

Township of West Milford

Passaic County, New Jersey

~ Resolution 2020 – 187 ~

RESOLUTION OF THE TOWNSHIP OF WEST MILFORD, COUNTY OF PASSAIC, STATE OF NEW JERSEY SUPPORTING LOCAL CABLE FRANCHISING INCLUDING NON-MONETARY OBLIGATIONS

WHEREAS, municipal streets and highways are public property, obtained and maintained by municipalities at great expense to our taxpayers; and

WHEREAS, cable companies may use municipal streets and highways for their lines which provide service to customers, but only after obtaining permission to use this property for their lines; and

WHEREAS, such permission is normally contained in a franchise agreement obtained from local governments and include important provisions to protect the community and its residents such as:

- Managing the lines in the streets so that there is minimal disruption, safety codes are followed and all types of users (cars, pedestrians, utilities) can use the streets with the least interference from others;
- Requiring providers to repair the streets they harm and relocate lines at their expense, if streets are straightened, widened, or otherwise improved on or maintained;
- Prohibiting redlining either directly or by delays in serving minority areas, which is especially offensive when public property is being used to provide service;
- Ensuring nondiscriminatory service, such as by requiring lines to be extended to all areas with a certain population density;
- Setting customer service standards, protections and enforcement mechanisms; and

WHEREAS, such agreements call for providing rental payments in the form of franchise fees to the unit of local government in return for the providers' use of valuable public property for their lines; and

WHEREAS, such agreements often also call for providing, non-financial community benefits, protected by Congress in the Cable Act, for services that include:

- Public Education and Government ("PEG") channels and in some cases Video on Demand and in HD format;
- Financial support for the capital expenses associated with creating the programming run on such PEG channels;
- Inclusion of PEG programming on Electronic Programming Guide Service;
- Complimentary connections to city and school buildings and the provision of lines for municipal use (I-Net); and
- Broadcasting of local emergency alerts, which because they relate to local emergencies are typically not carried on the federal emergency alert system; and

WHEREAS, franchise provisions ensure cable service and use of the rights of way are tailored to the local needs of each municipality, having been Federal law and policy since 1984 and the policy of municipalities for 30 years before that; and

WHEREAS, the Federal Communications Commission ("FCC") has adopted a proposal (05-311) that allows cable companies to establish a market value for the non-financial franchise obligations and then allow the cable operators to deduct that amount from the franchise fees owed under the franchise agreements; and

WHEREAS, the FCC, in the same proceeding is suggesting that a cable operator needs no additional permission nor needs to comply with any additional local or State requirements when the cable operator accesses municipal property to offer non-cable services; and

WHEREAS, these FCC proposals undermine local authority, turn public property over to private interests and remove longstanding community benefits.

NOW THEREFORE, BE IT RESOLVED that the Township of West Milford affirms the importance of cable franchising in granting permission for cable companies to use valuable public property for their lines; in providing needed protections for municipalities, the public and cable customers and in tailoring franchise requirements and services to meet local needs; and

BE IT FURTHER RESOLVED, that the Township of West Milford opposes any regulatory proceeding or legislation that see to alter the terms of existing franchises including any effort to require that non-financial obligations be subject to offset against franchise fees; and

BE IT FURTHER RESOLVED, that the Township of West Milford opposes any regulatory proceeding or legislative effort that would give away to a cable, fiber, broadband or telephone provider the right to use the rights-of-way without obtaining permission and paying fair market value for such use.

BE IT FURTHER RESOLVED, that a copy of this resolution be transmitted to the sponsors Hon. Mayor Brian C. Wahler of Piscataway Township, Hon. Mayor Colleen Mahr, of Fanwood Borough, Hon. Mayor J. Christian Bollwage of Elizabeth City and Hon. Mayor Timothy McDonough of Hope Township.

BE IT FURTHER RESOLVED, that a copy of this resolution be transmitted to our representative in Congress, the members of the New Jersey General Assembly and State Senate, the President of the New Jersey Board of Public Utilities, the Lieutenant Governor, the Governor of the State of New Jersey, Michael Darcy, Executive Director of New Jersey League of Municipalities and David Garb, Legislative Committee Chair/JAG Vice President.

Adopted: May 20, 2020

Adopted this 20th day of May, 2020
and certified as a true copy of an original.

William Senande, Township Clerk