



PRIVILEGED ATTORNEY-
CLIENT COMMUNICATION

February 12, 2025

Terry Carcella
City Manager
City of Latrobe
901 Jefferson Street
Latrobe, PA 15650

RE: Executive Summary of Cable Franchise Agreement with Comcast

Dear Mr. Carcella:

I am pleased to inform you that we have reached tentative agreement with Comcast regarding cable franchise renewal for the City of Latrobe. The following is an executive summary of the major provisions of the Cable Franchise Agreement (the "Agreement") negotiated with Cheryl McCabe of Comcast. While there are many other important provisions contained in the Agreement, I have limited this summary to the major items outlined herein. The Agreement is, of course, subject to the approval of City Council.

1. Franchise Fees (Sections 1(p) and 6)

Municipalities are entitled under federal law to assess a franchise fee of up to five percent (5%) of the cable operator's "gross revenues" for cable services provided within the municipality. The City currently assesses a five percent (5%) franchise fee, which will remain the same in the Agreement.

The definition of "gross revenues" in the Agreement includes an itemized list of 25 separate revenue sources that will maximize the City's franchise fee revenue. This list includes all current eligible revenue sources as well as all foreseeable future sources and a "catch all" item to capture any other future revenue sources that are not foreseeable. The list adds several new revenue sources that Comcast has added in the past few years.

While several relevant variables such as rate changes, subscriber activity, subscriber penetration, and related issues can and will impact the City's franchise fees, the Agreement

is intended to maximize the City's franchise fee revenue. Please note that all franchise fees are passed through to Comcast cable subscribers as a separate line item on their bills. Franchise fees will be paid to the City on a quarterly basis.

In addition to franchise fee revenue, the Agreement ensures franchise fee accountability. It permits the City to conduct an independent audit of Comcast's records to determine whether Comcast has paid franchise fees accurately. Should the audit reveal that franchise fees have been underpaid, then Comcast must pay the underpaid amount "plus interest from the due date equal to the then-current prime rate of interest as published in *The Wall Street Journal* on the underpayment amount." If franchise fees are shown to have been underpaid by five percent (5%) or more, then Comcast must also pay up to \$3,000.00 of "the documented out-of-pocket costs" of the audit.

Finally, the Agreement includes "bundled services" protection. If a subscriber purchases more than one of Comcast's three services (i.e. cable, internet and phone) and receives a bundled services discount, this provision ensures that the discount does not apply only to cable services. If it did, franchise fee revenue to the City would be reduced. Section 6.5 of the Agreement states that "allocation of revenue shall not be structured for the purpose of evading franchise fees applicable to cable services."

2. Customer Service Standards (Section 4)

The Agreement establishes a set of comprehensive, quantifiable, and enforceable customer service standards. These standards adopt the relevant recommendations of the Federal Communications Commission ("FCC"), which are not enforceable unless they are included in a franchise agreement, and also add certain additional requirements. The customer service standards include, but are not limited to, the following:

- Telephone answering time limits for customer service representatives, including the requirement that Comcast to perform surveys to measure compliance with the standards upon receipt of subscriber complaints;
- Time limits for commencing installation, service interruption, and repair work, including limits on technicians cancelling appointments with subscribers;
- A four-hour "appointment window" for service calls;
- Requirements for notices to subscribers;
- Requirements that bills be clear, concise, and fully itemized;
- Customer complaint procedures, including that Comcast may not impose late fees on a subscriber who disputes a bill in good faith until the investigation is completed;

- Requirements to be met prior to disconnecting service;
- Credits for service interruptions of six or more hours upon request; and
- Standards of subscriber privacy.

3. Right-of-Way Protections (Section 3)

The Agreement provides many protections of the City's public rights-of-way. For example, Comcast agreed to repair any damage to public or private property by Comcast or any of its contractors or subcontractors within 20 business days. In addition, the Agreement includes safety standards, the provision of service area maps to the City upon request, requirements for disconnection and relocation of Comcast's wires and equipment, removal of equipment in the event of an emergency, and the need for City approval for cutting down any trees in the public rights-of-way.

4. Reporting Requirements (Sections 5.7 and 6.3)

The Agreement includes three reporting requirements to the City to be met by Comcast. The first is a detailed franchise fee report to accompany each quarterly franchise fee payment. The report must contain line items for sources of revenue received by Comcast and the amount of revenue received from each source.

Second, upon written request, Comcast must submit a customer complaint report stating the date, nature and resolution of all subscriber complaints that have generated a work order or have necessitated a response. The term "complaint" is defined as any written (including email) or oral communication by a subscriber expressing dissatisfaction with Comcast's operation of the cable system that is within Comcast's control and requires a corrective measure. In addition, and upon request, the City may obtain from Comcast specific information regarding service repair requests and service interruptions.

Third and finally, Comcast must, upon written request, provide to the City copies of reports or other communications to any federal or state regulatory agencies relating to Comcast's cable system within the City.

5. Cable System Requirements and Service Area (Section 3)

The Agreement provides technical requirements for the cable system serving the City. It requires the system to be built for digital television standards and meet or exceed all technical performance standards of the FCC, the National Electric Code and the National Electrical Safety Code. It also requires that Comcast perform tests on the cable

system upon request, report to the City regarding the results of the tests, and take corrective measures if the results show non-compliance with applicable standards.

Furthermore, the Agreement requires that Comcast make cable service available to every area in which there is a minimum of 25 residential dwelling units per linear aerial plant mile (50 units per mile underground) subject to certain conditions. A “dwelling unit” is considered to be any home within 275 feet of the nearest distribution pole line in the public right of way. Upon City request, Comcast must conduct a survey to determine the number of dwelling units per mile in the requested area. Any unit within 125 feet of the main distribution line is entitled to a standard installation rate. For any unit beyond 125 feet, Comcast must connect it if the unit owner pays the incremental cost beyond the installation costs for the initial 125 feet.

6. Educational and Governmental (“EG”) Channel (Section 7.2)

Federal law grants municipalities the right to dedicated public, educational and governmental (“PEG”) channels. In the Agreement, Comcast agrees to continue to make available a single educational and/or governmental (“EG”) channel to be used for programming related to educational and/or governmental activities. The City or its designee would have complete control over the content, scheduling, and administration of the channel, and the City may delegate these functions, or a portion of these functions, to a designated access administrator, such as the School District.

Comcast agrees to provide and maintain the wires and other signal distribution equipment so that programming can originate from the selected video origination location and be distributed over the cable system. Comcast is required to cablecast the EG channel to all Comcast subscribers and the technical quality of the channel must be comparable to the technical quality used for commercial channels.

8. Services to Community Facilities (Section 7.1 and Exhibit A)

The Agreement requires Comcast to provide Basic level television service to various public buildings, including police and fire departmentse. Notwithstanding the foregoing, the FCC Section 621 Report and Order of September 2019 (“Order”) has injected a major new restriction that previously did not exist. The Order states that “costs attributable to franchise terms that require a cable operator to provide free or discounted cable services to public buildings” may be offset against franchise fees. The FCC found that these services are in-kind contributions and fall within the 5% franchise fee cap.¹

¹ For those municipalities that assess a franchise fee percentage that is lower than 5%, they may receive free cable services for public facilities, provided the services have a fair market value that, combined with franchise fee revenue, is less than 5% of gross revenues.

The Order outlines the new options for local governments: (1) continue to receive the existing cable services and reduce franchise fee revenue by the “marginal cost” value of those services; (2) discontinue all the services and continue receiving franchise fees at their current level; or (3) terminate the service to certain buildings and reduce franchise fees by the value of the reduced service. These options are reflected in Section 7.1 of the Agreement. At this time, Comcast does not intend to begin charging the City for such services. Should Comcast elect to do so in the future, the Agreement requires that Comcast provide the City 120 days’ written notice of the commencement of any such charges. The City will then have 30 days to notify Comcast of its decision to opt for either (1), (2), or (3) above with respect to each facility. The Agreement also reserves the right for the City to change any Public Building designated to receive such service upon 90 days’ written notice to Comcast, so long as the Public Building is within 125 feet of existing Comcast cable distribution plant.

9. Liquidated Damages for Violations (Section 8.2)

Once Comcast has agreed to the obligations described in this executive summary and the other obligations contained in the Agreement, it is critical for the City to be able to enforce these obligations. Section 8.2 of the Agreement allows for monetary fines, also known as “liquidated damages,” in the amount of \$250 per day for each violation of the Agreement. The City may assess such monetary fines after providing Comcast with written notice and allowing Comcast 45 days to correct the violation, unless the nature of the violation is such that it cannot be cured within 45 days, in which case the cure period may be extended. Liquidated damages may be assessed for 120 days, after which the City may commence revocation proceedings or initiate a lawsuit.

10. Length of Franchise Term (Section 2.2)

Due to the fact that cable technology is constantly changing and we cannot predict the state of this technology in the future, we recommend the shortest possible length of term for the Agreement. For Comcast, this is 10 years. We know from our extensive dealings with Comcast over the past 22 years that this is a policy position from which Comcast will not deviate.

11. Competitive Equity Provision (Section 2.6)

Pursuant to the 1992 Cable Television Consumer Protection and Competition Act, cable franchise agreements may not be exclusive. The City may award more than one franchise to different cable operators. In large part due to the emergence of Verizon as a competitor in the cable industry, Comcast insisted upon including a competitive equity provision, also known as “level playing field” provision, in the Agreement. These provisions relate to the prospect of another cable operator providing cable services in the City in the future.

The competitive equity provision negotiated with Comcast states that, if the City grants another cable franchise and the material terms of the new franchise agreement, when taken as a whole, are more favorable to the competitor than the terms in this Agreement are to Comcast, then Comcast may request an amendment to this Agreement to include such favorable terms. Only if the City agrees with Comcast that there is a lack of competitive equity will the City and Comcast enter into discussions to amend the Agreement. This provision keeps control with the City and assesses the Agreement in the aggregate rather than on an issue-by-issue basis. In our experience, an issue-by-issue analysis can be misleading by focusing on singular issues in a vacuum without taking into account the totality of the negotiations.

This concludes the executive summary of the major items contained in the Agreement. There are many other provisions in the Agreement, but we have highlighted the major items. Thank you for your cooperation in this effort. Should you have any questions or concerns regarding this matter, please do not hesitate to contact me directly.

Sincerely yours,

Michael D. Roberts

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