

ORDINANCE NO. 411

ORDINANCE OF ORWIGSBURG BOROUGH AUTHORIZING EXECUTION OF A CABLE FRANCHISE AGREEMENT BETWEEN THE BOROUGH AND COMCAST OF THE SOUTH, INC

WHEREAS, pursuant to the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996 and any future amendments thereto (hereinafter collectively referred to as the "Cable Act"), the regulations of the Federal Communications Commission (hereinafter referred to as the "FCC") and Pennsylvania law, the Borough is authorized to grant and renew franchises to construct, operate and maintain a Cable System utilizing public rights-of-way and properties within the Borough's jurisdiction; and

WHEREAS, Comcast currently holds a cable franchise from the Borough by virtue of a Cable Franchise Agreement dated December 1993, originally granting a cable franchise to Time Warner Entertainment Company, L.P., which was extended via a Cable Television Franchise Extension Agreement dated November 20, 2003 between the Borough and Comcast of the South, Inc; and

WHEREAS, Comcast has requested that the Borough renew Comcast's franchise to maintain, construct, operate, and upgrade its cable system over, under and along the aforesaid rights-of-ways for use by the Borough's residents; and

WHEREAS, the aforesaid rights-of-way used by Comcast are public properties acquired and maintained by the Borough on behalf of the citizens of the Borough, and the right to use said rights-of-way is a valuable property right; and

WHEREAS, the Borough desires to protect and manage the aforesaid rights-of-way, establish standards of customer service, maintain a technologically advanced cable system, receive franchise fees for Comcast's use of the Borough's rights-of-ways as provided by federal law, obtain the use of educational and governmental channels, establish certain reporting requirements, obtain certain complimentary services and provide for the current and future cable-related needs of its residents; and

WHEREAS, the Borough held a public hearing on the subject of cable franchise renewal, including reviewing the cable operator's past performance and identifying the Borough's future cable-related community needs; and

WHEREAS, the Borough has determined that Comcast has the financial, legal and technical ability to provide cable services to subscribers located in the Borough; and

WHEREAS, the Borough, after affording the public notice and opportunity for comment, has determined that the public interest would be served by renewing a franchise with Comcast according to the terms and conditions contained in the Cable Franchise Agreement (“Agreement”) and the one-page side agreement, and that the process for consideration of these documents complies with all applicable federal, state and local laws and regulations.

NOW THEREFORE, BE IT ORDAINED THAT

SECTION 1: Grant of Franchise

The Borough Council does hereby approve the Agreement and one-page side agreement negotiated with Comcast, including all of the terms and conditions contained therein, and does hereby authorize the execution of such Agreement and side agreement. A copy of the Agreement and side agreement is attached hereto as Exhibit A.

SECTION 2: Repealer

Any and all other prior Ordinances that conflict with the terms and conditions of this Ordinance are hereby repealed to the extent of such conflict.

SECTION 3: Severability

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not render this Ordinance invalid.

SECTION 4: Effective Date

This Ordinance shall become effective as provided by law.

[SIGNATURE PAGE TO FOLLOW]

ENACTED AND ORDAINED this 12 day of JUNE, 2013.

ATTEST:

BOROUGH OF ORWIGSBURG

Sherry McEdward

Michele Helle

President, Borough Council

APPROVED

Austin Scandibe

Mayor