

**Open Work Session
Comcast Franchise Agreement
October 18, 2016**

Mr. Wayne Strausburg, Director of Administration, and Mr. Dan Cohen with the Cohen Law Group, came before Council. Mr. Cohen briefed Council on the key differences between the old Cable Franchise Agreement and the new Cable Franchise Agreement. Mr. Cohen said this a 40-page agreement and a 2-page side agreement, but he will do his best to summarize the highlights. He said franchise fees is revenue received from cable operators for the use of a public right-of-way. He said the County under federal law is allowed to assess up to 5% of the cable operator's gross revenues for cable services derived from the County. The franchise fees are passed through to the customers as a separate line item on their bill. The County charges a 5% franchise fee and that remains the same in the new agreement. There is no increase in the percentage of franchise fees. The definition of "gross revenues" has changed. It is more comprehensive because a lot has changed in the cable world in what cable companies are charging in the last 15 years, since the last cable agreement was done in June 2001. The definition of gross revenues has 25 revenue sources that are subject to the franchise fee. The County has both an agreement and an ordinance, both of which are substantive. The new agreement has 25 revenue sources and the old ordinance as 10 revenue sources. He said that does not mean the franchise fee revenue will double, but he thinks it will increase a little bit because of the new definition of gross revenues. Mr. Cohen said his firm does a lot of franchise fee audits, and they have found that there is not a lot accountability to franchise fee revenues that are coming into the County. This agreement, however, gives the County stronger accountability measures than what the County had before. The County has to have line item reports with every franchise fee payment, so the County can see if all 25 revenue sources are being paid. There is an audit procedure and the ability to audit Comcast should the County chose to do that. Mr. Cohen said he certainly would recommend that the County do an audit at the appropriate time. He said there is a process for disputes if there is a difference between the County and Comcast. If under payments are found then there is a 10% penalty and, if underpayments are 5% or more, then Comcast has to pay for the audit. Mr. Cohen said all the things he just mentioned were not in the former agreement or ordinance. Mr. Cohen continued he said there is a bundle services protection provision in the agreement. Comcast does not just offer cable service, they offer cable, internet and phone. If a customer has the bundle package, there may be a discount for ordering the services packaged together. He said if you ordered each service individually, it could be \$50 per service, but if you got the bundle package the cost would be \$99.95, so there would be a \$50 difference. He said someone may ask the question what does the \$50 difference get applied to. It could get applied to cable, in which the franchise fee revenues just went down the tubes but, in this agreement, the cable operator cannot do that. They have to proportion the discount among all three services equally. He said that covers the franchise fee side. He said there was a lot of negotiations over PAC 14, in both enhancements and money for the PAC 14 channel. He said on the enhancement side, which he is only going to mention a few, the agreement says the channel has to be cast to all Comcast subscribers no matter what service they have. Mr. Cannon asked if cable customers are currently getting the PAC 14 channel, to which Mr. Cohen said he thinks they are, but they want to make sure they continue to get the PAC 14 channel in the future, especially when Comcast goes fully digital. He said probably what will happen is the analog portion of the channel lineup will go away, and Comcast will only have a digital lineup. There are 10 additional return lines, in another words, places from which the channel program can be originated live. Mr. Cohen said that is in Section 8.2. of the Cable Franchise Agreement. He said

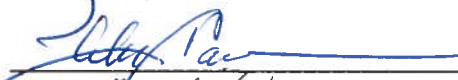
there is a technical requirement for the PAC 14 channel to be of an equal quality as the commercial channel that Comcast Cable casts. If Comcast were to change the channel number, then Comcast has to help PAC 14 with rebranding the channel. Mr. Cohen said with regards to the program description on the digital guide, he thinks now it just says PAC 14, it does not say anything else, like PAC 14 Wicomico County Council, but that should not happen. Mr. Cohen explained that Comcast uses a third party company to do that, but it says they have to be cooperative with a third party to get the electronic programming on. He said the biggest item for PAC 14 is that the channel be cast in high definition (HD). Mr. Cohen said that was a big battle with Comcast. The reason being is because that is bandwidth and every cable company works hard to protect their bandwidth. Mr. Cohen said that is what the Side Agreement is all about. He said it basically says at the three-year anniversary of the agreement, so long as 50% of PAC 14 programming is in HD and that equals at least five hours a day, five days per week, then Comcast will agree to a schedule for implementing the channel in HD. If PAC 14 meets those thresholds by the three-year anniversary, which he thinks they will, they will be able to have HD. Mr. Cohen said that is a summary of the PAC enhancement side. As for the money side, the last agreement, Comcast gave Wicomico County \$105,000 in support of PAC 14. He said with this agreement, remember the City and County are together with respect to PAC 14, based on current subscriber accounts, they project it will be \$2,081,760. He said that is based on 80 cents per subscriber per month over the course of a 10-year term. Mr. Cohen said the old agreement was 15 years and this agreement is 10 years. He said that is obviously a big jump as it is approximately 20 times what it was. Mr. Joe Holloway asked how is that split up between the City and County, to which Mr. Cohen said the money goes to PAC 14, but the last subscriber account they got from Comcast is the County has 13,649 subscribers and the City has 8,036 subscribers, so if you break that down, the County's portion is \$1.3 million. Mr. Joe Holloway clarified that the revenues to PAC 14 are increasing, to which Mr. Cohen said as long as the 80 cents per subscriber per month remains steady, it will increase to about \$2,081,000, which has to be used for capital costs. He said FCC rules and federal law requires the money to be used for capital costs. Mr. Cannon asked what is the reason for the increase, to which Mr. Cohen said the County hired their partner, CDBG, who did a peg needs report and assessment. CDBG looked at every piece of equipment PAC 14 has, and they had meetings with all the stakeholders of PAC 14. They looked at what was needed in terms of over the next 10 years and put together a report that gave what the PAC 14 community needs are, which the federal laws says, you have to identify your community needs and they had 10 to 12 pages of equipment lists and upgrades that are needed by PAC 14. Mr. Cohen said Comcast certainly did not take their initial number as it was much higher. Mr. Joe Holloway asked if there would be an increase in fees to the customers, to which Mr. Cohen responded, it is 80 cents per subscriber per month, which will be on the bill. It will say something like peg fee on the invoice. He said for those who do not know what peg stands for it is public education and governmental channel. Mr. Cannon said it is going to be 80 cents per month, but what is the fee now. Mr. Cohen said Comcast gave PAC 14 \$105,000 fifteen years ago. He said it certainly was passed through to Comcast Cable customers, but he is sure that was paid years ago. Mr. Strausburg said they spent an enormous amount of time on PAC 14 and a significant part of reasoning for that is because when you cast the agreement for 10 years and you look at the advances that are occurring in technology, they want to be absolutely certain or as certain as they can be that the County did not get left behind, which is a reason they limit the agreement to 10 years. He said one of the principal drivers of taking the agreement from 15 years to 10 years is because the whole technology industry is advancing so quickly. They felt a shorter agreement was in the County's best interest. Mr. Cohen said the County taxpayers are subsidizing PAC 14 now and this is a fee

that only goes to Comcast subscribers not all County taxpayers. Mr. Cohen said one thing Mr. Strausburg and his staff mentioned is that there are parts in the County that are not served by Comcast, and they are not served because the houses are pretty far apart. He said that was a big part of the negotiations as well. The term that is used is "density number," how many homes per mile is necessary before the cable operator has to extend the cable system. Mr. Dodd said that he has a constituent who has already proven that there are enough houses within that guideline, but Comcast will not do anything. Mr. Cohen said the density number is going down in the new agreement but, if that is the case, one of the other things is that this agreement has strong teeth and enforcement mechanisms. In the current agreement, it is 25 homes per mile and, in the new agreement, it is 20 homes per mile. He said getting Comcast from 25 homes to 20 homes was not easy. Mr. Cohen said, if in Councilman Dodd's district, there are 20 homes per mile and they have asked Comcast to provide service and they will not do it, then they enforce the agreement. The agreement has monetary fines attached to it. He said what you do is call Chris Comer, who is the Franchise Director for Comcast as he is sure that Mr. Comer would look into it. If for some reason, it was not done, then the County could send a Notice of Violation and then there would be liquidated damages. Mr. Joe Holloway said an issue that he runs into in his district is that his driveway 800 feet long, so Comcast wants over \$3,000 to get up the driveway. He said over the years he has received many notices advising him that they will hook up cable for free, but when his calls to request the hook up, Comcast tells him that they cannot do it. Mr. Joe Holloway then asked if there is anything in the new agreement to address that issue. Mr. Cohen said that was improved in the new agreement as it goes from a 200 foot setback to a 400 foot setback. Mr. Strausburg asked Mr. Cohen to clarify the 20 homes per mile because if there is not cable service in the area, the fact that you may have 20 houses in a mile may not apply. It has to be 20 houses in a mile from the end of the cable service. Mr. Strausburg said it has to be contiguous to existing service. Mr. Cannon asked if the franchise fee is 5% of the gross revenue and revenues go through the ceiling does that mean that the bill to the subscribers will increase, to which Mr. Cohen responded, yes, it is usually a few cents. He said cable companies increase rates at least once per year but, if gross revenues increase, franchise fees to the subscriber would increase as well. Mr. Strausburg said it is a percentage of the bill; it is like a sales tax. Mr. Cannon said it is great that the values that the County is receiving will increase astronomically, but the subscribers are the ones paying. Mr. Cohen said he does not know if franchise fees have increased astronomically. They have not done an audit to see that, but he thinks franchise fees increase incrementally. He said it is a policy decision on the County's part on what to do with the franchise fees. Mr. Cohen said, generally, their clients prefer to have fee based increase because of increased costs, then tax increases, and that is what this is. Mr. Cannon asked if the \$2 million increase is capital revenues, to which Mr. Cohen responded, yes, for PAC 14. Mr. Cannon then asked if that correlates to the 5%, to which Mr. Cohen responded, no, it is a separate fee. Mr. Cohen said franchise fees are 5% of gross revenues, and the County can use the money for whatever it decides to use it for, it does not have to be for cable, it can be for police or pot holes. Mr. Cohen said the \$2 million is for peg financials, which is money for PAC 14. Mr. Strausburg said they received a lot of calls from the public requesting or, in some cases, demanding that the County do something about Comcast's fees. He said the Franchise Agreement does not give the County any authority to manage, control or influence what Comcast charges for their various services. Mr. Strausburg said that is controlled elsewhere. Mr. Joe Holloway said he gets asked why there is a monopoly on cable services. He hears from people that move into the area that say some places have choices for cable providers. Mr. Cohen said no other company wants to compete with Comcast in Wicomico County. He said it is a multi-multimillion dollar

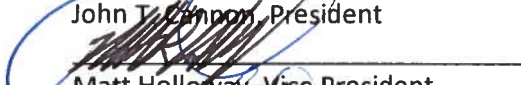
proposition to build a cable system. Mr. Strausburg said the infrastructure costs, when compared to population density, is not feasible. Mr. Joe Holloway said there is another provider in Willards. Mr. Cohen asked what other provider does Willards have, to which Mr. Joe Holloway responded, Mediacom. Mr. Dodd said he gets asked that question a lot too. Mr. Joe Holloway said he wonders why Mediacom does not move into Wicomico County. Mr. Strausburg said they would have to build the infrastructure as Comcast will not let them use their infrastructure and it is cost prohibitive. Mr. Cannon said Verizon was trying to make a huge surge to come to this area. They were joking that they were hanging cable from the trees to get service to this area. Mr. Cohen said the one telecom company that has infrastructure out there is Verizon. Verizon took their copper system and converted it into fiber. There are areas in Maryland, Pennsylvania, New York, etc. where Verizon is offering cable service and wired broadband service, so that could happen in Wicomico County. Mr. Cohen said the very first sentence in the agreement says it is nonexclusive. Mr. Creamer said that section is on page 7 of the agreement. Mr. Cohen said if Verizon decides to do that, he thinks the County should consider it. Mr. Joe Holloway said the citizens in Wicomico County can use Direct TV. Mr. Kilmer asked if there are some Franchise Agreements that are exclusive agreements. Mr. Cohen said Congress prohibited exclusive agreements in 1992. Mr. Kilmer then clarified that there are no barriers if companies want to come to Wicomico County. Mr. Kilmer further clarified that if another franchise came to Wicomico County there should be equity, to which Mr. Cohen responded, yes, that was negotiated with Comcast. He said there is a competitive equity section in the agreement, section 2.7. He said it does not say that every term has to be the same. Mr. Cohen said the agreement cannot be more favorable to Verizon than the agreement is to Comcast and that is fair. Mr. Creamer asked Mr. Cannon if attention should be given to the County facilities that Comcast is required to serve. Mr. Strausburg said there was a lot of discussion about that as well. Mr. Cohen said that section shows the locations that the cable company will be able to cast its channel. He said the cost of the return lines to those facilities will come out of the peg financial support, \$2.1 million, but Comcast will connect up to those facilities as long as the County requests them. Mr. Cohen continued he said there are stronger customer service standards in the agreement than before. Basically, everything from how long you have to wait on the phone for a customer service representative to answer to how long you have to wait at your house for a technician to arrive, to not having late fees being imposed too early, things like that is under the customer service standards. Mr. Dodd said under the customer service standards, he had an issue himself. He had a technician come to his house and then he never saw him again, which he hears the same complaint from people. Mr. Dodd asked why is it that when the customer calls for service, they get an operator in the Philippines. Mr. Cohen said he gets that question a lot. He said just like cable rates, there are certain areas, you just do not have the legal authority to require customer service representatives be American; we just do not have that authority. Mr. Dodd said it is not a question about being American, it is there is not someone local to call when you need a technician to come to your house when you have issues. Mr. Cohen said everything the County has legal authority to require, it is doing so in the agreement. There is also a section on free service, complimentary cable services to County buildings, public schools and public school buildings and libraries. The current agreement is much more restrictive, it only has five county buildings, so that is a big difference. Mr. Cohen said the CDBG report that he mentioned early also did a technical needs assessment, and they found some problems. He said CDBG also did a residential survey as people were complaining about outages. There were more outages than the industry average in Wicomico County, which could be due to pedestals not properly secure, supply and power boxes unlocked, and things like that. Mr. Cohen said they sent a noncompliance letter to Comcast and they

fixed those things. In the new agreement, Comcast is required to report to the County on those items to make sure going forward that those technical deficiencies are corrected. Mr. Cohen said there are right of ways protections in the agreement. This new agreement has higher liquidated damages, monetary fines, than the prior agreement and it has a \$75,000 performance bond. He said as Mr. Strausburg mentioned, the new agreement has a 10-year term whereas the prior one was 15 years. Mr. Joe Holloway asked if there is a Comcast service provided for free to people based on their income level. Mr. Cohen said for internet service Comcast has a program called Internet Essentials. They will provide internet service, particularly for school children to do their homework, at a very low amount, which he thinks is \$9.95 or something like that. Mr. Cannon asked if there is only one DTA in the Government Office Building, to which Mr. Cohen responded DTAs are an issue. Mr. Cohen explained DTAs are digital transport adapters, which are little boxes that allow more connections within a facility. There is the connection to the building and then the ability to have multiple connections within the facility. Mr. Cohen said the Side Agreement allows for three DTAs per building, so that includes per school and per library as well as per County building. Mr. Cannon said what he was really getting at is the fact that right now there is a primary setup in the building to transmit the meetings. He said the Board of Education is not transmitting live feed programming and it appears to him that they are going to use an outside source to support that effort. Mr. Strausburg said the Wicomico County Board of Education, Board Room, at 101 Long Avenue, will probably have to be reassign to their new location, but they did include the Board of Education headquarters in the 10 locations. Mr. Strausburg said the County will start negotiating a new agreement in five years because this agreement took close to two years. Mr. Creamer asked when are the considerable upgrades for the Council Chambers expected to happened, to which Mr. Strausburg responded, he is waiting for PAC 14 in terms of the equipment in the back. The County needs equipment in the back to drive what happens out front.

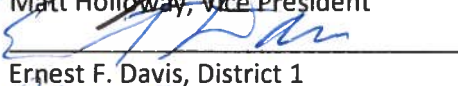
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John T. Cannon, President



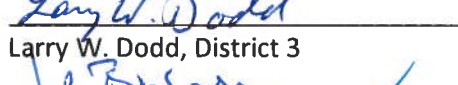
Matt Holloway, Vice President



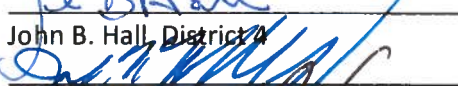
Ernest F. Davis, District 1




Marc Kilmer, District 2




Larry W. Dodd, District 3



John B. Hall, District 4



Joe Holloway, District 5



Matthew E. Creamer, Council Administrator