



**PROPOSAL TO PERFORM
CABLE FRANCHISE RENEWAL SERVICES**

submitted to the

**QUAKER VALLEY
COUNCIL OF GOVERNMENTS**

by the

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I. INTRODUCTION

The Cohen Law Group (“CLG”) welcomes this opportunity to submit a proposal for legal services to assist the eligible municipalities of the Quaker Valley Council of Governments (“COG”) in a franchise fee audit and cable franchise renewal negotiations with Comcast of Pennsylvania LLC (“Comcast”). Based upon our discussions with the COG Executive Director and our review of the Comcast franchise agreements in our possession, it appears that there are approximately eleven municipalities that are eligible and may be interested in joining together to negotiate franchise renewal.¹ The cable franchise agreements for these municipalities are either expired or set to expire within the next three years, which is the time frame that Comcast prescribes for inclusion in multi-municipal negotiations.

As such, now is the time to begin the cable franchise renewal process. Franchise renewal is the best opportunity for municipalities to obtain significant benefits and to assert their legal rights with their cable company. A multi-municipal negotiation greatly increases the negotiating leverage of each of the municipalities. In addition, and as detailed in Section V below, it also reduces their attorneys’ fees. Our law firm was privileged to represent many of these municipalities in the last franchise renewal negotiation with Comcast, and we would welcome the opportunity to assist the COG again in this upcoming franchise renewal.

There have been dramatic changes in video technology since the inception of the COG’s current franchise agreements, including digital technology, increased high definition (HD) format, expansion of video-on-demand, and, perhaps most important, internet-based programming such as Netflix, Hulu and Disney+ (also referred to as video streaming). There have also been major

¹ These municipalities are: Aleppo Township, Avalon Borough, Bell Acres Borough, Ben Avon Borough, Emsworth Borough, Glen Osborne Borough, Glenfield Borough, Kilbuck Township, Leet Township, Leetsdale Borough, and Sewickley Heights Borough.

changes in the franchise operations of Comcast as well as federal regulations applicable to cable franchising. In 2019, the Federal Communications Commission (“FCC”) issued its most important cable regulations in the past 35 years with its *Third Report and Order*. This *Order* made fundamental changes to the cable franchise process and the benefits available to municipalities.

As described in this proposal, we recommend that the municipalities: 1) **perform a franchise fee audit** to ensure that the municipalities have received all the franchise fee revenue to which they are entitled; and 2) **negotiate a new franchise agreement** that addresses the changes since the last franchise and secures increased financial and legal benefits for each municipality.

Municipal officials have two critical roles when it comes to renewing (or, in the rare circumstance, not renewing) a cable franchise. First, they are effectively the landlords of their cable company. The cable company utilizes the public rights-of-way to operate its cable system. Municipal officials manage those rights-of-way as a public trust and are entitled to a fair return for the cable company’s use of those public properties.

Second, municipal officials have an obligation to protect and advance the interests of their residents. This means not only getting the best possible services from the cable operator today, but also doing everything possible to prepare for the future. Video and internet technology changes very rapidly. A cable franchise agreement must provide for the benefits available from existing technologies as well as those that may become available from future technologies.

CLG is uniquely qualified to represent the COG in cable franchise renewal negotiations. For 26 years, our firm has specialized in cable franchise matters on behalf of local governments, and we have negotiated more franchise agreements than any other law firm in Pennsylvania and surrounding states. We have represented over 500 municipalities in six states in cable franchise renewal negotiations. Our firm has also negotiated more agreements with Comcast than with any

other cable operator. We know Comcast's negotiators assigned to the COG, we know the company's corporate policies, and we know their negotiating tactics.

CLG has developed a three-step approach to cable franchise renewal projects. The first step is identifying the municipality's specific needs. Since these needs often become better defined as the negotiation progresses, we maintain flexibility to achieve an agreement that accomplishes the client's specific goals. Second, we negotiate firmly and deliberately with the cable operator in order to reach agreement in a timely fashion. Finally, we work efficiently to achieve results that are cost effective for the client. We are keenly aware of the fiscal constraints facing municipalities, and focus, therefore, on keeping attorneys' fees as low as possible.

II. POTENTIAL FRANCHISE BENEFITS

There are significant benefits available to municipalities in a new cable franchise agreement. The key to receiving these benefits is to know the law and regulations relating to each benefit and to negotiate aggressively to obtain them from Comcast. The following is a list of some of the more important potential benefits:

- 1. Franchise Fee Revenue.** Under federal law, municipalities may assess a franchise fee of up to 5% of the cable company's "gross revenues" for cable services derived from the municipality. The key to obtaining more revenue is enumerating the specific revenue sources to be included in the definition of "gross revenues." **CLG has developed a comprehensive list of 27 revenue sources that are eligible to be included in "gross revenues." This list includes revenue sources that are not in your current franchise agreement. The addition of these revenue sources will increase your franchise**

fee revenue. Please note that franchise fees are passed through to cable customers as a separate line item on their bills.

- 2. Franchise Fee Accountability.** In addition to franchise fee revenue, it is also essential for municipalities to require franchise fee accountability. In a franchise agreement, these include detailed franchise fee reports, the right to conduct franchise fee audits with penalties for underpayments, and protections against franchise fee reductions due to bundled service packages (also referred to as the “triple play” of internet, television, and telephone services).
- 3. Legal Protections of the Rights-of-Way.** Because cable companies place wires and equipment in the public rights-of-way, it is critical that a franchise agreement include legal protections for the municipality. These protections include, but are not limited to, safety standards, repair and restoration of property damage, emergency removal of equipment, indemnification, and full insurance coverage.
- 4. Customer Service Standards.** In a franchise agreement, municipalities may impose customer service standards on the cable operator. It is important to include comprehensive and enforceable standards. Examples include refunds for service interruptions, time frames for home visits by technicians, rules for resolving customer billing disputes, privacy standards, and a prohibition against early application of late fees.

5. **Free Services.** It is common in a franchise agreement for cable companies to provide free cable service to community facilities, including municipal facilities, schools, and libraries. The subjects of negotiation is the number of community facilities that will receive the service and the level of service received. Please note that this benefit will be impacted by the FCC's 2019 *Third Report and Order*.
6. **Competitive Equity.** Cable operators typically request that, if the municipality grants a franchise to another cable company (e.g. Verizon), then that franchise agreement cannot be more favorable or less burdensome to the competitor than the new agreement is to Verizon. While in theory this is a fair principle, in practice it can have the effect of impeding cable and internet competition. We will ensure that any such provision does not result in such an outcome.
7. **Reporting Requirements.** It can be helpful to obtain periodic information from the cable operator related to financial and customer service issues. A franchise agreement may require the cable operator to provide written reports on such matters as franchise fee verification, number of current subscribers, and customer complaints.
8. **PEG Channels.** Municipalities have a legal right to dedicated channel space for public, educational and governmental ("PEG") programming. A PEG channel may be used to inform citizens by cablecasting government meetings, public safety alerts, local announcements and/or athletic events. Depending on whether your

municipality currently administers a PEG channel, the renewal agreement may require improvements such as high definition (HD), or it may reserve the right for a channel in the future.

9. Enforcement. Once the cable operator agrees in a franchise agreement to provide certain benefits to the municipalities, they must be able to enforce these obligations. This includes strict and practical enforcement tools to ensure the company's performance of its obligations under the agreement. These tools may include, but are not limited to, monetary fines, a substantial performance bond, and the right to revoke the franchise in extreme circumstances.

10. Length of Term. Because telecommunications technology changes so rapidly, municipalities typically seek a shorter length of franchise term. On the other hand, cable companies typically seek longer terms to protect their capital investment in the cable system. The difference between these two positions is resolved through negotiation.

III. SCOPE OF SERVICES

The following is the scope of services that the Cohen Law Group will perform if hired to assist the Quaker Valley COG in cable franchise renewal with Comcast.

A. Preliminary Setting of Priorities

We will first arrange an initial kickoff meeting (either in-person or virtual) with at least one representative from each participating municipality. During the meeting, we will describe the franchise fee audit and franchise renewal processes, including both the formal and informal processes prescribed by the federal Cable Act. We will inform the officials regarding their legal

rights, including the substantive areas in which they have legal authority over the cable operator and those areas in which their legal authority is limited. We will outline the potential benefits available to the municipalities and solicit their concerns with respect to Comcast.

Finally, we will provide each municipality with a public notice and written talking points for a required public hearing on cable franchise renewal. During this preliminary phase, we recommend that the municipalities conduct franchise fee audits to determine whether Comcast has been paying them all the franchise fee revenue to which they are entitled. Franchise renewal is the best time to conduct an audit, because, if underpayments are discovered, the municipalities have more leverage to collect the underpayments. The scope of services for a franchise fee audit is discussed below.

B. Franchise Fee Audit

CLG conducts franchise fee audits on a regular basis, including numerous audits of Comcast. In 2021-23, we conducted over 120 franchise fee audits and discovered underpayments in approximately 65% of them. Section 626 of the federal Cable Act requires that municipalities, as part of cable franchise renewal, review the cable operator's past performance. A franchise fee audit is a key component of assessing past performance. It is the best method to hold the operator accountable for past franchise fee payments.

The federal Cable Act allows municipalities to assess up to five percent 5% of the cable operator's "gross revenues" for cable services derived from the municipality. "Gross revenues" consists of numerous revenue sources, including both subscriber and non-subscriber revenues, that the cable operator collects from cable customers. We will prepare a written Request for Information and Documents ("RFID") to Comcast for specific franchise fee information and worksheets relevant to each municipality. CLG will then undertake the following activities:

- Make a determination of all eligible revenue sources for each municipality based upon the municipality’s current definition of “gross revenues.” There are currently 27 eligible revenue categories and many sub-categories.
- Review Comcast’s supporting documentation for franchise fee revenue, including quarterly spreadsheets, worksheets, and other revenue reports for each municipality.
- Identify the revenue sources that Comcast has included in its franchise fee documentation for each municipality. Determine whether the cable operator has applied the fee to all eligible revenue sources. Identify any revenue sources that the cable operator did not include in calculating “gross revenues”.
- Ensure that all eligible revenues recorded in Comcast’s financial records are accurately included in the franchise fee payments in accordance with each municipality’s franchise agreement.
- Determine whether non-subscriber revenues, such as advertising and home shopping commissions, which are typically recorded on a regional rather than a local basis, have been properly calculated and properly apportioned to each municipality.
- Review certain special revenue sources, such as “trouble call” fees, video downgrade fees, broadcast retransmission fees, franchise fee-on-fees, and others to determine proper inclusion in the determination of franchise fees for the time period under review.
- Re-perform a select number of cable operator calculations determining franchise fee revenues for the period under review. These calculations include, but are not limited to, figures underlying the amounts reported for general franchise fee categories such as “miscellaneous revenues” and “installation revenues” (which include, for example, installation, disconnection, reconnection, relocation and change-in-service fees).
- Obtain a “homes passed list” from Blue Ridge for each municipality to determine whether the cable operator is properly coding all cable customers to the correct municipality. This includes asking each municipality to compare the homes passed database against its residential database for possible errors.
- Ascertain trends of major revenue categories to spot discrepancies and/or inconsistencies in the reporting of revenues over time and making inquiries with the cable operator to explain such discrepancies and/or inconsistencies.
- Determine whether there are franchise fee underpayments to the municipalities for the period under review, the amount of any underpayment, and whether any penalties and/or interest apply in accordance with each municipality’s franchise agreement.

The review period will be based on the timeframe allowed in each franchise agreement, which most likely will be five years. Our investigation will include follow-up requests for further

information and discussions with Comcast. Once the audit is completed, we will prepare a report for each municipality that summarizes the results of the audit, including any franchise fee underpayments, describes the areas of inquiry, and provides charts showing subscriber and revenue trends. While CLG is fully qualified to file legal action against the cable operator to collect underpayments, the fee for this project does not include litigation and such actions would require a separate engagement.

C. Drafting of Proposed Agreement

After the setting of priorities stage, including the franchise fee audit, is completed, our attorneys will draft a proposed franchise agreement with Comcast that provides the municipalities with all of the benefits and legal protections to which they are entitled under current law and technology. The agreement will include the results of the setting of priorities stage above, as well as our judgment as to the legal provisions that would advance the COG's interests and meet its future cable-related needs. We will then submit the agreement to the municipal representatives for informal review and comment before presenting it to representatives of Comcast.²

D. Negotiation with Cable Operator

The most important stage in the process is negotiating a franchise renewal agreement with representatives of Comcast. The working document for these negotiations will be the franchise agreement drafted by CLG and informally approved by the COG. We will preserve the municipalities' legal rights under the formal process, but negotiate with Comcast under the informal process outlined in the federal Cable Act. The negotiation typically consists of multiple

² We are not aware of any municipality in the COG that has an active PEG channel. If this is correct, then there is no need to prepare a PEG Needs Assessment Report to present to Comcast in order to receive PEG financial support. If any municipality has a PEG channel and such a report is advisable, then CLG will work with the municipality to prepare the report. If so, there would be an additional fee for this service.

conference call negotiations with representatives of Comcast, status conferences with the clients, multiple revisions of the proposed franchise agreement, redrafting specific franchise agreement provisions, and editing the final draft of the cable franchise agreement.

E. Consideration by the Local Governing Bodies

After tentative agreement with Comcast has been reached on a master franchise agreement, CLG will customize the agreement for each of the participating municipalities. We will then report to the clients on the substantive provisions of the deal. Specifically, we will present each municipality with its own final cable franchise agreement (and any side agreements) negotiated by the parties. We will also draft an executive summary of the major provisions of the final agreement. Finally, we will draft a recommended short-form ordinance or resolution (depending on the classification of each municipality) authorizing approval of the agreement for consideration by the local governing body for each municipality.

IV. PROFESSIONAL BACKGROUND

The Cohen Law Group specializes in representing municipalities in cable, wireless, and broadband matters. Collectively, our attorneys have worked on cable franchise issues on behalf of municipalities for over 70 years. CLG has represented over 500 local governments in six states in negotiations with cable companies. CLG's full array of legal services includes the following:

- Drafting cable franchise agreements
- Cable franchise renewal negotiations with cable companies
- Franchise fee audits
- Cable compliance reviews
- Drafting of wireless facilities ordinances and design standards
- Negotiation with cellular tower and antenna companies
- Wireless facility litigation
- Drafting of right-of-way ordinances and development of right-of-way fees
- Broadband expansion planning and implementation
- Drafting of pole attachment agreements and pole attachment negotiations

As an active member of the National Association of Telecommunications Officers and Advisors (NATOA) and other professional organizations, CLG stays current with frequent changes in cable, wireless, and broadband law. Dan Cohen was recently a Board Member of NATOA and was also former Co-Chair of NATOA's Policy & Legal Committee. CLG attorneys have written articles on cable and wireless matters that have been published in the *Pennsylvania Township News*, *Pennsylvania Borough News*, and the *Pennsylvania Municipal Reporter*. They are also frequent speakers at municipal conferences.

Mr. Cohen is especially qualified to represent municipalities because he was a municipal official himself. He served on the Pittsburgh City Council for 12 years. He has firsthand knowledge of the challenges and opportunities confronting municipal governments. Mr. Cohen served as Chair of City Council's Cable Television Committee and also served on the Mayor's Telecommunications Committee. Mr. Cohen led Pittsburgh's efforts to regulate cable rates, which resulted in a refund ordered by the FCC for all City of Pittsburgh cable customers. Mr. Cohen graduated from Yale University and Stanford Law School.

In addition to Mr. Cohen, CLG has a strong legal team that includes attorney Stacy Browdie, attorney Phil Fraga, attorney Mike Roberts and attorney Joel Winston. Our Office Manager is Victoria Novak.

V. COST OF SERVICES

The following are CLG's fees for **both the franchise fee audits and franchise renewal negotiations** for the Quaker Valley COG. We propose these services on a flat fee basis, because our experience in performing these projects lends predictability to our efforts on behalf of the COG. A flat fee also provides "price certainty." We offer our services at a discounted rate depending on the number of municipalities that participate due to the economies of scale in

representing a multi-municipal group. The following are our standard flat fees based on population, followed by our discounted fees based on the number of municipalities that join:

**FLAT FEE SCHEDULE FOR FRANCHISE FEE AUDIT AND
FRANCHISE RENEWAL NEGOTIATIONS WITH COMCAST**

Standard Single Municipality Fee (by population prior to discount)

< 1,000	\$7,900
1,001-2,000	\$9,900
< 2,000	\$10,900

COG Discounted Fees (by population and number of participating municipalities)

7 + Municipalities 20% Discount

< 1,000	\$6,320
1,001-2,000	\$7,920
< 2,000	\$8,720

5-7 Municipalities 15% Discount

< 1,000	\$6,715
1,001-2,000	\$8,415
< 2,000	\$9,265

2-4 Municipalities 10% Discount

< 1,000	\$7,110
1,001-3,000	\$8,910
< 2,000	\$9,810

The flat fee includes all expenses. It also includes virtual or in-person meetings with COG, but does not included attendance at public meetings of individual municipalities. The flat fee amounts above also do not include the unlikely possibility of services requested outside the scope of services in this proposal or any significant unforeseeable developments. In the event of such extraordinary developments, CLG will contact each municipality to discuss them prior to rendering

services related to such developments. If such services are authorized, CLG would charge a fee of \$320 per hour.

Please note that our billing policy is to bill one-third of the fee for each project at the commencement of the project, one-third at the middle of each project, and one-third at the conclusion of each project. Thank you for the opportunity to submit this proposal.