
In Re: Cable Systems, Inc.
Cite as 5 *N.J.A.R.* 75

**IN THE MATTER OF:
CABLE SYSTEMS, INC.
IN THE COUNTY OF CAMDEN, NEW JERSEY.**

Decided September 1, 1981

Initial Decision

SYNOPSIS

The Board of Public Utilities, Office of Cable Television, served an Order to Show Cause on cable Systems, Inc. seeing to set aside certain rate increases because of alleged reorientation made by an officer of the cable company to a local borough advisory committee.

The administrative law judge assigned to the case determined that when an ordinance granting a municipal consent to a cable television company is approved by the State Board of Public Utilities it becomes binding on both the applicant and the municipality. It is in the nature of a contract and the parol evidence rule would apply to its terms and conditions. Therefore any alleged oral representations which did not become part of the application should not be considered to alter the terms of the municipal ordinance granting such consent.

Accordingly, the municipal ordinance was found binding and could not be varied by parol evidence.

APPEARANCES:

Kevin J. Coakley, Esq., for Cable Systems, Inc.

Joseph E. Kelley, Esq., for Office of Cable Television

GLICKMAN, ALJ:

The Board of Public Utilities, Office of Cable Television, served an Order to Show Cause on Cable Systems, Inc. (Cable), seeking to set aside certain rate increases because of alleged representations made by an officer of Cable before an advisory committee of the Borough of Haddonfield. Cable asserts that any oral representations before the advisory committee, even if made, have no legal significance since the ordinance granting the municipal consent is a fully integrated contract between the company and the municipality which cannot be varied, amended or supplemented by parol evidence of statements made prior to the company's franchise application.

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On April 16, 1981, the Order to Show Cause was transmitted to the Office of Administrative Law as a contested case pursuant to *N.J.S.A. 52:14F-1 et seq.*

At a prehearing conference on June 12, 1981, the following issues were identified:

1. Did Cable Systems, Inc. promise the Borough of Haddonfield during the initial franchise proceedings that it would delay a rate increase to residents until one year after the initial installation was completed in the entirety of the Borough?
2. Is such a promise enforceable?
3. If the answers to issues 1 and 2 are yes, should Cable Systems, Inc. rebate all additional monies collected pursuant to both of its 1980 common tariff rate increases in the Borough of Haddonfield?
4. If the answers to issues 1 and 2 are yes, should Cable Systems, Inc. be prohibited from any rate increases in the Borough of Haddonfield for a period of one year from the date construction of its entire system is completed, absent a showing that the problem of a rate increase will place Cable Systems, Inc. in a loss position?

The following stipulations were entered into at the prehearing conference, which this court adopts as part of its FINDINGS of FACT:

1. In 1978, Cable Systems, Inc. received an initial franchise to operate a cable television system in the Borough of Haddonfield.
2. On July 27, 1978, Cable Systems, Inc. elected to join the common tariff (which provides for automatic rate increases within the limits of the tariff set by the Board of Public Utilities without a fixed hearing).
3. On August 1, 1980, Cable Systems, Inc. received its first rate increase.
4. On November 1, 1980, Cable Systems, Inc. received its second rate increase.
5. Both rate increases were within the limits established by the common tariff.
6. In November 1980, the Board of Public Utilities approved the transfer of the certificate of approval for the Cable Television franchise from Cable Systems, Inc. to New York Times Cable Company of New Jersey.

On August 5, 1981 respondent, Cable filed a motion for summary decision. On August 25, 1981, oral argument was heard on respon-

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dent's motion and a decision was rendered by the court, which decision shall now be memorialized in this initial decision.

*ISSUE FOR DETERMINATION ON MOTION
FOR SUMMARY DECISION*

The threshold issue which shall be dispositive of respondent's motion for summary decision may be stated as follows:

Is an ordinance granting municipal consent to a cable television company a fully integrated contract between the company and the municipality which cannot be varied, amended or supplemented by parol evidence of statements made prior to the company's franchise application?

FACTS

Pursuant to *N.J.A.C.* 14:18A-11.2(a), the municipal governing body of Haddonfield established a citizen's advisory committee, prior to accepting applications for a municipal consent to operate a cable television system, in order to screen potential applicants for a cable franchise. Representatives of the respondent cable company, which company was ultimately awarded the franchise, allegedly made oral statements to the advisory committee to the effect that the rates for its basic cable service to the community would remain fixed for one year following the complete installation of the cable system. The substance of the alleged statements was neither presented at the public hearing, nor incorporated in respondent's application for the cable television franchise, nor incorporated into the ordinance granting the municipal consent to respondent.

As a result of letters written by John J. Tarditi, Jr. and Peter Florey to the Office of Cable Television, an Order to Show Cause was issued against Cable requiring it to show cause why:

1. It should not rebate all additional monies collected pursuant to both of its 1980 common tariff rate increases in Haddonfield;
2. It should not be prohibited from any rate increases in Haddonfield Borough for a period of one year from the date construction of its entire system in the borough is completed, absent a showing that same will place Cable Systems, Inc. in a lost position.

Respondent's rejoinder, understandably, to the Order to Show Cause and to the underlying contention that certain representations were made to an advisory committee is that such remarks were never

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made, and that even assuming, *arguendo*, that they were made in fact, their parol nature precludes their incorporation in the agreement between the municipality and the respondent, as embraced within the ordinance.

DISCUSSION OF LAW

It should be noted at the outset that research has not disclosed any statutes, regulations or cases which expressly equate municipal consent with a contract. The parol evidence rule, however, applies to legal instruments in writing generally. *See, Meola v. Gorga*, 27 *N.J. Super.* 390, 395 (App. Div. 1953); *Naumberg v. Young*, 44 *N.J.L.* 331, 335 (Sup. Ct. 1882). Thus, "it is well settled that parol testimony cannot be introduced to vary, add to or alter a *written instrument*, which in itself is clear and free from doubt, in the absence of fraud, surprise or mistake, and where a written agreement is complete, its terms cannot be varied . . . by parol evidence. . . ." *Collins Realty Co. v. Sale*, 104 *N.J. Eq.* 138, 142 (E. & A. 1929). (emphasis supplied.) A principal exception to the rule is where the written instrument manifestly is not intended to be the complete embodiment of the agreement between the parties to the document. *Meola, supra*, at 395. That is, the need to supply additional terms must be apparent from the writing itself and the mere fact that there is nothing in the written agreement pertaining to the subject matter towards which the parol evidence is directed, is not enough to permit the introduction of prior oral statements. *See, Naumberg, supra*, at 339. The question in the instant controversy, therefore, becomes whether an ordinance granting a municipal consent is a sufficiently integrated writing to preclude the use of the alleged prior oral statements to vary, amend or supplement the agreement between the parties which that ordinance represents.

An ordinance granting a municipal consent has no binding effect, in and of itself, upon either an applicant for a cable television franchise or the municipality issuing the consent. *See, In re Micro-Cable Communications Corp.*, 176 *N.J. Super.* 197, 207 (App. Div. 1980); *In re Meadowlands Communications Systems, Inc.*, 175 *N.J. Super.* 53, 64 (App. Div. 1980), *certif. den.*, 85 *N.J.* 455 (1980). The obtaining of a "municipal consent is but one step in the process of franchising set forth by the Legislature. The municipal consent only empowers an applicant to apply for a Certificate of Approval." *Micro-Cable, supra*, at 207. A Certificate of Approval can only be granted by the Board of Public Utility Commissioners, *N.J.S.A.* 48:5A-15, and, therefore,

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it is the Board which has the ultimate authority as to whether a cable franchise will be granted. *See, Clear Television Cable Corp. v. P.U.C. Board*, 85 *N.J.* 30, 35 (1981).

Once a Certificate of Approval is granted, it gives binding effect to the municipal ordinance granting consent, with the terms and conditions contained in the consent, to the extent that it has not been modified by the certificate. *See, N.J.S.A.* 48:5A-17(a); *Micro Cable, supra*, at 204. As was stated by the Supreme Court of New Jersey in *Clear Television, supra*, at 51: "With possession of a certificate to operate—as opposed to a municipal consent, which is merely the first step in the application procedure—the Legislature apparently believed that the cable company should be entitled to rely on the Board's decision and commence operations on the terms and conditions under which it was certified." The reference to terms and conditions clearly implicates those of the municipal consents which, the statutory provisions prescribe, must be attached to the application for certification. *N.J.S.A.* 48:5A-16(a). The municipal ordinance, in turn, incorporates the terms of the application for the municipal consent by virtue of *N.J.A.C.* 14:18-11.16(a)(5), the necessary contents of said application being stated in *N.J.A.C.* 14:18-11.20. Moreover, an applicant for a municipal consent is required to accept its terms and conditions, as ultimately decided upon by the municipality, within a stated period. *See, N.J.A.C.* 14:18-11.19. Of course, the Board may amend the certificate, so as to make it differ from the consent on which it is based, in order to effect a more regionalized approach to their granting of a cable franchise. *N.J.S.A.* 48:5A-17(b). In making its amendment, however, the Board may not impair a previously existing Certificate of Approval. *N.J.S.A.* 48:5A-17(c); *Clear Television, supra*, at 51.

While an ordinance granting a municipal consent has no conclusive effect in and of itself, when approved by the State Board, it becomes binding on both the applicant and the municipality to the extent that it is not modified by the terms of the certificate. It is in the nature of a contract, therefore, if not a contract in fact. At any rate, it certainly is an integrated writing, embracing as it does, all of the terms and conditions of the relationship between the municipality and the cable television company. It is clear, therefore, that the parol evidence rule applies with respect to those terms and conditions. As the certificate relates to the municipality and cable television company, in their relationship one to another, it is an integrated writing creating binding legal obligations.

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Consequently, any alleged oral representations made before an advisory committee, and not at a public hearing and which do not become part of the application, shall not be considered to alter or vary the terms of the municipal consent as set forth in the municipal ordinance granting such consent. It is up to the Legislature or the Office of Cable Television to amend the statute or administrative code to make such oral statements before an advisory committee binding on the cable television company.

CONCLUSION

Accordingly, it is **CONCLUDED** that the municipal consent, as approved by the Board of Public Utility Commissioners, is binding on both the cable company seeking the franchise and the municipality. It embodies all of the terms and conditions of the two parties and, therefore, cannot be varied, amended or supplemented by parol evidence.

Based on what has just been enunciated, respondent's motion for a summary decision shall be granted. The Order to Show Cause heretofore filed shall be **DISMISSED WITH PREJUDICE**.

**ADOPTED BY SCIENCE PURSUANT TO *N.J.S.A.* 52:14B-10(c)
BY THE BOARD OF PUBLIC UTILITIES.**