incorporated therein, and any amendment thereto, except as modified herein, are binding upon the Company as terms and conditions of this consent. The Application and other relevant writings submitted by the Company shall be annexed hereto and made a part hereof by reference provided same do not conflict with applicable State or Federal law.

SECTION 19. COMPETITIVE EQUITY

Should the Municipality grant a franchise to construct, operate and maintain a cable television system to any other person, corporation or entity on terms materially less burdensome or more favorable than the terms contained herein, the Company may substitute such language that is more favorable or less burdensome for the comparable provision of this Ordinance subject to the provisions of N.J.A.C. 14:17-6.7.

SECTION 20. SEPARABILITY

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 its validity or unconstitutionality shall not affect the validity of the remaining portions of the Ordinance.

SECTION 21. THIRD PARTY BENEFICIARIES

Nothing in this Franchise or in any prior agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of such agreements or Franchise.

SECTION 22. ANNUAL MEETING

a. A Company representative shall appear annually, upon reasonable written request of the Mayor, at a public hearing, public meeting, or public work session of the Governing Body, to discuss matters pertaining to the provision of cable service to residents of the Township, and other cable-related issues as the Township and Company may see fit to discuss.

b. A company representative will meet quarterly with the Township Cable Television Committee, upon reasonable notice of date and time by the Committee

SECTION 23. EFFECTIVE DATE

This Ordinance shall take effect immediately upon issuance of a Renewal Certificate of Approval from the BPU.

8. ORDINANCE NO. 1343-10 – AN ORDINANCE GRANTING RENEWAL OF MUNICIPAL CONSENT TO COMCAST OF WILDWOOD LLC TO CONSTRUCT, CONNECT AND OPERATE AND MAINTAIN A CABLE TELEVISION AND COMMUNICATIONS SYSTEM IN THE TOWNSHIP OF MIDDLE, NEW JERSEY – On motion by _____ seconded by _____ and passed on roll call, Ordinance No 1343-10 passed first reading. Second reading, public hearing and consideration for adoption will be held on 04/05/2010 at 6:00 p.m.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWNSHIP OF MIDDLE, as follows:

SECTION 1. PURPOSE OF THE ORDINANCE

The municipality hereby grants to Comcast renewal of its non-exclusive Municipal Consent to place in, upon, across, above, over and under highways, streets, alleys, sidewalks, easements, public ways and public places in the municipality, poles, wires, cables, underground conduits, manholes and other television conductors, fixtures, apparatus and equipment as may be necessary for the construction, operation and maintenance in the Municipality of a cable television and communications system.

SECTION 2. DEFINITIONS

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. Such meaning or definition of terms is supplemental to those definitions of the Federal Communications Commission ("FCC") rules and regulations, 47 C.F.R. Subsection 76.1 et seq., and the Cable Communications Policy Act, 47 U.S.C. Section 521 et seq., as amended, and the Cable Television Act, N.J.S.A. 48:5A-1 et seq., and shall in no way be construed to broaden, alter or conflict with the federal and state definitions:

- a. "Township" or "Municipality" is the Township of Middle, County of Cape May, State of New Jersey.
- b. "Company" is the grantee of rights under this Ordinance and is known as Comcast of Wildwood LLC.
- c. "Act" or "Cable Television Act" is Chapter 186 of the General Laws of New Jersey, and subsequent amendments thereto, N.J.S.A. 48:5A-1, et seq.
- d. "FCC" is the Federal Communications Commission.
- e. "Board" or "BPU" is the Board of Public Utilities, State of New Jersey.
- f. "Office" or "OCTV" is the Office of Cable Television of the Board.
- g. "Basic Cable Service" means any service tier, which includes the retransmission of local television broadcast signals as defined by the FCC.
- h. "Application" is the Company's Application for Renewal of Municipal Consent.
- i. "Primary Service Area" or "PSA" consists of the area of the Municipality currently served with existing plant as set forth in the map annexed to the Company's Application for Municipal Consent.

SECTION 3. STATEMENT OF FINDINGS

Public hearings conducted by the municipality, concerning the renewal of Municipal Consent herein granted to the Company were held after proper public notice pursuant to the terms and conditions of the Act and the regulations of the Board adopted pursuant thereto. Said hearings, having been fully open to the public, and the municipality, having received at said public hearings all comments regarding the qualifications of the Company to receive this renewal of Municipal Consent, the Municipality hereby finds that the Company possesses the necessary legal, technical, character, financial and other qualifications and that the Company's operating and construction arrangements are adequate and feasible.

SECTION 4. DURATION OF FRANCHISE

The non-exclusive Municipal Consent granted herein shall begin on July 1, 2011 and expire thirteen and one half (13.5) years from that date (with a ten year automatic renewal as provided by N.J.S.A. 48:5A-19 and 25, and N.J.A.C. 14:18-13.6).

In the event that the Municipality shall find that the Company has not substantially complied with the material terms and conditions of this Ordinance, the Municipality shall have the right to petition the OCTV, pursuant to N.J.S.A. 48:5A-47, for appropriate action, including modification and/or termination of the Certificate of Approval; provided however, that the Municipality shall first have given the Company written notice of all alleged instances of non-compliance and an opportunity to cure same within ninety (90) days of that notification.

SECTION 5. FRANCHISE FEE

Pursuant to the terms and conditions of the Act, the Company shall, during each year of operation under the consent granted herein, pay to the Municipality two percent (2%) of the gross revenues from all recurring charges in the nature of subscription fees paid by subscribers for cable television reception service in the Municipality or any higher amount permitted by the Act or otherwise allowable by law, whichever is greater.

SECTION 6. FRANCHISE TERRITORY

The consent granted under this Ordinance to the renewal of the franchise shall apply to the entirety of the Municipality and any property subsequently annexed hereto.

SECTION 7. EXTENSION OF SERVICE

The Company shall be required to proffer service to any residence or business along any public right-of-way in the Primary Service Area, as set forth in the Company's Application. Any extension of plant beyond the Primary Service Area shall be governed by the Company's Line Extension Policy, as set forth in the Company's Application.

SECTION 8. CONSTRUCTION REQUIREMENTS

Restoration: In the event that the Company or its agents shall disturb any pavement, street surfaces, sidewalks, driveways, or other surface in the natural topography, the Company shall, at its sole expense, restore and replace such places or things so disturbed in as good a condition as existed prior to the commencement of said work.

Relocation: If at any time during the period of this consent, the Municipality shall alter or change the grade of any street, alley or other way or place the Company, upon reasonable notice by the Municipality, shall remove, re-lay or relocate its equipment, at the expense of the Company.

Removal or Trimming of Trees: During the exercise of its rights and privileges under this franchise, the Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks or other public places of the municipality so as to prevent the branches of such trees from coming in contact with the wires and cable of the Company. Such trimming shall be only to the extent necessary to maintain proper clearance of the Company's wire and cables.

SECTION 9. CUSTOMER SERVICE

In providing services to its customers, the Company shall comply with N.J.A.C. 14:18-1, et seq. and all applicable state and federal statutes and regulations. The Company shall strive to meet or exceed all voluntary company and industry standards in the delivery of customer service and shall be prepared to report on it to the municipality upon written request of the Municipality Administrator or Clerk. The Company shall continue to comply fully with all applicable state and federal statutes and regulations regarding credit for outages, the reporting of same to regulatory agencies and notification of same to customers.

- a. *The Company shall continue to fully comply with all applicable state and federal statutes and regulations regarding the availability of devices for the hearing impaired and the notification of same to customers.*
- b. *The Company shall use every reasonable effort to meet or exceed voluntary standards for telephone accessibility developed by the National Cable Television Association (NCTA).*
- c. *Nothing herein shall impair the right of any subscriber or the Municipality to express any comment with respect to telephone accessibility to the Complaint Officer, or impair the right of the Complaint Officer to take any action that is permitted under law.*

SECTION 10. MUNICIPAL COMPLAINT OFFICER

The Office of Cable Television is hereby designed as the Complaint Officer for the Municipality pursuant to N.J.S.A. 48:5A-26(b). All complaints shall be received and processed in accordance with N.J.A.C. 14:17-6.5. The Municipality shall have the right to request copies of records and reports pertaining to complaints by Municipality customers from the OCTV.

SECTION 11. LOCAL OFFICE

During the term of this franchise, and any renewal thereof, the Company shall maintain a business office or agent in accordance with N.J.A.C. 14:18-5.1 for the purpose of receiving, investigating and resolving all local complaints regarding the quality of service, equipment malfunctions, and similar matters. Such a business office shall have a publicly listed toll-free telephone number and be open during standard business hours, and in no event (excepting emergent circumstances) less than 9:00 A.M. to 5:00 P.M., Monday through Friday.

SECTION 12. PERFORMANCE BONDS

During the life of the franchise the Company shall give to the municipality a bond in the amount of twenty-five thousand (\$25,000.00) dollars. Such bond shall be to insure the faithful performance of all undertakings of the Company as represented in its application for municipal consent incorporated herein.

SECTION 13. SUBSCRIBER RATES

The rates of the Company shall be subject to regulation as permitted by federal and state law.

SECTION 14. COMMITMENTS BY THE COMPANY

- a. *The Company shall provide free Expanded Service cable television service on one (1) outlet at no cost to each existing and future school in the Municipality, public and private, elementary, intermediate and secondary, provided the school is within 175 feet of active cable distribution plant. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the school requesting service. Monthly service charges shall be waived on all additional outlets.*
- b. *The Company shall provide free Expanded Service cable television service at no cost on one (1) outlet to each existing and future police, fire, emergency management facility, community center including the Martin Luther King Center, senior center and public library located in the Municipality and operated by the Municipality or the County of Cape May, provided the facility is located within 175 feet of active cable distribution plant. Each additional outlet installed, if any, shall be paid for on a materials plus labor basis by the Municipality. Monthly service charges shall be waived on all additional outlets.*
- c. *The Company shall provide free basic Internet service, via high-speed cable modem, to one (1) non-networked personal computer in each qualified existing and future public school in the Municipality, elementary, intermediate and secondary, at no charge provided the facility is located within 175 feet of active cable distribution plant. The Internet service shall be installed on a personal computer that is accessible to the students and not for administrative use only.*
- d. *The Company shall provide free basic Internet access via high-speed cable modem on one (1) non-networked personal computer in each qualified existing and future public library located in the Municipality, and operated by the Municipality or the County of Cape May at no charge provided the facility is located within 175 feet of active cable distribution plant. The Internet service shall be installed on a personal computer that is accessible to library patrons and not for administrative use only.*

- e. *The Company shall provide to the Municipality a one-time technology grant in the amount of twenty thousand dollars (\$20,000.00) within six months of the issuance of a renewal Certificate of Approval*

SECTION 15. EDUCATIONAL AND GOVERNMENTAL ACCESS

- j. *The Company will continue to provide one shared channel for educational and governmental (“EG”) access for the shared use by the residents of Middle Township, Wildwood, North Wildwood, West Wildwood, Wildwood Crest, West Cape May, Cape May, Cape May Point, and Lower Township. (collectively, “Municipalities”) on the most basic tier of service offered by the Company in accordance with the Cable Act, Section 623, and as further set forth below. Educational access video programming shall be provided by the governing bodies of Middle Township, Wildwood, North Wildwood, West Wildwood, Wildwood Crest, West Cape May, Cape May, Cape May Point, and Lower Township or a designated educational institution. Currently, this designee is the Richard M. Teitleman School and the Cape May County Technical High School. Government video programming shall be provided by the governing bodies of Middle Township, Wildwood, North Wildwood, West Wildwood, Wildwood Crest, West Cape May, Cape May, Cape May Point, and Lower Township. Unused capacity may be utilized by the Company subject to the provisions for “fallow time” below.*
- k. *The Company does not relinquish its ownership of or ultimate right of control over a channel by designating it for EG use. An EG access user – whether an educational or government user – acquires no property or other interest by virtue of the use of a channel so designated, and may not rely on the continued use of a particular channel number, no matter how long the same channel may have been designated for such use.*
- l. *The Company shall not exercise editorial control over any educational or governmental use of channel capacity, except Company may refuse to transmit any educational or governmental access program or portion of an educational or governmental access program that contains obscenity, indecency, or nudity.*
- m. *The governing bodies of Middle Township, Wildwood, North Wildwood, West Wildwood, Wildwood Crest, West Cape May, Cape May, Cape May Point, and Lower Township shall be responsible for developing, implementing, and enforcing rules for EG Access Channel use which shall insure that the EG Access Channel and the EG Access Equipment, which shall be provided by the Municipalities, will be available on a first-come, first served, non-discriminatory basis.*
- n. *Educational Access. “Educational Access” shall mean noncommercial use by educational institutions such as public or private schools, but not “home schools,” community colleges, and universities.*
- o. *Government Access. “Government Access” shall mean noncommercial use by the governing bodies of Middle Township, Wildwood, North Wildwood, West Wildwood, Wildwood Crest, West Cape May, Cape May, Cape May Point, and Lower Township for the purpose of showing the public local government at work.*
- p. *Company Use of Fallow Time. Because blank or under utilized EG channels are not in the public interest, in the event the Municipalities or other EG access users elect not to fully program their EG access channel, Company may program unused time on those channels subject to reclamation by the Municipality upon no less than 60 days written notice.*
- q. *Indemnification. The Municipalities shall indemnify Company for any liability, loss, or damage it may suffer due to violation of the intellectual property rights of third parties on the EG channel and from claims arising out of the Municipalities’ rules for or administration of access.*
- r. *The Company will provide an additional PEG access channel, upon a demonstration by the Municipalities, that utilization of the existing governmental/educational access channel exceeds forty-eight (48) hours per week of original, non-commercial, first-run, locally produced, full motion video programming over a period of eighteen (18) consecutive weeks, if existing bandwidth allows for the addition of said channel.*

SECTION 16. EMERGENCY USES

The Company will comply with the Emergency Alert System (“EAS”) rules in accordance with applicable state and federal statutes and regulations.

The Company shall in no way be held liable for any injury 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 system as contemplated herein.

SECTION 17. LIABILITY INSURANCE

The Company 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 \$5,000,000.

SECTION 18. INCORPORATION OF THE APPLICATION

All of the statements and commitments contained in the Application or annexed thereto and incorporated therein, and any amendment thereto, except as modified herein, are binding upon the Company as terms and conditions of this consent. The Application and other relevant writings submitted by the Company shall be annexed hereto and made a part hereof by reference provided same do not conflict with applicable State or Federal law.

SECTION 19. COMPETITIVE EQUITY

Should the Municipality grant a franchise to construct, operate and maintain a cable television system to any other person, corporation or entity on terms materially less burdensome or more favorable than the terms contained herein, the Company may substitute such language that is more favorable or less burdensome for the comparable provision of this Ordinance subject to the provisions of N.J.A.C. 14:17-6.7.

SECTION 20. SEPARABILITY

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 its validity or unconstitutionality shall not affect the validity of the remaining portions of the Ordinance.

SECTION 21. THIRD PARTY BENEFICIARIES

Nothing in this Franchise or in any prior agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of such agreements or Franchise.

SECTION 22. ANNUAL MEETING

- a. *A Company representative shall appear annually, upon reasonable written request of the Mayor, at a public hearing, public meeting, or public work session of the Governing Body, to discuss matters pertaining to the provision of cable service to residents of the Township, and other cable-related issues as the Township and Company may see fit to discuss.*
- b. *A company representative will meet quarterly with the Township Cable Television Committee, upon reasonable notice of date and time by the Committee*

SECTION 23. EFFECTIVE DATE

This Ordinance shall take effect immediately upon issuance of a Renewal Certificate of Approval from the BPU.

9. **RESOLUTION – TABULATION COMMITTEE – RECONSTRUCTION OF BENNETT ROAD**
– On motion by _____ seconded by _____ and passed on roll call, the following resolution was adopted.

NOW THEREFORE BE IT RESOLVED, by the Township Committee, the Governing Body of the Township of Middle, County of Cape May and State of New Jersey that Chief Finance Officer Tracey Taverner, Township Clerk Kimberly Tomkinson, and Business Administrator Mark Mallett, be and hereby are appointed to tabulate the bids to be taken on Tuesday, March 30, 2010 at 1:00 PM in the Middle Township Municipal Building, 2nd Floor Conference Room, 33 Mechanic Street, Cape May Court House, NJ for the following:

RECONSTRUCTION OF BENNETT ROAD

10. **RESOLUTION – AMEND AWARD OF BID – HOME REHABILITATION PROGRAM CONTRACT 2006-13** – On motion by _____ seconded by _____ and passed on roll call, the following resolution was adopted.

WHEREAS, Ellen Thomas participated in the Middle Township Housing Rehabilitation Program, and

WHEREAS, the project was bid and a contract awarded to E&B Home Improvements via Resolution 418-07 in the amount of \$23,725.00, and

WHEREAS, E&B Home Improvements has failed to make repairs as agreed upon by Ellen Thomas, E&B Home Improvements and the Township of Middle, and

WHEREAS, it has been deemed necessary to award the remaining balance to another contractor.

NOW THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Middle, the governing body thereof, that a contract is hereby awarded to Gemini Builders in the amount of \$9,600.00 in order to complete repairs and bring the project to a satisfactory status.

11. **RESOLUTION – REFUND OF TAXES** – On motion by _____ seconded by _____ and passed on roll call, the following resolution was adopted.

Refund due to overpayment by mortgage company

12. **RESOLUTION – RELEASE OF PERFORMANCE BOND – POSTING OF MAINTENANCE BOND – ACCEPTANCE OF ROAD /SOUTHERN SHORE DRIVE** – On motion by _____ seconded by _____ and passed on roll call, the following resolution was adopted.

WHEREAS, the improvements located at Block 168 Lots 21-26, 40, otherwise known as Southern Shore Drive, constructed by Lawrence A. Pray Builders Inc. is complete, and

WHEREAS, the Engineer for the Township of Middle has conducted his inspection and certified that all improvements have been completed, and

WHEREAS, the Engineer for the Township of Middle has recommended that the performance bond in the amount of \$135,454.97 be released, and

WHEREAS, the applicant has also submitted a maintenance bond in the amount of \$56,439.57 for a two-year period.

NOW THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Middle, the governing body thereof, that the release of the performance bond and acceptance of the maintenance bond and guarantee hereby authorized.

BE IT FURTHER RESOLVED, that Southern Shore Drive be and hereby is accepted into the Township road system for continuous maintenance.

13. **RESOLUTION – AWARD CONTRACT UNDER NON-FAIR AND OPEN PROCESS – RABIES CLINIC** – On motion by _____ seconded by _____ and passed on roll call, the following resolution was adopted.

WHEREAS, the Township has determined that the value of the following contracts will not exceed \$17,500.00 and are renewal contracts from previous years, and

WHEREAS, the Local Public Contract Law (N.J.S.A. 40A: 11-1 et seq.) provides for the award of contracts for professional services without advertising for bids, and

WHEREAS, these contracts are not therefore subject to the provisions of N.J.S.A. 19:44A-20.4 or 20.5, and

WHEREAS, the Township of Middle requires said services, and funds are available for said purpose,

NOW THEREFORE BE IT RESOLVED, by the Township Committee, the Governing Body of the Township of Middle, County of Cape May and State of New Jersey, that the following persons are hereby appointed to the positions designated below for the calendar year 2010.

BE IT FURTHER RESOLVED, that a contract be executed by the Township of Middle with each of said persons to supply professional services for the calendar year 2010.

Baysea Veterinary Hospital ----- Rabies Clinic \$100.00 (\$65.00 per hour)

FURTHER RESOLVED, that generally the rabies clinic only requires one hour, but said clinic will remain open, if animals are present, for an additional hour, with fee pro rated.

FURTHER RESOLVED, that a copy of this Resolution be forwarded to the Herald Times for publication.

FURTHER RESOLVED that these contracts are contingent upon the certification of availability of funds and submission of State Affirmative Action Certification.

14. RESOLUTION – REDUCTION OF PERFORMANCE BOND – MANISH SINGH – On motion by _____ seconded by _____ and passed on roll call, the following resolution was adopted.

WHEREAS, \$100,176.00 is being held as a performance guarantee for Manish Singh for site improvements at Block 99.02, Lot 54.08, also known as Village Drive, and

WHEREAS, the Engineer has conducted his inspection and determined that improvements having a value of \$61,567.20 have been completed, and

WHEREAS, the Zoning Official has recommended that the performance guarantee for the above stated project be reduced to \$38,608.80.

NOW THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Middle, the governing body thereof, that the Irrevocable letter of credit be and is hereby reduced to \$38,608.80.

15. RESOLUTION – SOCIAL AFFAIRS PERMIT (ITEMS A THROUGH D) – On motion by _____ seconded by _____ and passed on roll call, the following resolution was adopted.

Approving various dates for Social Affairs permits for Wildwood Golf Club and Wildwood Civil Assoc. and Middle Township Baseball Assoc.

16. RESOLUTION – RELATIVE TO AUDIT CONTROLS REQUIRED FOR THE ISSUANCE OF STATUTORY BONDS BY THE MUNICIPAL EXCESS LIABILITY JOINT INSURANCE FUND – On motion by _____ seconded by _____ and passed on roll call, the following resolution was adopted.

WHEREAS, the Municipal Excess Liability Joint Insurance Fund (MEL) issues statutory bonds conditional upon members adopting effective control to minimize losses;

WHEREAS, the governing body has reviewed a report from its auditor and concludes that the controls in place concerning the handling of finances and financial transactions are satisfactory;

NOW, THEREFORE, BE IT RESOLVED by the governing body of Middle Township that a copy of this resolution, together with a copy of the report shall be forwarded to the MEL.

17. DISCUSSION WITH REPRESENTATIVES FROM BEAZER HOMES

18. PUBLIC COMMENT: