



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
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Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CABLE TELEVISION

JASONTOWN APARTMENTS, LLC)	ORDER ADOPTING
Petitioner)	INITIAL DECISION
)	
v.)	
)	
COMCAST OF THE MEADOWLANDS, LLC)	BPU DOCKET CO11060380
Respondent)	OAL DOCKET NO. CTV11604-11

Parties of Record:

Edwin F. Chocley, Jr., Esq., Riker, Dansig, Scherer, Hyland & Perretti, for Jasontown Apartments, LLC, Petitioner

Harold Friedman, Esq., Scarinci & Hollenbeck, for Comcast of the Meadowlands, LLC, Respondent

BY THE BOARD:

The New Jersey Board of Public Utilities ("Board") and its Office of Cable Television ("OCTV"), pursuant to N.J.S.A. 48:5A-1 et seq., have been granted general supervision and regulation of and jurisdiction and control over all cable television systems which operate within the State of New Jersey, subject only to the limitations of federal law. The within matter was initiated following a transfer from the New Jersey Superior Court of a complaint by Jasontown Apartments, LLC (hereinafter "Jasontown" or "Petitioner") seeking to resolve an on-going dispute with Comcast of the Meadowlands, LLC (hereinafter "Comcast" or "Respondent") concerning the terms and conditions of access as authorized by N.J.S.A. 48:5A-49. Upon receipt of the case, the Board transmitted this matter to the Office of Administrative Law ("OAL") for hearing and initial disposition as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. The matter was assigned to Administrative Law Judge ("ALJ") Richard McGill, who rendered an Initial Decision on December 20, 2012, which was filed with the Board on December 27, 2012. On January 23, 2013 the Board requested and was subsequently granted an extension of time to consider ALJ McGill's initial decision.

BACKGROUND/HISTORY

This matter centers on the attempt by Comcast to gain access to the Jasontown Apartment Complex to upgrade and replace its in-place facilities used to provide cable television service. Cable television facilities were originally installed in Jasontown's apartment buildings pursuant to an agreement signed in 1980. The entry to the building was by overhead cable from utility poles at the street to distribution boxes on the exterior of the apartment buildings. From the distribution boxes, the cables ran primarily on the outside of the building and entered individual apartments by penetrating the brick sheathing.

In 2006, Comcast began to install an upgrade to its cable system at Jasontown's complex using external distribution. During the installation work, Comcast drilled numerous holes in the decorative brick and punctured vapor barriers. Comcast also drilled holes through the buildings' gable ends, fascias and soffits. Further, Comcast's activity compromised the buildings' firewalls by making very large holes at multiple locations and punching large holes through fire-rated sheetrock. In addition, Comcast cut cables and left those dangling from the exterior of the buildings, and the company's wall-mounted distribution boxes have provided nesting locations for squirrels.

Approximately two weeks after Comcast began work on its upgrade project, Jasontown demanded that Comcast cease its activity, remove dangling wires on the outside of its buildings and repair the damage. Comcast refused to begin the repairs or removal of the dangling cables, unless Jasontown entered into a contract to upgrade the cable facilities within the complex which Mr. James Nuckel, a member of Jasontown Apartments, LLC and owner, viewed as onerous and unacceptable.

In or about 2008, Verizon installed its FiOS service in Jasontown's apartment buildings. The entry to the buildings was by overhead wire from the utility poles in the street to a distribution box in the basement. The installation within each building was done internally with risers proceeding vertically through the apartments to termination points in closets within the units. The distribution within the apartments was also internal.

In 2009, Mr. Jack Anderson, Comcast's Construction Coordinator, sent Jasontown a one-page letter proposing an upgrade to Comcast's facilities at the apartment complex. According to the proposal, Comcast would replace the existing backbone cable from an outside utility pole to each building. New inline cables would be installed to each apartment through a riser from the basement to each unit. Old distribution boxes would be replaced by new ones in the basement. After activation of the new system, the old system would be removed, and holes would be repaired. Jasontown found Comcast's proposal to be unacceptable due to the lack of detail. On August 20, 2010, Jasontown filed a verified complaint in Superior Court in Bergen County setting forth claims of trespass and negligence against Comcast.

On June 14, 2011, the Superior Court entered an Order transferring the matter to the Board for a determination of all issues concerning access raised by the amended pleadings. The Order also stated that the Court will retain jurisdiction over plaintiff's claims of negligence and trespass and the defenses thereto.

Pursuant to the Court's Order, Jasontown filed its petition with the Board on June 24, 2011, and Comcast filed its Answer on August 2, 2011. The matter was thereafter transmitted on September 22, 2011 to the Office of Administrative Law as a contested matter under N.J.A.C. 14:17-9.1 et seq.

ALJ McGill conducted evidentiary hearings on May 21 and May 22, 2012, which addressed the question of the terms and conditions of access, removal of the existing cable system facilities, remediation of existing damage to Petitioner's property and other technical issues regarding access. ALJ McGill filed his Initial Decision with the Board on December 27, 2012, and exceptions were filed by Comcast, on January 3, 2013. Also on January 3, 2013, Petitioner filed a letter with the Board requesting that the Board promptly adopt ALJ McGill's Initial Decision as its Final Decision in this matter. As explained more fully below, the Board **ADOPTS** the Initial Decision in its entirety and **DENIES** the Respondent's Exceptions.

Terms and Conditions of Access:

Plans and Specifications

Petitioner sought to require that the Respondent submit complete plans and specifications describing any and all work, the schedule for the work, start and end completion dates, dependencies on non-Comcast activities, and the locations of its facilities and system on which work is supposed to be performed. In addition, Petitioner would make the plans and specifications subject to its approval. ALJ McGill's Initial Decision granted the Petitioner's request, noting that Verizon provided plans and specifications for installations of its FiOS service, and Jasontown's request for Comcast to do the same seemed reasonable. ALJ McGill added that the plans and specifications would be subject to Jasontown's approval and that Jasontown shall not withhold approval unreasonably.

Although Respondent has agreed to submit such a plan, in its Exception it argued that unforeseen factors beyond the company's control could result in delay or interruption or alteration of schedule and proposes describing the required plan as "reasonable projected dates and times". Petitioner does not see any basis for Comcast to embed delay and uncertainty into its project plan and asserts that any extraordinary relief should be requested from the Board.

Accordingly, the Board **HEREBY ADOPTS** the ALJ's recommendation and **HEREBY FINDS AND ORDERS** that Comcast comply with the project plan requirement recommended by the ALJ and rejects the alternative proposed in Comcast's Exceptions.

Entry into the Buildings / Location of Trenches

As a condition of access, Petitioner has requested that Respondent relocate the backbone cables from aerial to underground cables in conduit. Petitioner has agreed to pay the cost of the conduit and its installation. The backbone cable is to terminate at a distribution box at a central location in the bottom level of each building. Respondent has agreed to this requirement and has provided Jasontown with technical specifications of the required equipment. In addition, Petitioner shall complete the trenching and conduit installation for all buildings before Respondent begins work on the project.

ALJ McGill adopted these conditions and agreements, but stipulated that both parties shall agree on the location of the trenches. Respondent, in its Exceptions, argues that the location of the trenches is part of its overall wiring plan and therefore location(s) of each trench should be designated by Respondent. Petitioner's Reply stresses that Respondent has provided no evidence supporting its exception that it should be entitled to dictate to Jasontown the location of the trenching.

The Board agrees with the ALJ on this matter. Accordingly, the Board **HEREBY ADOPTS** the ALJ's recommendation and **HEREBY FINDS AND ORDERS** that Comcast reach an agreement with Petitioner regarding location of the trenches. The Board finds Petitioner's concerns of possible impact of the trenching on its property and its need to ensure safety, functioning appearance and value of the premises, as directed under N.J.S.A. 48:5A-49a, to be persuasive as well. Nonetheless, the Board recognizes that the location of the current utility poles and the point of entry into each building should be considered when determining the locations of the trenching.

Access and Security Procedures

Petitioner seeks to have Respondent comply with its access and security requirements including, access during business hours, photo identification for workers, assurance that Comcast's contractors are properly licensed with copies of such licenses provided to Petitioner, and a daily sign in requirement for all workmen at the Jasontown management office. Respondent agrees that all personnel will have identification badges, proper licensing documentation and that the work will generally be accomplished during business hours. Nonetheless, Respondent believes that it would be oppressive to require each worker to sign in at some office on a daily basis.

ALJ McGill determined that Respondent shall comply with Petitioner's security requirements as follows: access during business hours with the exception of midnight to 6:00 a.m. hours for the activation process, photo identification for all Comcast or contractor personnel and for each worker to sign in at the Jasontown management office.

In its Exceptions, Respondent sites possible misinterpretation and requests articulation of "non-business-hour". In addition, the requirement to have workmen sign in at management office is seen by Respondent as unnecessary and an unreasonable requirement. Respondent proposes that an email with the name of each workmen be sent to Jasontown advising the names of the persons who will be on the premises each day. In its Reply, Petitioner opposes Respondent's attempt to expand the one exception in the ALJ's decision regarding work during non-business hours. Regarding Respondent's email proposal as a substitute for workmen signing in, Petitioner sees that as Comcast's intent to dispatch a certain worker but not proof that the worker is or was actually on site at the premises.

The Board finds the determination of the ALJ to be persuasive and appropriate. The Board finds Petitioner's need to protect the safety and well-being of the tenants, functioning, appearance and value of the premises and the convenience, as directed under N.J.S.A. 48:5A-49a, to be reasonable and for the ALJ's recommendations to be adopted. The record is void of any discussion of Respondent's proffered alternatives to the Petitioner's requested conditions and the ALJ's decision on the matter. Therefore, there is no basis within the record upon which to support its adoption.

Accordingly, the Board **HEREBY ADOPTS** the ALJ's recommendation and **HEREBY FINDS AND ORDERS** that Comcast comply with the security requirement recommended by the ALJ and rejects the alternative proposed in Comcast's Exceptions.

On Site Comcast Supervisor

Petitioner contends that Respondent should be required to have a Comcast supervisor on site at all times when work is being performed. Respondent states that there will be a supervisor on site at all times although not necessarily a Comcast employee.

ALJ McGill determined that since cable installation has caused fairly extensive damage to Jasontown's premises in the past and Respondent will have contractors on site for installation, removal and remediation, it is a reasonable precaution to have a Comcast supervisor on site at all times work is being performed. Comcast's Exception argues that the on-site supervision will be done by an experienced independent contractor and that to have a second supervisor i.e., a direct Comcast employee, on site at the same time would be unnecessarily duplicative and unwarranted waste of time and expense. Petitioner's Reply asserts that a Comcast on-site supervisor is necessary to prevent damages from occurring again.

The Board concurs with the ALJ that in light of damage caused to Petitioner's premises in prior installations, that a Comcast supervisor is to be on site at all times when work is being performed. In addition, the Board finds Petitioner's need to protect the safety and well-being of the tenants, functioning, appearance and value of the premises and the convenience, as directed under N.J.S.A. 48:5A-49a, to be a reasonable concern, which can be mitigated by having a direct Comcast supervisor on site. The Board finds this recommendation as a reasonable condition of access in this case. Accordingly, the Board **HEREBY ADOPTS** the ALJ's recommendation and **HEREBY FINDS AND ORDERS** Comcast to comply with this recommendation.

Cable Distribution within Buildings

The Parties agreed that Respondent shall route the inline cables from the distribution box in the basement to a termination point in each apartment using the same route that Verizon employed for its FiOS service. Distribution of cable within an apartment or unit shall be implemented completely within the apartment or unit. All cabling within the units shall be run along baseboards or other corners of the room, as agreed to by the unit's tenant. Cables shall be stapled to the wall or baseboard at no more than twelve inches along the cable.

Although there is general agreement between the parties that Comcast's internal distribution of its inline cables will follow the same path as that employed by Verizon for its FiOS service, ALJ McGill determined that Comcast's qualification that it will to do so "where feasible" raises concerns. ALJ McGill's Initial Decision adds that Comcast shall not deviate from Verizon's installation path without Jasontown's approval and that Jasontown shall not withhold approval unreasonably.

The Board finds Petitioner's need to protect the safety and well-being of the tenants, functioning, appearance and value of the premises and the convenience, as directed under N.J.S.A. 48:5A-49a, to be reasonable concern. In light of having an existing installation of inline cables from Verizon, which have been approved by Petitioner, the Board finds that requesting Respondent to follow the same path for its installation to be a practical and reasonable condition of access. Accordingly, the Board **HEREBY ADOPTS** the ALJ's recommendation and **HEREBY FINDS AND ORDERS** that Comcast comply with this condition of access.

Standards and Codes

ALJ McGill determined that all work shall be performed in a good and workmanlike manner and in compliance with industry standards, including but not limited to, not drilling through exterior walls, except for the point of entry if necessary, and to comply with building, fire, local and all applicable codes, governmental statutes, rules and regulations.

The Board finds the ALJ's determinations regarding standards for installation persuasive and appropriate. In addition, the Board finds Petitioner's need to protect the safety and well-being of the tenants, functioning, appearance and value of the premises and the convenience, as directed under N.J.S.A. 48:5A-49a, to be a reasonable concern and one which can be mitigated by Comcast's adherence to all codes and regulation pertinent to the installation of its cable. Accordingly, the Board **HEREBY ADOPTS** the ALJ's recommendation and **HEREBY FINDS AND ORDERS** that Comcast comply with this condition of access.

Permits and Approvals

The ALJ determined that Comcast shall provide copies of necessary permits and approvals to Jasontown prior to commencement of work and any permits or approvals necessary for removal and/or remediation may be provided at a later date than those for installation.

The Board finds the ALJ's determination to be reasonable. Accordingly, the Board **HEREBY ADOPTS** the ALJ's recommendation and **HEREBY FINDS AND ORDERS** that Comcast comply with this condition of access.

Insurance

ALJ McGill determined that Respondent and its contractors shall maintain general liability insurance equal to or greater than the amounts in N.J.S.A. 48:5A-28 and workers' compensation coverage with respect to workers at the premises, name Petitioner as an additional insured and provide Petitioner with certificates evidencing such insurance.

The Board concurs with the ALJ in light of damage caused to Petitioner's premises in prior Comcast's installations, that Comcast shall maintain general liability insurance and workers' compensation coverage as mandated by N.J.S.A. 48:5A-28. The Board finds this recommendation as a reasonable condition of access in this case. Accordingly, the Board **HEREBY ADOPTS** the ALJ's recommendation and **HEREBY FINDS AND ORDERS** Comcast to comply with this recommendation.

Notice of Site Visits

ALJ McGill determined that Respondent shall provide reasonable advanced written notice to Petitioner's designee of any site visits for installation of the upgrade, for removal and remediation, and for any related site visits. However, the ALJ finds Petitioner's proposed requirement of providing written notice for "any purpose", such as routine service visits, to be too excessive and that it should not be extended to that point.

The Board finds the ALJ's determination that Comcast provide reasonable advanced written notice to be persuasive and appropriate. In addition, the Board finds Petitioner's need to protect the safety and well-being of the tenants, functioning, appearance and value of the premises and

the convenience, as directed under N.J.S.A. 48:5A-49a, to be reasonable concern. Accordingly, the Board **HEREBY ADOPTS** the ALJ's recommendation and **HEREBY FINDS AND ORDERS** that Comcast comply with this condition of access.

Licensing of Contractors

ALJ McGill determined that Respondent ensure that its contractors be properly licensed and provide copies of such to Jasontown.

The Board finds the ALJ determination to be appropriate. Therefore the Board **HEREBY ADOPTS** the ALJ's recommendation and **HEREBY FINDS AND ORDERS** that Comcast comply with this condition of access.

Project Manager

The ALJ determined that requiring a single project manager is reasonable and since there is no real dispute it should be approved. In addition, Comcast shall provide Jasontown with the individual's full contact information.

The Board finds the ALJ's determination that Comcast designate a single project manager to be appropriate and therefore the Board **HEREBY ADOPTS** the ALJ's recommendation and **HEREBY FINDS AND ORDERS** that Comcast comply with this condition of access.

Removal of Existing Cable System

ALJ McGill determined that Respondent remove the old cabling including the aerial backbone cables, the external wiring and the distribution boxes. He also determined the removal shall begin no later than thirty days after the completion of the upgrade in the last building or structure.

The Board finds the ALJ's determination that Comcast remove the old system and adhere to the time frame stipulated to be persuasive and appropriate. The Board finds this recommendation as a reasonable condition of access in this case. Accordingly, the Board **HEREBY ADOPTS** the ALJ's recommendation and **HEREBY FINDS AND ORDERS** Comcast to comply with this recommendation.

Remediation of Damages

ALJ McGill determined that Respondent shall repair the damage which it has caused to Petitioner's premises. In addition, the ALJ determined that repairs cannot be micromanaged in advanced and that Petitioner should not have the authority to determine unilaterally whether the repairs are satisfactory. The ALJ further noted that to the extent Petitioner is not satisfied with the repairs by Respondent, it has the right to proceed with its lawsuit in Superior Court.

The Board finds the ALJ's determination that Comcast shall repair all damages as stipulated by Petitioner to be persuasive and appropriate. In addition, the Board concurs with the ALJ's determination that repairs cannot be micromanaged. The Board finds these recommendations as reasonable conditions of access in this case. Accordingly, the Board **HEREBY ADOPTS** the ALJ's recommendation and **HEREBY FINDS AND ORDERS** Comcast to comply with this recommendation.

Summary of Findings:

The following is a summary of the Board directives contained herein:

1. The Board **ADOPTS** the ALJ's recommendation and **HEREBY ORDERS** Comcast to access and provide cable television service to the Jasontown Complex, subject to the reasonable conditions presented herein.
2. The Board **ADOPTS** the ALJ's recommendation and **HEREBY ORDERS** Comcast to submit complete plans and specifications describing any and all work, the schedule for the work and the locations of its facilities and system on which work is supposed to be performed. The plans will be subject to Jasontown's approval which shall not be unreasonably withheld.
3. The Board **ADOPTS** the ALJ's recommendation and **HEREBY ORDERS** Jasontown not to withhold approval of the aforementioned plans unreasonably.
4. The Board **ADOPTS** the ALJ's recommendation and **HEREBY ORDERS** Comcast to install the backbone cable underground once Jasontown performs the trenching and conduit installation. Comcast and Jasontown shall agree on the locations of the trenches. In addition, Comcast shall provide technical specifications of the required equipment, including the diameter of the backbone cables and the maximum acceptable radius of a conduit's turn.
5. The Board **ADOPTS** the ALJ's recommendation and **HEREBY ORDERS** Comcast to install the inline cables from the distribution box in the basements to the termination point in each apartment internally. Comcast is to follow Verizon's installation path where feasible and when is not feasible to submit an alternate path for Jasontown's reasonable approval.
6. The Board **ADOPTS** the ALJ's recommendation and **HEREBY ORDERS** Comcast to install the intra-unit cabling completely within the apartment or unit. Comcast is to properly attach all cabling along baseboards or other corners of the room as agreed by the unit's tenant. Splitters and amplifiers shall be properly attached to a wall or other bulkhead and grounded if required.
7. The Board **ADOPTS** the ALJ's recommendation and **HEREBY ORDERS** Comcast to perform all work in a good and workmanlike manner and in compliance with industry standards. Comcast shall comply with building, fire, local and other applicable codes and governmental statutes, rules and regulations. Comcast shall provide to Jasontown copies of any necessary permits and approvals from applicable government authorities.
8. The Board **ADOPTS** the ALJ's recommendation and **HEREBY ORDERS** Comcast and its contractors to maintain general liability insurance equal to or greater than the amounts required in N.J.S.A 48:5A-28. Comcast shall also maintain workers' compensation coverage with respect to workers at the premises. Comcast shall name Jasontown as an additional insured and provide Jasontown with certificates to evidence such insurance.
9. The Board **ADOPTS** the ALJ's recommendation and **HEREBY ORDERS** Comcast to confirm its contractors are properly licensed and to provide copies of such licenses to Jasontown.
10. The Board **ADOPTS** the ALJ's recommendation and **HEREBY ORDERS** Comcast to provide advanced written notice to Jasontown's designee of any site visits for installation of the upgrade, for removal and remediation, and for any related site visits.
11. The Board **ADOPTS** the ALJ's recommendation and **HEREBY ORDERS** Comcast to complete all work during business hours. The only exception shall be for the activation process which is normally done between midnight and 6:00 a.m. In addition, Comcast

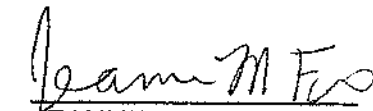
- shall comply with the requirement of photo identification for all Comcast or contractor personnel and sign in on a daily basis at the Jasontown management office.
12. The Board **ADOPTS** the ALJ's recommendation and **HEREBY ORDERS** Comcast to have a Comcast supervisor on site at all times when work is being performed.
 13. The Board **ADOPTS** the ALJ's recommendation and **HEREBY ORDERS** Comcast to designate a single project manager and provide Jasontown with the individual's full contact information.
 14. The Board **ADOPTS** the ALJ's recommendation and **HEREBY ORDERS** Comcast to begin the removal of the old cable system, including the aerial backbone cables, the external wiring and the distribution boxes, after the installation is activated and functioning properly.
 15. The Board **ADOPTS** the ALJ's recommendation and **HEREBY ORDERS** Comcast to repair all damages , which it has caused to Jasontown's premises, no later than thirty days after completion of the upgrade process. Removal of the old system and remediation shall be done as one continuous project.

Based upon the foregoing, the Board **HEREBY ADOPTS** the ALJ's Initial Decision as set forth herein in its entirety. The Board likewise **HEREBY ORDERS** that all parties shall provide ongoing documentation to the Board as each provision is satisfied.

DATED: 3/20/13

BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER



JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



**JASONTOWN APARTMENTS, LLC
PETITIONER**

v.

**COMCAST OF THE MEADOWLANDS, LLC
RESPONDENT**

BPU Docket No. CO11060380
OAL Docket No. CTV11604-11

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NJ SUP
CASE MANAGEMENT



State of New Jersey
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INITIAL DECISION

OAL DKT. NO. CTV 11604-11

AGENCY DKT. NO. CO11060380

JASONTOWN APARTMENTS, LLC,

Petitioner,

v.

COMCAST OF THE MEADOWLANDS, LLC,

Respondent.

Edwin F. Chociey, Jr., Esq., for petitioner (Riker Danzig Scherer Hyland & Perretti, attorneys)

Harold Friedman, Esq., for respondent (Scarinci Hollenbeck, attorneys)

Record Closed: August 24, 2012

Decided: December 20, 2012

BEFORE **RICHARD McGILL, ALJ:**

This matter was transferred to the Board of Public Utilities (hereinafter the "Board") by the Superior Court of New Jersey in Bergen County based upon the doctrine of primary jurisdiction to set the terms and conditions of access by Comcast of the Meadowlands, LLC (hereinafter "Comcast" or "respondent") to a garden apartment complex owned by Jasontown Apartments, LLC (hereinafter "Jasontown" or "petitioner")

in Wallington, New Jersey. Pursuant to an Order of the Superior Court dated June 14, 2011, Jasontown filed a petition with the Board on June 24, 2011.

The matter was transmitted to the Office of Administrative Law on September 22, 2011, for determination as a contested case. A hearing was conducted on May 21 and 22, 2012, at the Office of Administrative Law in Newark, New Jersey. The parties filed initial and reply briefs, and the record closed on August 23, 2012, upon receipt of supplemental briefs.

ISSUES

The issues in this proceeding concern the terms and conditions under which respondent will have access to petitioner's garden apartment complex to provide cable television service to the tenants. When this dispute began in 2006, the parties differed widely with respondent commencing an upgrade of cable facilities installed externally to the buildings. In contrast, petitioner wanted internal installation. The differences are now narrower, but they remain numerous.

FACTS

Petitioner's first witness was James Nuckel, who a member of Jasontown Apartments, LLC, which is the owner of the property. Mr. Nuckel began to work at the apartment complex as a teenager when it was a family-owned business. It was evident that Mr. Nuckel has extensive knowledge of the property.

Petitioner's second witness was Arthur A. Carapola, who is an electrical engineer with extensive experience in regard to systems engineering and deployment including design and installation of cable systems. Based upon his experience in information technology, Mr. Carapola proposed various terms and conditions for Comcast's access to the property.

Respondent's sole witness was Jack Anderson, whom it employs as a Construction Coordinator. Mr. Anderson has extensive experience in regard to the installation of cable television systems. Mr. Anderson's first contact with the property was in 2009.

Mr. Nuckel was the only witness with firsthand knowledge of the premises prior to 2009. Mr. Nuckel was a credible witness, and his testimony is accepted as true. Part of Mr. Carapola's testimony addressed the deficiencies of external as opposed to internal distribution of cable wires. This testimony was persuasive but is not in dispute at this point, as respondent has agreed to internal installation of its cable facilities. The differences in the testimony of Mr. Carapola and Mr. Anderson as to the terms and conditions of access will be discussed below.

The facts in this matter are primarily background at this point. Based upon the evidence presented at the hearing, I **FIND** as follows:

Jasontown's garden apartment complex consists of thirty three-story buildings. Each building contains ten apartments with shared space such as laundry rooms on the lowest level. Groups of five buildings are connected to form a total of six structures. The buildings are sheathed in brickwork with gables and soffits made of aluminum or vinyl. The roof area is made of wood with outside shingling.

Cable television facilities were originally installed in Jasontown's apartment buildings pursuant to an agreement signed in 1980. The entry to the building was by overhead cable from utility poles at the street to distribution boxes on the exterior of the apartment buildings. From the distribution boxes, the cables ran primarily on the outside of the buildings and entered individual apartments by penetrating the brick sheathing. In some instances, the cables ran through the attic to reach the other side of the building, where the cables again entered the apartments through the brick sheathing. When it was necessary to run a cable from one room in an apartment to

another, the line went out through the exterior wall and penetrated the brick sheathing again.

In 2006, Comcast began to install an upgrade to its cable system at Jasontown's complex using external distribution. The work continued for approximately two weeks before Jasontown demanded that Comcast cease its activity, remove dangling wires on the outside of the building and repair damage.

During the installation work, Comcast drilled numerous holes in the decorative brick and punctured vapor barriers, creating a vector for water damage to wallboard and sheathing and allowing mold growth. A vapor barrier is any material, typically a plastic or foil sheet, that resists diffusion of moisture through a building's wall, ceiling and floor assemblies. Comcast also drilled large holes through the buildings' gable ends, fascias and soffits, which resulted in squirrel and insect infestation. Further, Comcast compromised the buildings' firewalls by kicking through very large holes at multiple locations and punching large holes through fire-rated sheetrock.

Comcast cut cables and left them dangling from the exterior of the building in plain view creating a condition that is very unsightly and unsafe, especially for children who reside in the complex. There are also large tangles of wires hanging loose from the buildings. These wires are unsightly and an attraction to children in the area. Comcast's wall-mounted distribution boxes have provided nesting locations for squirrels on the exterior walls. Comcast refused to repair the damage or remove the dangling cables, unless Jasontown entered into a contract which Mr. Nuckel viewed as onerous and unacceptable.

In or about 2008, Verizon installed its FiOS service in Jasontown's apartment buildings. The entry to the buildings was by overhead wire from the utility poles in the street to a distribution box in the basement. The installation within each building was done internally with risers proceeding vertically through the apartments to termination points in closets within units. The distribution within apartments was also internal.

In 2009, Mr. Anderson sent Jasontown a one-page letter proposing an upgrade to Comcast's facilities at the apartment complex. According to the proposal, Comcast would replace the existing backbone cable from an outside utility pole to each building. New inline cables would be installed to each apartment through a riser from the basement to each unit. Old distribution boxes would be replaced by new ones in the basements. After activation of the new system, the old system would be removed, and holes would be repaired.

Jasontown found Comcast's proposal to be unacceptable due to the lack of detail. On August 20, 2010, Jasontown filed a verified complaint in Superior Court in Bergen County setting forth claims of trespass and negligence against Comcast. Jasontown filed its First Amended Verified Complaint on May 11, 2011. The Superior Court entered an Order on June 14, 2011, transferring the matter to the Board for a determination of all issues concerning access raised by the amended pleadings. Pursuant to the Court Order, Jasontown filed its First Amended Verified Complaint with the Board.

LAW AND ANALYSIS

A. Law

No owner of any dwelling may prevent a tenant from receiving cable television service. N.J.S.A. 48:5A-49a. But the owner of the property may require that the installation of cable television facilities conforms to all reasonable conditions necessary to protect the safety, functioning, appearance and value of the premises and the convenience, safety and well-being of other tenants; and further, the cable television company installing any such facilities for the benefit of a tenant in any dwelling shall agree to indemnify the owner thereof for any damage caused by the installation, operation or removal of such facilities. N.J.S.A. 48:5A-49a. Disputes as the terms and conditions of access are heard and determined by the Board. Princeton Cablevision Inc. v. Union Valley Corp., 195 N.J. Super. 257, 268-69 (Ch. Div. 1983).

B. Terms and Conditions of Access

Petitioner's requirements in regard to the installation of cable television facilities were set forth in the prefiled testimony of Mr. Carapola as follows:

A proper plan to upgrade Comcast's present cable television system installation at the Premises must contain the following characteristics:

- It must remedy the damages and unsightliness caused by Comcast through its present installation, by removing and relocating all cables from the buildings' exterior to internal distribution.
- It must define the remediation necessary to remove the current installation of cabling and repair all the damage and penetrations caused by Comcast or its contractors, including but not limited to perforations through brick; vapor barrier damage; gable, fascia and soffit damage; squirrel and insect infestation; and firewall damage.
- Primary backbone cables must be relocated from aerial cables to underground cables in conduit.
- It must provide for the internal distribution of inline cables to a single termination point (receptacle) at a consistent location in each unit.
- It must define the methodology to be used for intra-unit, i.e., inside the apartment, cabling from room-to-room.
- It must include a detailed project plan defining work phases, start and end completion dates for each building, dependencies on non-Comcast activities, etc.
- It must provide that Comcast performs any and all work in compliance with industry standards and building, fire, local and other applicable codes and applicable governmental statutes, rules and regulations, including but not limited to not drilling through exterior walls to reach residents.
- It must provide that before any work by Comcast at the Premises (including but not limited to any new installation of its wiring, removal of existing exterior wiring and construction or installation work to its facilities and system), Comcast shall:

submit to Jasontown for review and, if appropriate in Jasontown's discretion, approval, complete plans and

specifications for such work specifically describing any and all proposed work, the schedule for the work and the locations of its facilities and system on which work is proposed to be performed, and

provide Jasontown with copies of any necessary permits and approvals from applicable government authorities for the proposed work.

- It must provide that Comcast is required to maintain, and to require its contractors to maintain, proper levels of commercial general liability insurance, including but not limited to insurance for damages to rented premises, medical expenses, personal injury, advertising injury and products – completed operations and workers' compensation, with respect to the Premises and Jasontown, its personnel, directors, agents and representatives, and shall provide Jasontown with the insurance policies providing such insurance and certificates evidencing such insurance; such insurance shall name Jasontown as an additional insured.
- It must require Comcast to provide to Jasontown reasonable advance written notice to Jasontown's designee of any site visits for any purpose, including but not limited to the work to be performed, the tenant, unit or building in which the work is to be performed, the name of the worker and the entity employing the worker, e.g., Comcast or Comcast contractor.
- It must require that Comcast comply with Jasontown's reasonable requirements for site access and security, including but not limited to access during business hours, identification through photo ID, sign in at the Jasontown management office, etc.
- It must require Comcast to ensure that its contractors are properly licensed and to provide copies of such licenses to Jasontown.
- It must require that a Comcast supervisor is on-site at all times when work is being performed.
- It must provide that the upgrade process be completed one building or set of buildings at a time, from installation of the new environment to removal of the old cabling and remediation of the damage.
- It must require that Comcast designate a single Project Manager for upgrade, and that Comcast provide to Jasontown such individual's full contact information.

Comcast presented its plan for installation of upgraded cable facilities in a one page proposal. Petitioner expressed concern about the brevity of the proposal and, relying upon N.J.S.A. 48:5A-49a, set forth more detailed terms and conditions of access. In view of the greater detail, petitioner's proposal will serve as a basis for discussion of the terms and conditions of access.

Preliminarily, the original dispute in this matter related to petitioner's opposition to respondent's external installation of upgraded cable facilities on petitioner's property. As reflected in the findings above, external installation entails unnecessary physical damage to the property and harm to its aesthetics. While respondent is now proposing internal installation at petitioner's apartment complex, it is worth stating that where feasible, internal installation of cable facilities is a reasonable provision for a property owner to require as a condition of access.

Plans and Specifications

Petitioner would require respondent to submit complete plans and specifications describing any and all proposed work, the schedule for the work and the locations of its facilities and system on which work is supposed to be performed. Mr. Nuckel testified that he had received such plans from Verizon for its FiOS service. In addition, petitioner would make the plans and specifications subject to its approval.

Respondent argues that there is no need for additional plans and/or specifications. Comcast has already laid out the details for the location and path of the internal wiring. According to Mr. Anderson, the parties will agree upon the location in the basement/lower level of each building for the distribution boxes and risers, which will go vertically to a common point on each floor and end at the termination point in each unit.

In view of the fact that Verizon provided plans and specifications for installation of its FiOS service, petitioner's request for respondent to do the same seems reasonable.

The plans and specifications shall be subject to petitioner's approval in order for petitioner to protect its rights under N.J.S.A. 48:5A-49a. Petitioner's approval of respondent's plans and specifications shall not be unreasonably withheld.

Entry to the Buildings

Petitioner proposes several terms and conditions related to the physical characteristics of access. One major concern relates to the entry into the building. This refers to the method of delivery of cable television service into the buildings from the main cable line in the street. The lines from the street to buildings are sometimes called backbone cables. Currently, respondent's backbone cables are installed overhead as are the electric power lines and the FiOS system. Petitioner wants to impose a condition such that the new Comcast backbone cables are installed underground from the street to the point of entry to each building. The backbone cable will terminate at a distribution box at a central location in the bottom level of each building. Petitioner has agreed to pay the cost of the conduits and their installation. Petitioner requests that respondent specify the diameter of the backbone cables to be installed in each conduit as well as the minimum diameter of the conduit and the maximum acceptable radius of a conduit turn.

According to Mr. Anderson's testimony, respondent agrees that the service to each building will be via underground cables that will run through buried conduits with a redundant extra conduit, provided that petitioner will bear the cost of trenching and conduit installation from the poles to the building. The diameter of the backbone cables to be installed in each conduit will be three quarters of an inch (3/4"), and there will be two points of entry in each building. Further, in each building the backbone cable will terminate in a single wall-mounted distribution cabinet to be located in common space in the bottom level (basement) of each building or at a point next to the Verizon FiOS cabinet. During cross-examination, Mr. Anderson added the further condition that the trenching and conduit installation must be completed for all buildings before Comcast begins to work on the project.

According to respondent, underground installation is not a mandatory industry standard and is contrary to a regulation, N.J.A.C. 14A:18-2.3, which requires that a cable company's lines must follow the same path as those of the power company. Nonetheless, underground installation of the backbone is acceptable to respondent, provided that petitioner performs the trenching and conduit installation at its expense and at locations designated by Comcast and that all of such work will be completed before Comcast commences its installation of the new cable wiring.

Preliminarily, in accordance with N.J.A.C. 14:18-2.3(b), it is permissive for cable to follow the utility lines where the existing installation is overhead. It is mandatory for cable to follow the existing utility facilities where the installation is underground. N.J.A.C. 14:18-2.3(c). Thus, the provisions of N.J.A.C. 14:18-2.3 do not prevent underground installation of cable lines for petitioner's apartment buildings.

The parties are in agreement that petitioner will perform the trenching and conduit installation at its own expense. Petitioner did not expressly take any position on the added condition that all trenching and conduit installation shall be completed before respondent begins work on the project. Presumably, petitioner does not oppose this condition. Under the circumstances, the installation of the backbone cable from the utility poles in the street to petitioner's buildings shall be underground subject to the conditions that petitioner shall perform the trenching and conduit installation at its own expense and that all of such work shall be completed before respondent commences its installation of the new cable wiring. The parties shall agree on the locations for the trenches, and respondent shall specify the maximum acceptable radius of a conduit turn.

Cable Distribution Within Buildings

A second major concern relates to the internal distribution of inline cables. This would include the inline cables from the distribution box in the basement to a termination point in each apartment. Petitioner wants the inline cables installed internally using the same route that Verizon employed for its FiOS service.

Respondent agrees to internal distribution of the inline cable following the same path as Verizon but adds the qualification that it will do so "where feasible." Mr. Anderson stated that he was sure that it would be possible to use the same riser points as Verizon did, and Mr. Carapola testified that he was not aware of any reason that it would not be possible to do so.

Nonetheless, the "where feasible" language raises concerns. For example, there could be questions as to the standard for whether it was feasible to follow Verizon's installation path, who would make the determination as to feasibility and who would make the decision as to an alternate route.

The parties agree that the distribution of inline cable from the box in the basement to the termination point in each apartment shall be done internally. Respondent shall follow Verizon's installation path where feasible. Respondent shall not deviate from Verizon's installation path without petitioner's approval. If respondent determines that it is not feasible to follow Verizon's installation path, respondent shall submit an alternative plan to petitioner for approval, which shall not be unreasonably withheld.

Installation Within Units

With respect to the installation within apartments, petitioner and respondent are substantially in agreement. As stated by petitioner's expert, distribution within an apartment or unit shall be implemented completely within the apartment or unit. Intra-

unit cabling shall not run outside the confines thereof. Any signal splitters or amplifiers shall be properly attached to a wall or other bulkhead and grounded. All cabling within the units shall be run along baseboards or other corners of the room, as agreed to by the unit's tenant/Comcast subscriber. All cables within the unit shall be stapled to the wall or baseboard at no more than every twelve inches along the cable. In view of the agreement of the parties, these requirements are reasonable and should be approved.

Project Plan

Another proposal by petitioner would require respondent to provide a detailed project plan defining work phases, start and end completion dates, and dependencies on non-Comcast activities. In view of the necessity for petitioner to prepare the premises for respondent's work and advise tenants, this is a reasonable request to be provided upon completion of the trenching. Under the circumstances, this request should be approved.

Petitioner would require that respondent or its contractor complete the upgrade process one building or set of buildings at a time from installation of the new equipment to removal of the old cabling and remediation of the damage. Respondent plans to complete the upgrade work structure by structure and agrees to identify for petitioner the sequence of each structure for upgrade. It is noteworthy that Mr. Anderson estimates that it will take approximately twelve days per structure to complete the upgrade process. Respondent did not state any plan as to the time frame between the upgrade and completion of removal of the old system and repairs.

It is incumbent upon the property owner in an access situation to demonstrate the reasonableness and necessity of conditions that it seeks to impose on the cable operator. Petitioner did not express any particular reason for completion of the upgrade, removal and repairs on one structure before starting another, while respondent has an interest in completing the upgrade process as one continuous project. Under the circumstances, this requirement is not reasonable. Nonetheless, it is

evident that petitioner has an interest in reasonably prompt removal of the old cable system and completion of remediation. Therefore, respondent should be required to begin the removal of the old cable system and remediation of the damage no later than thirty days after completion of the upgrade process and accomplish the removal and remediation as a continuous project.

Standards for Installation

Petitioner seeks a provision stating that respondent will perform any and all work in compliance with industry standards, including but not limited to, not drilling through exterior walls; building, fire, local and other applicable codes; and applicable governmental statutes, rules and regulations. Petitioner maintains that respondent's work in 2006 fell short of this standard.

Respondent agrees to utilize experienced, well-trained licensed personnel, who will comply with all industry standards. Further, the work will be done in a good and workmanlike manner. With respect to the work performed in 2006, Mr. Anderson surmised that the condition of the premises with respect to the cable facilities was the result of an involuntary interruption of work in progress.

Petitioner criticizes respondent's work in 2006 but does not offer any standard that differs from its original requests to which respondent has essentially agreed. Since respondent has also agreed to internal installation of the cable lines, there will be no drilling through external walls aside from the point of entry. It follows that petitioner's original request, expanded to include a reference to completion of work in a good and workmanlike manner, should be approved. Therefore, respondent should be required to perform any and all work in a good and workmanlike manner and in compliance with industry standards, including but not limited to, not drilling through exterior walls, except for the point of entry if necessary, and to comply with building, fire, local and other applicable codes and governmental statutes, rules and regulations.

Permits and Approvals

Petitioner would require that prior to the commencement of work respondent will provide copies of any necessary permits and approvals from applicable government authorities. Respondent has agreed to provide petitioner with copies of all applicable permits. This requirement is reasonable with the understanding that any permits or approvals necessary for removal and/or remediation may be provided at a later date than those for installation.

Insurance

Petitioner would require respondent to maintain, and to require its contractors to maintain, proper levels of commercial general liability insurance, including but not limited to, "insurance for damage to rental premises, medical expenses, personal injury, advertising injury and products – completed operations and workers' compensation, with respect to the Premises and Jasontown, its personnel, directors, agents and representatives and shall provide Jasontown with the insurance policies providing such insurance and certificates evidencing such insurance; such insurance shall name Jasontown as an additional insured." Respondent has agreed to provide certificates of general liability insurance and will require its contractors to do so as well. Respondent has also agreed to provide certificates of workers' compensation insurance. Further, petitioner will be named as an additional insured.

Respondent objects to two aspects of petitioner's proposed requirement. First, respondent objects to a requirement to provide petitioner with copies of the insurance policies. Second, respondent objects to petitioner's list of subcategories of insurance. Respondent contends that the scope of all insurance coverage requirements by a cable company are set forth in N.J.S.A. 48:5A-28 and that its insurance vastly exceeds minimum requirements. Respondent would agree that it and its contractors will supply coverage for the statutorily described liability at levels that exceed insurance

requirements. In response, petitioner argues that the access statute, N.J.S.A. 48:5A-49, controls conditions necessary to protect property owners and does not limit the scope of insurance that is appropriate in an individual case.

One point in dispute concerns petitioner's proposed requirement that respondent produce copies of its insurance policies. Petitioner has not given any reasons as to why it would need to see respondent's insurance policies. Under the circumstances, petitioner has not demonstrated the reasonableness of this proposed requirement. It follows that this proposed requirement should not be approved.

The second point in dispute relates to petitioner's proposed requirement that respondent have various subcategories of insurance. Petitioner has not demonstrated that these subcategories of insurance are necessary as opposed to general liability insurance. Under the circumstances, petitioner has not established the reasonableness of this requirement. It follows that his requirement should not be approved.

With these changes, the provision with respect to insurance should require respondent and its contractors to maintain general liability insurance equal to or greater than the amounts in N.J.S.A. 48:5A-28 and workers' compensation coverage with respect to workers at the premises, to name petitioner as an additional insured and to provide petitioner with certificates evidencing such insurance.

Licensing of Contractors

Petitioner would impose a requirement that respondent ensure that its contractors are properly licensed and provide copies of such licenses to Jasontown. Respondent agrees that to the extent that licensing is required for any contractors, they will have licenses. Petitioner's proposed requirement is reasonable and should be approved.

Notice of Site Visits

Petitioner proposes several requirements related to workers when they are on site. Petitioner would require respondent to provide reasonable advance written notice to Jasontown's designee of any site visits for any purpose, including but not limited to, the work to be performed, the tenant, the unit or building in which the work is to be performed, the name of the worker and the entity, e.g., Comcast or its contractor, employing the worker.

Respondent agrees to provide reasonable notice of its schedule for the installation of the upgrade and, when complete, notice of the schedule for remediation work. But respondent objects to a requirement to provide Jasontown's designee with written notice of any site visit for any purpose. For example, respondent contends that it should not be required to provide notice of service calls once the installation is complete.

Petitioner's proposed requirement is somewhat overbroad. This requirement should not extend to "any purpose" such as routine service visits. But respondent should be required to provide reasonable written notice of the schedule for installation of the upgrade and for the remediation work and any related site visits. As modified, this requirement is reasonable and should be approved.

Security Requirements

Petitioner would have respondent comply with Jasontown's reasonable requirements for site access and security, including but not limited to, access during business hours, photo identification for workers and sign in at the Jasontown management office and the like. Respondent agrees that all personnel will have identification badges and that the work will generally be accomplished during business hours. On the other hand, respondent believes that it would be oppressive to require each worker to sign in at some office.

The requirements expressly mentioned by petitioner are reasonable. As respondent agrees, all personnel of Comcast and its contractors will have proper photo identification, and work will generally be completed during business hours. As one exception, Mr. Anderson testified that the activation process is normally done between midnight and 6:00 a.m. to minimize the interruption to existing customers. Additionally, each worker should sign in at petitioner's office so that petitioner will know the identity of individuals given access to its buildings. On the other hand, petitioner has referred to other requirements without specificity. Petitioner has not established the reasonableness of these unspecified requirements. Therefore, they should not be approved. With this one modification, petitioner's proposed requirements are reasonable and should be approved.

Supervisor on Site

Petitioner would require that a Comcast supervisor is on site at all times when work is being performed. Respondent states that there will be a supervisor on site at all times although not necessarily a Comcast employee. The supervisor may be employed by a contractor working on the job. Mr. Anderson testified that it is not necessary to have Comcast personnel on site at all times.

Cable installation has caused fairly extensive damage to petitioner's property in the past, and Comcast will have contractors on the site for installation, removal and remediation. In view of these circumstances, it is a reasonable precaution to have a Comcast supervisor on site at all times when work is being performed by Comcast employees or its contractors. Therefore, this proposed requirement is reasonable and should be approved.

Project Manager

Petitioner proposes that Comcast designate a single project manager for the upgrade and that Comcast provide to Jasontown such individual's full contact information. With respect to this proposed requirement, respondent states that Mr. Anderson will be the person in charge of the project and that his contact information has already been provided. There is no real dispute as to this proposed requirement which is reasonable and should be approved.

Removal of Existing Cable System

Petitioner's proposed requirement of removal of the existing cable system is not in dispute. According to Mr. Anderson's testimony, respondent will remove the old installation of cabling. This will include the aerial backbone cables, the external wiring and the distribution boxes. The only question concerns timing. In its brief, respondent states that the removal will be done following completion of the upgrade itself.

It is evident that the new installation must be activated and functioning properly prior to the removal of the old cabling. Nonetheless, respondent's proposal is open ended and would allow for indefinite delay with respect to the removal. In view of respondent's expressed intention to complete the upgrade on a building-by-building or structure-by-structure basis, it seems reasonable to require respondent to begin the removal no later than thirty days after completion of the upgrade in the last building or structure. Additionally, the removal work must be continuous until its completion. Further, respondent shall properly dispose of all materials removed from the buildings at an off-site location.

Remediation

With respect to remediation, petitioner would require respondent, as set forth in the testimony of Mr. Carapola, to perform the following tasks:

- Repair all holes drilled through the buildings. Internal sheetrock shall be patched and painted. Vapor barriers between the wood sheathing and the brickwork shall be repaired. Holes through brickwork shall be filled with a color-matched material.
- Repair all holes in the soffits.
- Repair or replace as necessary all firewalls that have been removed or damaged.
- Remove all cable ties and mounts from the surface of the buildings, and fill any holes resulting from their removal with a color-matched material.
- Repair insect, animal and water damage resulting from Comcast's penetrations, or Jasontown shall be compensated for such repair.
- Repair any damage caused by either the installation of the new system or the removal of the present system.
- The foregoing repairs shall return the appearance and function of the buildings to a condition acceptable to Jasontown. Jasontown will provide Comcast with a punch list of items needing completion before any building upgrade can be considered completed. Jasontown will have a final sign-off and acceptance of all upgrade and remediation work on this project.

In its brief, petitioner asserts that patching of some gable ends, fascias and soffits will be inadequate and that it will be necessary to replace these items. Petitioner would also require respondent to remediate mold growth. Additionally, according to Mr. Nuckel's testimony, respondent should present options for petitioner's consideration with respect to the repairs.

Respondent agrees to remediate any damage that it caused but objects to micromanagement of the work in advance. Further, respondent agrees that the repairs would be performed in a good and workmanlike manner but objects to the provision requiring that the work be done to petitioner's satisfaction.

The parties are in agreement that respondent will repair the damage which it caused to petitioner's premises. As to petitioner's specific requests, all areas for repair mentioned above should be addressed by respondent. Nonetheless, respondent's argument is persuasive that the repairs cannot be micromanaged in advance. Likewise, petitioner should not have the authority to determine unilaterally whether the repairs are satisfactory. As noted by respondent, to the extent that petitioner is not satisfied with the repair, it has the right to proceed with its lawsuit in Superior Court.

Conclusion

As noted above, the property owner has the right to impose reasonable conditions with respect to the installation of cable television facilities in accordance with N.J.S.A. 48:5A-49a. Based upon the above, I **CONCLUDE** that the terms and conditions approved herein are reasonable and that respondent should comply therewith. The approved terms and conditions of access are summarized as follows:

1. Respondent shall submit to petitioner complete plans and specifications describing any and all proposed work and the locations of its facilities and system on which the work is supposed to be performed. The plans and specifications shall be subject to petitioner's approval, which shall not be unreasonably withheld.
2. The entry to the building shall be installed underground, provided that petitioner performs the trenching and conduit installation at its own expense. All trenching and conduit installation shall be completed before respondent begins work on the project. The parties shall agree on the locations for the trenches, and respondent shall specify the maximum acceptable radius of a conduit turn.
3. The distribution of inline cable from the box in the basement to the termination point in each apartment shall be done internally. Respondent shall follow Verizon's installation path for its FiOS service where feasible. Respondent shall not deviate from Verizon's installation path without

petitioner's approval. If respondent determines that it is not feasible to follow Verizon's installation path, respondent shall submit an alternate plan for petitioner's approval, which shall not be unreasonably withheld.

4. Distribution within an apartment or unit shall be implemented completely within the apartment or unit. Intra-unit cabling shall not run outside the confines thereof. Any signal splitters or amplifiers shall be properly attached to a wall or other bulkhead and grounded. All cabling within units shall be along baseboards or other corners of the room as agreed to by the unit's tenant/Comcast subscriber. All cables within the unit shall be stapled to the wall or baseboard at no more than every twelve inches along the cable.
5. Respondent shall provide petitioner with a detailed project plan defining work phases, start and end completion dates, and dependencies on non-Comcast activities.
6. Respondent shall begin the removal of the old cable system and remediation of the damage no later than thirty days after completion of the upgrade process and accomplish the removal and remediation as one continuous project.
7. Respondent shall perform any and all work in a good and workmanlike manner and in compliance with industry standards, including but not limited to, not drilling through exterior walls, except for the point of entry if necessary, and to comply with building, fire, local and other applicable codes and governmental statutes, rules, and regulations.
8. Prior to the commencement of work, respondent shall provide petitioner with copies of any necessary permits and approvals from applicable government authorities with the understanding that any permits or approvals necessary for removal and/or remediation may be provided at a later date than those for installation.

9. Respondent and its contractors shall maintain general liability insurance equal to or greater than the amounts in N.J.S.A. 48:5A-28 and workers' compensation coverage with respect to workers at the premises, name petitioner as an additional insured and provide petitioner with certificates evidencing such insurance.
10. Respondent shall ensure that its contractors are properly licensed and provide copies of such licenses to petitioner.
11. Respondent shall provide reasonable advance written notice to petitioner's designee of any site visits for installation of the upgrade, for removal and remediation, and for any related site visits.
12. Respondent shall comply with petitioner's requirements for site access and security as follows: access during business hours, photo identification for all Comcast or contractor personnel and sign in at the Jasontown management office.
13. A Comcast supervisor shall be on site at all times when work is being performed.
14. Respondent shall designate a single project manager for the upgrade and provide petitioner with such individual's full contact information.
15. After the installation is activated and functioning properly, respondent shall remove the old cabling including the aerial backbone cables, the external wiring and the distribution boxes. Respondent shall begin the removal no later than thirty days after completion of the upgrade in the last building or structure.
16. Respondent shall repair the damage which it has caused to petitioner's premises.

Accordingly, it is **ORDERED** that respondent comply with the requirements set forth by petitioner in regard to the terms and conditions of access to the extent that they have been approved herein.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR OF THE OFFICE OF CABLE TELEVISION, BOARD OF PUBLIC UTILITIES, 44 South Clinton Avenue, P.O. Box 350, Trenton, NJ 08625-0350**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

Dec. 20, 2012
DATE

Richard McGill
RICHARD MCGILL, ALJ

Date Received at Agency:

Date Mailed to Parties:
ljb

DEC 4 1 2012

Laura Sanders
DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE