

Resolution No.:	<u>17-157</u>
Introduced:	<u>May 26, 2011</u>
Adopted:	<u>May 26, 2011</u>

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

SUBJECT: Approval of the FY 2012 Cable Communications Plan

Background

1. Section 8A-27(a) of the County Code provides that “All access grants, franchise fees, and other moneys received by the County from any franchisee may be spent only under a budget approved by the Council and in accordance with the County Cable Communications Plan.”
2. Section 8A-27(b) of the County Code provides that “The Cable Communications Plan must be proposed by the County Executive to the Council annually and may be amended at any time.”
3. Section 2.2 of the 2002 AT&T Comcast Transfer Agreement provides that “. . . all provisions of the Franchise Documents remain in full force and effect and are enforceable in accordance with their terms and with applicable law.”
4. Section 7(b) of the 1998 Cable Franchise Agreement, assumed by Comcast from Prime Communications – Potomac, LLC, between the County and SBC Media Ventures, Inc. provides that Comcast must pay a capital grant to the County of “\$200,000 per year . . . to be used by the County, in its sole discretion, for PEG equipment . . . or for PEG-related facilities renovation, or construction.”
5. Section 7(h)(1) of the 1998 Cable Franchise Agreement, assumed by Comcast from Prime Communications – Potomac, LLC, between the County and SBC Media Ventures, Inc. provides that Comcast must pay an annual capital grant to the County of \$1.2 million, adjusted annually by the Consumer Price Index, “to support installation, construction, operations, and maintenance of the County’s FiberNet and associated network equipment, and the Institutional Network . . . ”

6. Section 4.1 of the 1998 Cable Franchise Transfer Settlement Agreement, assumed by Comcast from Prime Communications – Potomac, LLC between the County, Prime Communications, and SBC Media Ventures, Inc. provides that Comcast must pay \$1.5 million, adjusted annually by the Consumer Price Index, for PEG support.
7. Section 7(b) of the 1999 Franchise Agreement with Starpower provides that Starpower must pay a capital grant to the County of “3% of Gross Revenues per year . . . excluding revenues arising from Internet Access . . . to be used by the County . . . for PEG access and institutional network purposes, including PEG access equipment, institutional network equipment or for renovation or construction of PEG access or institutional network facilities.”
8. On February 8, 2005 the County Council approved Resolution 15-889, supporting the transfer of interest in Starpower Communications LLC from Pepco Communications to RCN Telecom Services of Washington, D.C., Inc. Starpower is now doing business as RCN.
9. Section 3.3.6 of the 2006 Franchise Agreement with Verizon Maryland, Inc. provides that Verizon must pay \$200,000 within 30 days of the effective date of the Franchise Agreement and \$200,000 per year for four years on the anniversary of the effective date of the Franchise Agreement. In exchange, the County waived its ability to add more locations for cable service for public buildings above Verizon’s obligation to provide 100 connections at the County’s request.
10. Section 6.2 of the 2006 Franchise Agreement with Verizon provides that Verizon must pay a grant to the County of 3 percent of Gross Revenues each quarter to be used “for PEG and institutional network purposes.”
11. Section 8 of the Franchise Agreements with Comcast and RCN and Section 7 of the Franchise Agreement with Verizon provides that each franchisee must pay, for the life of the franchise, a franchise fee of 5 percent of annual gross revenues.

General Provisions

1. **Purpose and Effect:** This Cable Communications Plan constitutes the County’s formal direction for the use of resources required to be provided under Sections 7 and 8 of the Franchise Agreements with Comcast and RCN; Section 4.1 of the 1998 Cable Franchise Transfer Settlement Agreement, assumed by Comcast from Prime Communications – Potomac, LLC between the County, Prime Communications, and SBC Media Ventures, Inc.; and Sections 3, 6, and 7 of the Franchise Agreement with Verizon.

In FY 2012, these resources must be deposited by the County in its Cable TV Special Revenue Fund, and this Cable Communications Plan directs the use of the revenues in this Fund.

2. Spending Authority under the Time Period Governed by This Plan: This Cable Communications Plan provides spending authority for FY 2012. Resources appropriated in FY 2012 that are not encumbered by the County on or before June 30, 2012 must remain in the Cable TV Special Revenue Fund and be available for spending in future years.
3. Carryover: Resources provided to the County as a result of the requirements of the Franchise Agreements with Comcast, RCN, and Verizon, but not specifically allocated in the Cable Communications Plan to the General Fund, must remain in the Cable TV Special Revenue Fund and be available to be allocated in future years.
4. Future Fiscal Years: No estimate shown for any fiscal year after FY 2012 reflects any commitment or decision by the Council, and any such estimate should not be taken as prejudging any decision regarding activities or allocations, either in absolute or relative amounts, of expenditures for future years.
5. Management of Funds: All equipment, personnel, and other resources approved in the Cable Communications Plan for funding from the Cable TV Special Revenue Fund must be managed so that the resources are reasonably available to all users of the cable system and provide benefits to the subscribing public and the franchisee.
6. Affirmative Action and MFD Procurement Procedures: The Board of Directors of Montgomery Community Television, Inc. (MCT) must adopt and follow an Affirmative Action Plan and procedures for procurements from minority-, female-, and disabled-owned businesses (MFD) that take into account both the requirements of the Franchise Agreements with Comcast, RCN, and Verizon and relevant provisions of the County Code.
7. Financial Disclosure: The County must not spend any FY 2012 funds allocated to MCT until all members of the Board of Directors and the Executive Director of MCT have filed a financial disclosure statement with the Ethics Commission for the 2011 calendar year.
8. FY 2013-2018 Cable Plan: The Executive must submit a preliminary six-year Cable Communications Plan for FY 2013 through FY 2018 to the Council no later than January 15, 2012. The Executive submitted a preliminary six-year Cable Communications Plan for FY 2012 through FY 2017 to the Council on January 15, 2011. The Preliminary Cable Communications Plan included: (a) a list of known PEG activities and funding needs for FY 2012 through FY 2017; (b) a preliminary plan for prioritizing PEG funding needs within the context of the County's long-term vision for Cable television; (c) any capital project expenditures proposed to be funded through the plan; (d) changes to approved multi-year expenditures; and (e) updated projections of plan revenues for FY 2012 through FY 2017.

FY 2012 Cable Communications Plan Description

The FY 2012 Cable Communications Plan provides funding for cable franchise administration (Department of Technology Services, County Attorney's Office, and outside professional services); for municipal equipment and support; for public, educational, and government access programming (Office of Public Information, Council, Montgomery College, Montgomery County Public Schools, and Montgomery Community Television, Inc.); and for other miscellaneous cable-related activities.

The attached table details the approved expenditures from the Cable TV Special Revenue Fund for the following purposes in FY 2012:

Franchise Administration

- A. Funds are allocated to the Department of Technology Services to administer the Franchise Agreements with Comcast, RCN, and Verizon, including inspecting construction, testing signal quality, responding to residents' complaints, budgeting franchise fee and grant funds received from the cable operator, managing the contract to provide public access services, supporting an advisory committee, administering Federal Communications Commission rules and regulations, preparing for and negotiating franchise agreements, and advising elected officials on related policy matters.
- B. Funds are allocated to the County Attorney's Office to support the in-house staff costs associated with advising the Department of Technology Services and elected officials on related matters.
- C. Funds are allocated to hire outside professional services to advise or represent the County in areas of specialized telecommunications needs.

Municipal Support

- D. Funds are allocated for sharing franchise fee revenue with the municipal co-franchisors in accordance with the formula in Section 8A-29 of the County Code.
- E. Funds are allocated to support the 3 PEG channels allocated to (1) the City of Rockville; (2) the City of Takoma Park; and (3) the Montgomery County Chapter of the Maryland Municipal League. Funds are allocated from the Capital Equipment Support Grants, according to the requirements of Section 7(b)(1)(B) of the Franchise Agreement with RCN, the requirements of Section 7(b)(2) of the Franchise Agreement with Comcast, and from the PEG Support Fund according to the requirements of Section 4.1 of the 1998 Cable Franchise Transfer Settlement Agreement assumed by Comcast from Prime Communications. Funds are allocated from the PEG Support Fund to the extent that the Participating Municipalities meet all applicable matching-fund requirements in the Settlement Agreement.

County Government Access Programming

- F. Funds are allocated for managing the County Government Channel, maintaining County Government Channel video equipment, closed captioning of County Government programming, and for the operation of the Technical Operations Center to monitor and adjust technical quality of PEG Programming.

Funds are allocated to the Office of Public Information for in-house staff and contractors to produce Executive Branch programming for the County Government Channel.

Funds are allocated to the Council for in-house staff and contractors to produce programming for the Council and Legislative Branch agencies.

Funds are allocated to the Montgomery County portion of the Maryland-National Capital Park and Planning Commission for contractors to provide cable-related services, including webcasting and services needed to produce programming for the Planning Board and the Parks Department.

Educational Access Programming

- G. Funds are allocated to Montgomery College to produce educational programs and operate a cable channel with in-house staff.
- H. Funds are allocated to Montgomery County Public Schools to produce educational programs for children, parents, and teachers; carry Board of Education meetings; and run other educational programming of interest to County residents. MCPS currently operates two educational access channels on the cable system.

Public Access Programming

- I. Funds are allocated for Montgomery Community Television, Inc., to perform services in FY 2012 specified in its contract with the County, including the following:
- (1) produce and schedule two public access channels, including disseminating information on the daily program schedule;
 - (2) train community producers and technicians in program production and assist residents and community organizations in developing locally produced or locally sponsored programming;
 - (3) provide and maintain a central access studio, field production equipment, and editing facilities for use by community producers in program production;
 - (4) maintain all video equipment provided to MCT or purchased by MCT with cable company or County funds;
 - (5) produce local interest and public affairs programming;

- (6) promote and encourage programming representing a diversity of community interests and needs; and
- (7) perform outreach and create programming in the down-county area.

PEG Network

- J. For FY 2012, funds are allocated for PEG equipment replacement, for an emergency equipment reserve to be used in case of imminent failure of major PEG video systems, for joint PEG programming/promotion, PEG network engineering and administration, closed captioning of select PEG programming, and for PEG programming to provide access to cable by community organizations.

The Council wishes to encourage the most cost-effective operations of the PEG Channels and has directed the PEG Network to enhance the sharing of equipment, facilities, and personnel. All funds appropriated for PEG equipment replacement must be administered by the Office of Cable and Communications Services. Before spending any funds for this purpose, the PEG Network must report to the Council and the Executive on their plans for the purchase and allocation of replacement equipment. The Council intends that preference be given to purchases of equipment and facilities that can be shared by more than one PEG Channel.

The Council encourages the municipal co-franchisors to develop plans for purchasing equipment, using engineering expertise available from the other PEG Channels and the Office of Cable and Communications Services, and acquiring equipment that facilitates the sharing of resources with other PEG channels.

The Office of Cable and Communications Services must not spend funds from the Emergency Equipment Reserve until the PEG Network finds that additional replacement funds are needed to prevent interruption of programming on one or more PEG Channels.

All equipment purchased with Cable Funds, except equipment purchased with Municipal Grant funds or funds allocated to the Village of Friendship Heights under this Plan, must be titled to the Montgomery County Government, which may, under appropriate controls, allocate some of the equipment for use to individual PEG Channels.

Before the PEG Network may spend funds allocated for PEG joint Programming/Promotion, the Network must report its general plans to the Council and the Executive.

In FY 2012, funding is being added to support a part-time contractor to produce additional Spanish-language programming for the WatchLocalTV.org Network, and for a part-time contractor to provide Spanish-language public information and cable programming services for the Council.

Institutional Telecommunications

- K. For FY 2012, funds are allocated for Institutional Telecommunications for FiberNet capital improvements and operations. The County's Franchise Agreement with Comcast, assumed from Prime Communications, provides that Comcast must pay grants to support operations, maintenance, and the installation of cables and electronic equipment for the County's FiberNet.

The County plans to expand the FiberNet network to meet the telecommunications needs of County agency facilities. FiberNet will be expanded using funding provided under the American Recovery and Reinvestment Act and matching funds will be provided in FY 2012 to meet the requirements of this grant. The Department of Technology Services must develop a FiberNet buildout plan that identifies facilities with the greatest need for high-speed voice, data, and video transmissions and for which FiberNet offers lower cost service than private sector telecommunications providers. User agencies must notify the Council before paying any fee to or entering into any agreement with any private provider, if using FiberNet to serve specific facilities is more advantageous to the County. The Council will then consider if adjustments to the funded FiberNet buildout schedule are warranted to avoid paying excessive fees to private providers for telecommunications service to any specific facility.

General Fund Transfers and Repayment Schedule

- L. In FY 2004, \$2,636,000 was appropriated from the Cable TV Special Revenue Fund to the General Fund to finance general government operations. This was the first year that the Executive recommended transferring funds derived from franchise fees for unspecified general government operations.

In FY 2006, the Council allocated \$1,241,000 to fund the County's Automated Traffic Management System.

In FY 2007, the Council allocated \$284,000 to fund technology projects for the Montgomery County portion of the Maryland-National Capital Park and Planning Commission Operating Budget.

In FY 2009, the Council transferred \$250,000 to the General Fund in order to support County operating expenses, and indicated their desire to ensure that this transfer will improve the technology infrastructure and productivity support for all County departments.

In FY 2010, \$3,235,830 was transferred from the Cable TV Special Revenue Fund to the General Fund to finance general government operations. The Council intended that this transfer improve the technology infrastructure and productivity support for all County departments.

In FY2011, \$6,157,000 was approved to be transferred from the Cable TV Special Revenue Fund to the General Fund to finance general government operations. The Council intended that this transfer improve the technology infrastructure and productivity support for all County departments.

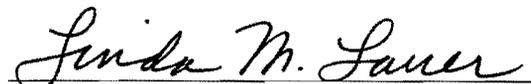
The FY 2004 General Fund transfer, the FY 2006 funding for the Automated Traffic Management System, and the FY 2007 funding for technology projects for the Montgomery County portion of the Maryland-National Capital Park and Planning Commission must be repaid without interest according to the following schedule: \$432,000 was paid in FY 2008, \$0 was paid in FY 2009, FY10 and FY 2011, and \$0 will be paid in FY 2012. As a part of the FY 2013 Recommended budget, the Executive must propose an amended repayment schedule.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

The Council approves the attached Cable Communications Plan as described in this resolution and appropriates cable communications grant resources and settlement funds as provided in the Cable Communications Plan and this resolution and any amendments to either that the Council adopts for FY 2012.

This is a correct copy of Council action.


Linda M. Lauer, Clerk of the Council

FY12 CE RECOMMENDED CABLE COMMUNICATIONS PLAN (\$000's)													
		Approved FY10	Actual FY10	Approved FY11	Est'd FY11	Approved FY12	Change fr FY11 App \$\$	%	FY13	FY14	FY15	FY16	FY17
1	BEGINNING FUND BALANCE	2,069	4,809	114	2,736	1,129	1,015	890%	113	3,452	2,412	2,401	1,711
2	REVENUES												
3	5% Franchise Fee	11,280	12,435	12,533	13,939	14,997	2,464	20%	15,629	16,261	16,667	16,998	17,338
4	Gaithersburg PEG Contribution	187	140	164	197	197	33	20%	199	203	207	211	215
5	PEG Operating Support	2,080	2,069	2,111	2,092	2,134	23	1%	2,176	0	0	0	0
6	PEG Capital Equipment Grant	1,990	3,146	3,484	4,169	4,809	1,325	38%	5,149	9,757	10,000	10,199	10,403
7	Verizon - Facilities Grant	200	200	200	200	0	(200)	-100%	0	0	0	0	0
8	FiberNet Operating & Equipment Grant	1,637	1,628	1,660	1,646	1,678	18	1%	1,712	0	0	0	0
9	Interest Eamed	30	9	30	10	20	(10)	-33%	50	120	170	230	270
10	TFCG Application Review Fees	80	194	203	172	246	43	21%	150	140	140	140	140
11	Miscellaneous	0	9	0	23	0	0	0%	0	0	0	0	0
12	Transfer from the General Fund	0	0	0	0	0	0	0%	0	0	0	0	0
13	TOTAL ANNUAL REVENUES	17,484	19,830	20,385	22,448	24,081	3,696	18%	25,065	26,481	27,184	27,778	28,366
14	TOTAL RESOURCES-CABLE FUND	19,553	24,639	20,499	25,184	25,210	4,711	23%	25,178	29,933	29,596	30,179	30,077
15	NON-DISCRETIONARY EXPENDITURES (a)												
16	A. MUNICIPAL EQUIPMENT & OPERATIONS												
17	Municipal Franchise Fee Distribution												
18	City of Rockville	460	459	464	543	559	95	21%	590	619	649	682	717
19	City of Takoma Park	199	192	196	216	195	(1)	-1%	198	202	206	209	213
20	Other Municipalities	152	157	159	189	221	62	39%	236	245	254	264	274
21	SUBTOTAL	812	808	819	948	975	156	19%	1,024	1,065	1,109	1,156	1,205
22	Municipal Capital Support												
23	Rockville Equipment	276	487	466	586	682	216	46%	732	787	846	910	978
24	Takoma Park Equipment	276	487	466	586	682	216	46%	732	787	846	910	978
25	Municipal League Equipment	276	487	396	516	612	216	55%	662	787	846	910	978
26	SUBTOTAL	828	1,461	1,328	1,689	1,976	648	49%	2,127	2,361	2,538	2,729	2,935
27	Municipal Operating Support												
28	Rockville PEG Support	70	26	70	74	76	6	8%	77	80	84	88	92
29	Takoma Park PEG Support	70	26	70	74	76	6	8%	77	80	84	88	92
30	Muni. League PEG Support	70	26	140	144	146	6	4%	147	80	84	88	92
31	SUBTOTAL	211	78	280	293	298	18	6%	302	240	252	264	276
32	SUBTOTAL	1,851	2,347	2,427	2,930	3,248	821	34%	3,454	3,667	3,899	4,148	4,416
33	NET TOTAL ANNUAL REVENUES	15,633	17,483	17,958	19,518	20,833	2,875	16%	21,611	22,814	23,285	23,630	23,950
34	NET TOTAL RESOURCES-CABLE FUND	17,702	22,292	18,072	22,254	21,962	3,890	22%	21,724	26,266	25,697	26,031	25,661
35	EXPENDITURES												
36	A. Transmission Facilities Coordinating Group												
37	TFCG Application Review	180	43	275	141	225	(50)	-18%	225	225	225	225	225
38	SUBTOTAL	180	43	275	141	225	(50)	-18%	225	225	225	225	225
39	B. FRANCHISE ADMINISTRATION												
40	Personnel Costs - Cable Administration	705	562	794	794	794	(0)	0%	833	980	1,029	1,080	1,134
41	Personnel Costs - DTS Administration	69	60	69	69	69	(0)	-1%	71	71	71	73	73
42	Personnel Costs - Charges for County Atty	95	74	95	95	98	3	3%	100	100	102	102	105
43	Operating	73	79	80	80	70	(10)	-13%	100	100	70	70	70
44	Engineering Services	50	10	50	50	30	(20)	-40%	70	70	50	50	50
45	Inspection Services	270	40	10	10	0	(10)	-100%	10	10	10	10	10
46	Legal and Professional Services	310	227	300	300	280	(20)	-7%	450	350	300	300	300
47	SUBTOTAL	1,572	1,053	1,398	1,398	1,340	(58)	-4%	1,634	1,682	1,633	1,686	1,743
48	SUBTOTAL	1,752	1,096	1,673	1,539	1,565	(108)	-6%	1,859	1,907	1,858	1,911	1,968
49	C. MONTGOMERY COUNTY GOVERNMENT - CCM												
50	Media Production & Engineering												
51	Personnel Costs	533	461	781	781	760	(21)	-3%	798	998	1,048	1,100	1,155
52	Operating	25	11	40	40	35	(5)	-13%	35	35	35	35	35
53	Contracts - TV Production	63	18	40	40	32	(8)	-20%	32	32	32	32	32
56	New Media, Webstreaming & VOD Services	48	30	38	38	38	0	0%	38	38	38	38	38
57	SUBTOTAL	669	520	899	899	865	(34)	-4%	903	1,103	1,153	1,205	1,260
58	Public Information Office												
59	Personnel Costs	560	551	705	705	704	(1)	0%	529	556	583	613	643
60	Operating Expenses	12	13	0	0	0	0	0%	40	40	40	40	40
61	Contracts - TV Production	210	128	83	83	83	0	0%	83	83	83	83	83
62	SUBTOTAL	782	692	788	788	787	(1)	0%	652	679	706	736	766
63	County Council												
64	Personnel Costs	74	64	154	154	157	3	2%	195	205	215	226	237
65	Operating Expenses	28	11	18	18	13	(5)	-28%	40	40	40	40	40
66	Contracts - TV Production	516	486	164	164	164	0	0%	164	164	164	164	164
67	SUBTOTAL	618	561	336	336	334	(2)	-1%	399	409	419	430	441
68	MNCPPC												
69	Personnel Costs	101	141	83	78	0	(83)	-100%	0	0	0	0	0
70	Operating Expenses	21	0	0	0	0	0	0%	0	0	0	0	0
71	Contracts - TV Production	117	97	81	81	81	0	0%	81	81	81	81	81
72	New Media, Webstreaming & VOD Services	47	0	24	24	24	0	0%	24	24	24	24	24
73	SUBTOTAL	286	238	188	183	105	(83)	-44%	105	105	105	105	105
74	SUBTOTAL	2,355	2,011	2,211	2,206	2,091	(120)	-5%	2,059	2,295	2,383	2,476	2,573

