Oneal Puri- CCAC Chair [redacted]

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Feedback on County Cable Franchise Agreement

Franchise:

- The agreement presently does not include a section on dispute resolution.

Recommendation- Include a paragraph stating that any disputes over interpretation, application, etc. of the agreement should be referred to a mediator or arbitrator, selected by the parties, rather than a court.

- Section on liquidated damages

Recommendation- Clarify who determines how those penalties are applied if the parties disagree over the number or scope of material violations. Compare paragraph 14 of Exhibit B, the Settlement Agreement, or paragraph 10(f) of Attachment 1, Indefeasible Use.

- Gross Revenue Paragraph 1.16.1: Definition of "gross revenue" includes "revenues from home shopping channels and other revenue sharing arrangements (1.16.1.12) but excludes directory or Internet advertising revenue (1.16.2.12).

Recommendation- Clearly define "gross revenue." It is our interpretation that advertising is a form of "revenue sharing arrangements." Therefore, revenue from advertising should be included in "gross revenue."

- Currently, "gross revenue" excludes revenues from the sale of cable services to a reseller, "when the reseller pays the cable Franchise fee on the resale of the Cable Services" (paragraph 1.16.2.6).

Recommendation- Specify whether this agreement covers payments by resellers. If they are not covered, how and under what authority are those cable franchise fees collected? Is Comcast required to provide an accounting of all revenues and exclusions?

- Paragraph 2.6.1 states that the franchise agreement shall be governed by "all applicable provisions of state and federal law ...." Paragraph 2.8 refers to "... federal or state law."

Recommendation- Specify which state is implied by "state law." We suggest mentioning Maryland law in this agreement, as we did not see where the agreement specifies Maryland law.

- Paragraph 3.2.2.

Recommendation- This paragraph should probably lead with a qualifier, such as "Subject to the limitations of subsection 3.2.1, Franchisee shall make Cable Services available...." This is to ensure that paragraphs 3.2.1 and 3.2.2 are not read to mean that Comcast is required to provide services as long as the minimum density requirement is met.

- Paragraph 3.2.3.2

Recommendation- Determine a way to verify Comcast's calculation of the "average construction cost per mile in the Franchise Area." Specify how often can Comcast recalculate that value and whether the value is reported to the County?

- Paragraph 3.2.3.

Recommendation- Specify any time limit on when Comcast is required to comply with a request for extension of cable service (assuming arrangements have been made for service). Paragraph 3.2.2, by comparison, has a six-month time limit.

- Paragraph 3.2.3.4.

Recommendation- Clarify whether or not a dwelling unit can be required to contribute to construction if it does not desire cable service. Will Comcast be able to collect a contribution charge in the future if that residence dweller later requests cable service? If not, does this create a free rider problem?

- Paragraph 6.1.1: "Franchisee must cease use [of PEG channels] by a time specified by the County, or within one hundred and twenty (120) days, which is later."

Recommendation- Clearly define the start date for the 120 days. Is it when the County makes the request, or from the effective date of the agreement?

- Paragraph 7.1. (The agreement currently states that if the 5% cap is increased, the County can raise the franchise fee accordingly, but if the 5% cap is entirely eliminated, then the franchise fee must be renegotiated).

Recommendation- Suggest replacing that provision with wording as the following: "If the 5% cap is eliminated, the County can raise the franchise fee by up to X percent or renegotiate a new cap." This gives the County a choice whether to choose a higher percentage or renegotiate, as it sees fit, rather than requiring renegotiation.

- Paragraph 7.6.

Recommendation- Paragraph is pretty vague and unclear, and seems to conflict with paragraph 1.16.2.12, discussed above.

- Paragraph 13.4.2 identifies a number of "material violations."

Recommendation- Clarify these violations and can it be determined that the agreement is revoked under paragraph 13.3? Please also clarify section 13.6 and whether this gives cause to apply liquidated damages under the section.

Exhibit B: Settlement Agreement

- Paragraph 8 states that the County can apply 1/3 of its 3% PEG grants for non-capital support without matching, and 2/3 of the 3% PEG grants for non-capital support equal to the amount the County or other entities supply.

Recommendation- Specify if this needs to be in the settlement agreement with Comcast. Confirm if this is it up to the County itself to decide how to allocate the PEG funds or who makes this decision. Also, please state if the monies can be put aside for future needs.

The Advisory Committee suggests the above-mentioned recommendations. The CCAC is satisfied with the overall negotiations and concessions agreed upon by the preliminary draft of the franchise agreement and would suggest the modifications above to clarify the county's positions.