

February 19, 2019

Daniel S. Cohen
Cohen Law Group
413 South Main Street,
Third Floor
Pittsburgh, PA 15215

RE: Engagement for Cable Franchise Renewal with Verizon

Dear Mr. Cohen:

This is to inform you that West Goshen Township has decided to engage the services of the Cohen Law Group (“CLG”) to assist in cable franchise renewal negotiations with Verizon Pennsylvania, Inc. This engagement is made pursuant to the Proposal to Perform Verizon Cable Franchise Renewal Services submitted to the Chester County Consortium (“Consortium”) dated February 12, 2019 (“Proposal”). The Proposal includes the scope of services for the projects as well as the cost of services on a flat fee basis.

As detailed in the Proposal, we understand that the amount of our fee depends on the population of our municipality and the number of municipalities that decide to participate. CLG will bill each municipality as follows: one-third upon engagement, one-third at preparation of Cohen Law Group’s response redline to the Verizon draft agreement, and one-third upon approval by the local governing body. We further understand that out-of-pocket expenses on our behalf will also be invoiced and divided among all participating municipalities.

While we are engaging the Cohen Law Group individually and, upon conclusion of the project, our municipality will obtain its own individual franchise agreement, we understand that this project will be in conjunction with other participating municipalities of the Consortium. We look forward to working with your firm on this project.

Sincerely yours,

Name: _____

Title: _____

Date: _____



PROPOSAL TO PERFORM

VERIZON CABLE FRANCHISE RENEWAL SERVICES

submitted to the

CHESTER COUNTY CONSORTIUM

by the

COHEN LAW GROUP

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Pittsburgh, PA 15215**

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February 12, 2019

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I. INTRODUCTION

The Cohen Law Group (“CLG”) welcomes this opportunity to submit a proposal for legal services to assist municipalities in Chester County (“Chester County Consortium”) in cable franchise renewal negotiations with Verizon of Pennsylvania, Inc. (“Verizon”). The current franchise agreements between the municipalities and Verizon will expire soon. As such, now is the time to begin the franchise renewal process. Franchise renewal is the best opportunity for local governments to obtain significant benefits and to assert their legal rights with their cable company.

We anticipate that the renewal negotiations with Verizon will be more challenging than the last Verizon negotiations in 2005-06. At that time, Verizon had just entered the cable television market and needed to obtain local franchises to begin to offer cable service. The company was eager to complete the negotiations and obtain permits. Over the last decade, Verizon has also shifted its focus and its capital from its wired service (with the marketing label of “FiOS”) to its wireless service. Now that Verizon is entrenched in the cable market with a smaller budget to devote to its wired service, the company has taken a more aggressive posture in franchise renewal negotiations.

There have also been dramatic changes in video technology since the inception of the current franchise agreements, including enhanced digital technology, increased high definition, expansion of video-on-demand, and, perhaps most important, internet-based video programming (sometimes referred to as video streaming or “over-the-top” technology). In addition, there have been major changes in both Verizon’s cable operations and the level of priority the company now gives to municipalities.

Finally, there have been significant changes in federal law and regulations applicable to cable franchising during the last several years. For example, in 2015, the Federal Communications

Commission (“FCC”) issued its Order on Reconsideration of Section 621(a)(1) of the Cable Act pertaining to in-kind payments and mixed-use networks. Currently, the FCC is considering a Second Further Notice of Proposed Rulemaking, MB Docket No. 05-311, that would require certain financial offsets to franchise fee revenue received by the municipalities. Given that the Chester County municipalities are now eligible for franchise renewal, we recommend that they negotiate a new agreement that addresses the changes since the last franchise, strengthens the current agreements, and protects the municipalities for the future consistent with current federal law.

CLG is uniquely qualified to represent the Chester County Consortium in cable franchise renewal negotiations. CLG specializes exclusively in assisting local governments in cable franchise and wireless matters. For 21 years, the core of our practice has been and continues to be cable franchise renewal negotiations. We have represented over 450 municipalities in six states negotiations with their cable companies. Over the past three years, CLG has represented over 150 municipalities in franchise renewal negotiations with Verizon. We know Verizon’s negotiators, their corporate policies, and their negotiating tactics.

Municipal officials have three critical roles when it comes to renewing (or, in the rare case, 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 company’s use of public property. This includes both financial and non-financial benefits for the municipality.

Second, municipal officials have an obligation to protect and advance the interests of their residents. This means not only getting the best services from the cable operator today, but also doing everything possible to prepare for the future. The field of telecommunications is changing so rapidly that it is difficult to predict with certainty the technologies that will be offered in the future. A cable

franchise agreement must provide for the benefits available from existing technologies as well as those that may become available from future technologies.

Finally, municipal officials are consumers of telecommunications services in all three forms – television, internet, and telephone. From internet access at the Municipal Building to television service at the Fire Station, municipalities use a wide range of telecommunications services. They are entitled, therefore, to the most efficient, state-of-the-art services at the best possible prices.

The principal of the firm is Dan Cohen. Aside from his credentials as a telecommunications attorney, Mr. Cohen is especially qualified to represent municipalities because he was a municipal official himself. He has first-hand knowledge of the challenges and opportunities confronting municipal governments. With twelve years' experience in municipal government, he understands the practical needs and the financial constraints facing municipal officials. In addition, the Cohen Law Group has a strong team that includes attorney Phil Fraga, attorney Stacy Browdie, attorney Mike Roberts, attorney Joel Winston, and office manager Akila Iyer.

CLG has developed a three-step approach to cable franchise renewal projects:

1. The first step is identifying the client's specific needs. Since these needs often become better defined as the negotiation progresses, our attorneys maintain flexibility throughout the process to achieve a cable franchise agreement that accomplishes the client's specific goals.
2. Second, our attorneys negotiate firmly and deliberately in order to reach agreement in a timely fashion. Our franchise agreements achieve maximum benefits for our clients.
3. Third and finally, our attorneys work efficiently in a manner that is cost effective for our clients. We are keenly aware of the fiscal constraints facing municipalities, and focus, therefore, on keeping attorneys' fees and costs as low as possible.

II. POTENTIAL FRANCHISE BENEFITS

There are significant benefits available to municipalities in a cable franchise renewal agreement. The key to receiving these benefits is to know the law and regulations relating to each benefit and to negotiate firmly to obtain them from the cable operator. 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 five percent (5%) of the cable company's "gross revenues" for cable services derived from their municipality. The central subject of negotiation with the cable operator is the specific revenue sources to be included in the definition of "gross revenues." CLG has developed a comprehensive list of cable operator revenue sources to which municipalities may apply the franchise fee. Currently numbering 27 revenue sources, the list is expanded regularly depending on the fees being charged by Verizon. Verizon now charges more fees than it did in 2006 and these fees that should be added as new revenue sources to the definition of "gross revenues" in the new agreement subject to the franchise fee.

2. Franchise Fee Accountability

In addition to franchise fee revenue, it is essential for the municipalities to require franchise fee protection and accountability. In a franchise agreement, these include detailed franchise fee verification reports, the right to conduct franchise fee audits without unreasonable burdens, penalties for underpayments, and new protections against franchise fee reductions due to bundled service packages (also referred to as the "triple play" of television, internet, and phone). In 2014-15, CLG assisted six Chester County municipalities with a franchise fee audit of Verizon. During the course of the project, we learned that the audit sections in their franchise agreements could be strengthened and recommended specific improvements to those sections in our franchise fee audit reports.

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 cable franchise agreement include legal protections for any damages or injuries that may occur. These protections include safety standards for construction and installation, requirements for repair and restoration of damage to public and private property, access to service area maps, emergency removal of equipment, disconnection and relocation of wires and equipment, indemnification of the municipality, and full insurance coverage.

4. Customer Service Standards

In a franchise agreement, municipalities may impose customer service standards on the cable company to which the company must adhere. It is important to include comprehensive and enforceable standards, including but not limited to, telephone answering time limits for customer service representatives, refunds for service interruptions, rules for resolving customer billing disputes, time limits for cable technicians to arrive at your home, a prohibition against the premature application of late fees, and rules respecting subscriber privacy.

5. Free Services

It is common in a franchise agreement for cable companies to agree to provide complimentary cable television and/or internet services to community facilities. The types of free services are different for different cable operators. The major subjects of negotiation are the number of community facilities (including municipal buildings, fire stations, public and private schools, and public libraries) that obtain the service, and the type and level of service obtained. The FCC's recent Section 621 Order and pending Second Further Notice of Proposed Rulemaking may directly impact this issue.

6. Public, Educational and Governmental (PEG) Channels

Municipalities have a legal right under federal law to dedicated channel space for public, educational and governmental (“PEG”) programming. PEG Channels may be used to inform citizens by broadcasting public safety alerts, announcements regarding government activities, public meetings and/or community, educational and athletic programs. For municipalities (or their designees) that currently operate a PEG Channel(s) or wish to activate one in the future, we will attempt to negotiate high definition (HD) format, commercial quality signals, programming titles on electronic menus, distribution of PEG signals to all customers, technical quality of the channel(s), rebranding funds for channel relocations, and other related enhancements.

7. Cash Franchise Grant

In addition to franchise fee revenue, we will attempt to negotiate new cash franchise grants from Verizon. In the last round of renewals in other jurisdictions, Verizon agreed to one-time cash grants. We would attempt to obtain similar grants in this renewal. In addition, our understanding is that Verizon agreed to provide the Chester County municipalities with certain PEG channel funding on a “per subscriber” basis. Depending on the municipalities’ specific PEG needs, we would attempt to increase this funding. The availability, amount, and distribution schedule of such grants depend upon the give-and-take of the cable franchise negotiations.

8. Reporting Requirements

It can be helpful for municipalities to obtain periodic information from the cable operator related to financial and customer service issues. Depending on the municipality’s specific needs, a franchise agreement may require the cable operator to provide written reports to the municipality on such matters as franchise fee verification, customer complaints, service interruptions, and construction activity in the public rights-of-way.

9. Enforcement

Once the cable operator agrees to provide certain benefits, the municipalities must be able to enforce these obligations. It is important to include practical enforcement tools to ensure the company's faithful performance of its obligations under the agreement. These may include, but are not limited to, predetermined monetary fines (also known as liquidated damages), a substantial performance bond, and the right to revoke the franchise in extreme circumstances. Our understanding is that the current Chester County agreements include procedural hurdles to effective enforcement that should be eliminated in the new agreements.

10. Length of Term

Because cable technology changes so rapidly, municipalities typically seek a shorter length of term in the franchise renewal agreement, and cable companies typically seek longer terms to protect their capital investment in the cable system. In recent Verizon renewals, however, the cable operator has sought shorter terms due to changes in video technology and potential changes in FCC regulations. This issue will be 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 Chester County Consortium municipalities in cable franchise renewal with Verizon.

A. Preliminary Setting of Priorities

We will arrange an initial in-person meeting with at least one representative from each participating municipality. During the meeting, we will describe the cable franchise process, including both the formal and informal processes prescribed by Section 626 of the federal Cable Act, 47 U.S.C. §546. We will also advise the officials regarding their legal rights, including the

substantive areas in which the municipalities have legal authority over the cable operator and those areas in which their legal authority is limited. We will also outline the potential financial and non-financial benefits available to the municipalities as well as solicit the concerns and needs of the officials with respect to the cable operator.

In addition, we will provide the municipalities with public notice and written talking points for a public hearing on cable franchise renewal. Section 626 of the Cable Act includes a “notice and comment” requirement, and we typically recommend that this requirement be satisfied by a public hearing inviting citizen input. We will also advise the municipalities with respect to any other legal and regulatory requirements pertaining to franchise renewal.

B. Drafting of Proposed Agreement

After the setting of priorities stage is completed, our attorneys will draft a proposed master franchise agreement with Verizon 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 discussed above, as well as our judgment as to the legal provisions that would advance the municipalities’ interests and meet their future cable-related needs. We will then submit the draft agreement to the clients for informal review and comment. The Consortium may wish to appoint an Executive Committee to perform this review. Suggested changes will be incorporated into the agreement and the proposed agreement will be presented to representatives of Verizon.

C. Negotiation with Cable Operator

The most important stage in the process is negotiating a franchise renewal agreement with representatives of Verizon. CLG has negotiated over 150 franchise renewal agreements with Verizon over the past three years. We know Verizon’s policies and its negotiating tactics. The

working document for these negotiations will be the draft franchise agreement informally approved by the clients. We will preserve the legal rights of the municipalities under the formal process, but negotiate with Verizon under the informal process outlined in the federal Cable Act.

The negotiation typically consists of many negotiation sessions with representatives of the cable operator, status conferences with the clients, multiple revisions of the proposed franchise agreement, redrafting specific franchise agreement provisions, and editing the final draft of the master agreement. We will then proceed to customize the master agreement to each individual municipality, including substantive provisions requested by each of the municipalities.

D. Consideration by the Municipal Governing Bodies

After tentative agreement with Verizon has been reached, CLG will report to each municipality on the substantive provisions of the deal. Specifically, we will present each municipality with its final customized franchise agreement (and any side agreements) negotiated by the parties and recommended by CLG. We will also draft an executive summary of the final agreement. Finally, we will draft a customized short-form ordinance authorizing approval of the agreement for consideration by each Township Board and Borough Council.

IV. PROFESSIONAL BACKGROUND

The Cohen Law Group specializes in representing municipalities in cable franchise and wireless matters. Collectively, our attorneys have worked on cable and telecommunications issues on behalf of municipalities for over 60 years. Over 21 years, CLG has represented over 450 municipalities in six states in negotiations with cable companies. We have also represented over 150 municipalities in cable franchise renewal with Verizon. CLG's full array of legal services to municipal clients include the following:

- Drafting cable franchise agreements
- Cable franchise renewal negotiations with cable companies
- Franchise fee audits
- Cable compliance reviews
- Evaluation of public, education and governmental (“PEG”) channels
- Development of wireless facilities ordinances
- Negotiation with cellular tower and antenna companies
- Identification and marketing of municipality’s vertical assets to wireless firms
- Wireless facility litigation
- Drafting of right-of-way ordinances and development of right-of-way fees
- Right-of-way management and enforcement
- Drafting pole attachment agreements
- Pole attachment negotiations with cable and telephone companies

As an active member of the National Association of Telecommunications Officers and Advisors (NATOA), CLG stays current with changes in telecommunications law. Dan Cohen has served on the national Board of Directors of NATOA since 2017. Our attorneys have also written articles on cable franchising and wireless matters that have been published in *Public Management Magazine*, *Government Procurement Magazine*, *Pennsylvania Township News* and *Pennsylvania Borough News*. They are also frequent speakers at regional and national municipal conferences.

In addition to providing professional counsel to municipalities on cable and wireless matters, Mr. Cohen served as an elected municipal official on the Pittsburgh City Council for 12 years. He has first-hand knowledge of the challenges and opportunities confronting municipal governments. He served as Chair of City Council’s Cable Television Committee for 10 years and also served on the Mayor’s Telecommunications Committee. He 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.

Attorney Phil Fraga served as assistant general counsel to a major cable company and was counsel to two telecommunications companies prior to joining the firm in 2006. His industry experience and understanding of the operations of cable providers have proven invaluable for our

clients. Mr. Fraga has negotiated hundreds of cable franchise agreements. He has undergraduate degrees from Bethany College (finance) and Carlow College (accounting), an MBA from the University of Steubenville, and a law degree from the Duquesne University School of Law.

Attorney Mike Roberts concentrates his work on cable franchise renewals, franchise fee audits, and wireless facilities regulation. Mr. Roberts graduated from the University of Pittsburgh and University of Pittsburgh Law School, where he was Features Editor for JURIST, a legal news and research service. Attorney Stacy Browdie concentrates primarily in cable franchise agreements, franchise fee audits, right-of-way management and PEG channels. Ms. Browdie also oversees the business management of the firm. She graduated from the University of Pennsylvania and from the University of Pittsburgh School of Law.

Attorney Joel Winston focuses on cable franchise negotiations, wireless regulation, and FCC proceedings in his work for CLG. He also has significant litigation experience. Prior to joining CLG, Mr. Winston worked as an attorney in the Office of the Attorney General for the State of New Jersey. He graduated from the University of Michigan and Seton Hall Law School. He has authored several published articles on law and technology issues.

V. COST OF SERVICES

The following represents CLG's cost of services to perform cable franchise renewal services. We propose to perform these services on a flat fee basis, because our significant experience in performing these projects lends predictability to our efforts on behalf of the Chester County municipalities. In addition, a flat fee provides "price certainty" to the municipalities.

We are offering our services to the Consortium municipalities at a discounted rate depending on the population of each municipality and the number of municipalities that participate. We offer

these discounts because there are certain economies of scale in representing a multi-municipal group. The chart below shows our standard single-municipality flat fees based on population followed by discounts based on the number of municipalities that participate in the project.

**FLAT FEE SCHEDULE FOR CABLE FRANCHISE RENEWAL
NEGOTIATIONS WITH VERIZON**

Standard Single Municipality Fees (based on population prior to discount)

Population ≤ 10,000	\$6,500
Population ≥ 10,001	\$8,500

Discounted Fees Based on Number of Participating Municipalities

2-5 Municipalities - 10% Discount from the Single Municipality Fee

Population ≤ 10,000	\$5,850
Population ≥ 10,001	\$7,650

6-10 Municipalities - 15% Discount from the Single Municipality Fee

Population ≤ 10,000	\$5,525
Population ≥ 10,001	\$7,225

11-14 Municipalities - 20% Discount from the Single Municipality Fee

Population ≤ 10,000	\$5,200
Population ≥ 10,001	\$6,800

15-18 Municipalities - 25% Discount from the Single Municipality Fee

Population ≤ 10,000	\$4,875
Population ≥ 10,001	\$6,375

19+ Municipalities – 30% Discount from Single Municipality Fee

Population ≤ 10,000	\$4,550
Population ≥ 10,001	\$5,950

The flat fees above do not include expenses, such as travel, postage and copying expenses, which are kept to a minimum and will be divided among all participating municipalities. They also do not include the unlikely possibility of extraordinary services outside the scope of services contained in this proposal or any significant unforeseeable developments. In the event of such extraordinary or unforeseeable developments, CLG will contact the affected municipality to discuss such developments prior to rendering services related to them. If such services were authorized, CLG would charge a fee of \$250 per hour, including travel time. Please note that our normal billing policy is to bill one-third of the fee at the commencement of the project, one-third at the middle of the project, and one-third at the conclusion of the project. Thank you for the opportunity to submit this proposal.