



# THE PRINCE GEORGE'S COUNTY GOVERNMENT


## Office of Audits and Investigations


March 8, 2023

### FISCAL AND POLICY NOTE

TO: Jennifer A. Jenkins  
Council Administrator

William M. Hunt  
Deputy Council Administrator

THRU: Josh Hamlin   
Director of Budget and Policy Analysis

FROM: Malcolm Moody -   
Legislative Budget and Policy Analyst

RE: Policy Analysis and Fiscal Impact Statement  
CB-022-2023 Cable Television

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CB-022-2023 (Proposed and presented by: The Chair of the Council at the request of the County Executive)

Assigned to the Government Operations Fiscal Policy Committee (GOFP)

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AN ACT CONCERNING CABLE TELEVISION for the purpose of granting a renewal of a franchise for the operation of a cable television system in the Northern and Southern Territories of Prince George's County (the "County") and prescribing certain terms and conditions to be included in a franchise agreement.

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### **Fiscal Summary**

#### **Direct Impact**

*Expenditures:* No additional expenditures likely.

*Revenue:* Additional revenues from payment of franchise fees to the County.

#### **Indirect Impact**

None Likely.

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### **Legislative Summary:**

CB-022-2023, proposed by the Chair at the request of the County Executive, was presented on February 21, 2023, and was referred to the Government Operations Fiscal Policy Committee (GOFP). The Bill would grant the renewal of a franchise for the operation of the Comcast of Maryland, LLC cable television system in the Northern and Southern Territories of Prince George's County and prescribe certain terms and conditions to be included in a franchise agreement.

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### **Current Law/Background:**

The adoption of CR-2-1980 by the County Council established the boundaries of the Northern and Southern Territory for the grant of franchises concerning the operation of television systems within the County. By the enactment of CB-17-1999<sup>1</sup> the County Council granted a renewal of franchise (the "Existing Comcast Franchise Agreement") which was awarded to Jones Communications of Maryland, Inc., a Colorado corporation, and predecessor in interest to Comcast of Maryland, LLC ("Franchisee") to provide cable services within the County. The Existing Comcast Franchise Agreement was for a term of fifteen (15) years and a renewal is desired by the County and Franchisee, which is governed by the Federal Cable Act.

47 U.S.C. §546<sup>2</sup> of the Federal Cable Act specifies the informal and formal process of renewal of franchise agreements. The process to begin the renewal process is described below:

- (1) A franchising authority may, on its own initiative during the 6-month period which begins with the 36th month before the franchise expiration, commence a proceeding which affords the public in the franchise area appropriate notice and participation for the purpose of (A) identifying the future cable-related community needs and interests, and (B) reviewing the performance of the cable operator under the franchise during the then current franchise term. If the cable operator submits, during such 6-month period, a written renewal notice requesting the commencement of such a proceeding, the franchising authority shall commence such a proceeding not later than 6 months after the date such notice is submitted.
  - (2) The [cable operator](#) may not invoke the renewal procedures set forth in subsections (b) through (g) unless—
    - (A) such a proceeding is requested by the cable operator by timely submission of such notice; or
    - (B) such a proceeding is commenced by the franchising authority on its own initiative.
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<sup>1</sup> [CB-017-1999](#) Note: CB-022-2023 references "Council Resolution CR-17-1999" on page 1, line 11 in error; this should be changed to "Council Bill CB-17-1999."

<sup>2</sup> [47 U.S. Code § 546 - Renewal](#)

### **Resource Personnel:**

- Tracy M. Benjamin, Principal Associate County Attorney, Office of Law
  - Lakisha Pingshaw, Project Management Office Manager
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### **Discussion/Policy Analysis:**

#### *Provisions of CB-022-2023:*

The proposed Bill would renew the nonexclusive right to construct and operate a cable television system along the public rights-of-way of the County within the Northern and Southern Territories as established in Council Resolution CR-21-1980 to Comcast of Maryland, LLC for an additional period of 10 years. outline the terms of the agreement between the County and Franchisee. By memorandum to the Council Chair dated January 3, 2023, the County Cable Television Commission indicated that it had reviewed the Cable Franchise Agreement (the Agreement), had held a public hearing regarding the Agreement, and approved of the Agreement and recommended the County Council's adoption of the Agreement."<sup>3</sup>

Key provisions within the Agreement are as follows:

**Section 7.1** Franchise Fee Payments of the agreement outlines the Franchise Fee of five percent (5%) of annual Gross Revenue, which will be paid on a quarterly basis that must be made no later than thirty (30) days following the end of each of Franchisee's fiscal quarters. The twelve (12) month period applicable under the Agreement for the computation of the Franchise fee shall be made on a calendar year basis in accordance with Title VI of the Communications Act<sup>4</sup>. According to this Agreement the Franchisee will be able to submit or correct any payments that were incorrectly omitted in relation to the quarterly Franchise fee remittances within ninety (90) days following the close of the quarter for which such payments were applicable. The Franchisee will also be refunded any payments that were incorrectly submitted.

**Section 7.4** Audit of the agreement details the right of the County to audit the Franchisee's Franchise fee payments according to the Section 5A-111(f)<sup>5</sup> of the County Code. The audit fees under this Agreement will not be determined based on a percentage of audit findings basis. The Agreement also states that participating municipalities can join in audits conducted by the County by having the County's auditor audit franchise fee payments to them. Any of the County's audit expenses will be borne by the County unless the audit finds an undisputed underpayment of more than five (5%) percent of any quarterly payment, which would require the County's out of pocket costs of the audit to be borne by the Franchisee. The cost being borne by the Franchisee shall be viewed as a cost incidental to the enforcement of the Franchise, however the Franchisee's

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<sup>3</sup> [Cable Television Commission agenda, December 28, 2022](#)

<sup>4</sup> [1934 Communications Act](#)

<sup>5</sup> [Sec. 5A-111. - Franchise fee.](#)

obligation to pay or reimburse the County's verified audit expenses will be limited to an aggregate of fifty thousand dollars (\$50,000) per audit. Concerning any additional undisputed amounts due to the County because of an audit, the rest of the section states that:

- Any additional undisputed amounts due to the County as a result of the audit shall be paid within thirty (30) days following written notice to Franchisee by the County of the underpayment, which notice shall include a copy of the audit. If recomputation from an undisputed amount result in additional revenue to be paid to the County, Franchisee shall pay any applicable penalties and interest charges computed from such due date, as provided for in the Cable Code.

**Section 7.6** of the agreement addresses that there are no limitations on the County's ability to impose taxes, fees, or assessment of general applicability. The section also clarifies that any Franchise fee payments required by the Section will be an addition to any and all taxes of a general nature or other fees/charges the Franchisee is required to pay. Under the Agreement the Franchisee will not have to make a claim for any deduction or credit of all or any part of the amount of Franchise fee payments from or against any County taxes or other fees/charges the Franchisee is required to pay to the County. The Franchisee will not be allowed apply or seek to apply any of the Franchise fee payments as a deduction or other credit against any County taxes or other fees/charges. The Franchisee is also not allowed to apply or seek to apply any applicable taxes or other/charges as a deduction or other credit from or against any of its Franchise fee obligations. The Franchisee can designate a Franchise fee as a separate item in any bill to a Subscriber but cannot designate or characterize it as a tax.

**Section 9** of the agreement relates to the provisions regarding any efforts by the County to review Reports and Records related to the Cable System and the Cable Service provided by the Franchisee. Specifically, **Section 9.1** states regarding Open Books and Records that in no less than thirty (30) days, during Normal Business Hours or on a nondisruptive basis at a mutually agreed location, the County has the right to require the Franchisee to provide and to inspect and copy all books and records. The books and records would include electronic media ("books and records") if they relate to the Cable System and the Franchisee's provision of Cable Service in the Franchise Area, which must align with the goal to monitor and/or ensure compliance with the terms of the Agreement. During this process the County shall provide notice that specifies the purpose of the review to allow the Franchisee to organize the necessary books and records. Any books and records not related to the provision of Cable Services in the County are not required to be disclosed by the Franchisee and extends to for any of its Affiliate's books and records. The Franchisee will only be obligated to provide information only in the form in which it is maintained in the ordinary course of business. Under the Agreement the Franchisee has the right to seek relief from a court if it believes a request by the County does not comply with this section or Applicable Law but does not allow the Franchisee to withhold information without doing so.

In addition to the sections mentioned above there are other aspects of the Agreement worth highlighting. **Exhibit A** of the Agreement that covers the right of the County and Participating Municipalities to have a right of use of an institutional network ("C-Net") constructed by Comcast of Maryland, LLC. C-Net is partially funded by Participating Municipalities and through a capital

equipment grant provided by Comcast. Under the Agreement the County and Comcast have agreed that the Federal Communications Commission's ("FCC") 3<sup>rd</sup> Report and Order on Section 621 of the Cable Act provides Comcast with the right to collect a fee for the C-Net. It is also agreed that the County and Participating Municipalities are allowed free use of the C-Net. Specifically, it is agreed to:

1. that the County's and Participating Municipalities' financial obligations around the C-Net shall be limited to the amounts set forth herein;
2. that the County's and Participating Municipalities' claims as to the ongoing use of the C-Net shall terminate at the end of this Settlement Agreement; and
3. that Comcast agrees solely for the limited purpose of this settlement agreement that fees as set forth herein may be treated by the County and all municipalities identified in Exhibit C of the Franchise Agreement as PEG capital expenses; and
4. that Comcast shall not offset costs related to the C-Net from franchise fees pursuant to the FCC's 621 Orders; and

The County's access to and use of the C-Net is managed by the Prince George's Intergovernmental Network Community Coordinating Committee ("PGINCCC").

**Exhibit D** of the Agreement outlines the process for the responsibility of the Franchisee to extend Cable Service to potential Subscribers in a Franchise Area deemed a "Low Density Area" according to Section 3.2 of the Agreement. One or more potential Subscriber must request extended Cable Service to the Low-Density Area. The cost of the extension or the total construction costs ("TCC") is then calculated and must be agreed to by the potential Subscriber(s). **Exhibit E** lists the Public, Educational, and Governmental ("PEG") channels that will be provided. The channels to be provided are shown below:

**PEG CHANNEL LISTING (HD Channels to be so marked)**

CHANNELS*	DESCRIPTION
69 / 1082	Countywide Public Safety Channel
70 / 1080	Countywide Government Channel (Council)
71 / 1081 HD	Narrowcast Municipal Channel
72 / 1072	Countywide University of Maryland
73 / 1073	Countywide University of Maryland Global
74 / 1074	Countywide Bowie State
75 / 1075 HD	Countywide Prince George's Community College
76 / 1070	Countywide Public Access – CTV
77 / 1077	Narrowcast Municipal Channel
78 / 1078	Narrowcast Municipal Channel
96 / 1079	Countywide PG County Public Schools

**\*New channel numbers effective July 26, 2022.**

**Exhibit G** clarifies the minimum customer service standards that the Franchisee must satisfy. The Franchisee must also comply with additional requirements established by applicable federal<sup>6</sup> and state law or regulation, including consumer protection laws, the requirements of the Cable Code,

<sup>6</sup> FCC Customer Service Standards - 47 C.F.R. §§ [76.309\(c\)](#), [76.1602](#), [76.1603](#), and [76.1619](#)

and Section 5A-109<sup>7</sup> of the County Code. Under the Agreement there will be no increases in rates or charges unless each Subscriber potentially effected by the increase is notified at least thirty (30) days in advance of the change. The Franchisee must also provide oral or written notification of any pending increases to rates and charges to any Person requesting Cable Service. The oral and written notification requirement also applies to a Subscriber after any approval of increases to rates and charges but before any rate increase becomes effective. The Franchisee must also employ an operator or maintain a telephone answering device twenty-four (24) hours per day, each day of the year, to receive Subscriber complaints. It will also be the responsibility for the Franchisee to establish maintenance service to address System Outages, maintain a publicly listed, toll-free number for Subscribers to request service calls, maintain an emergency system maintenance and repair staff.

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**Fiscal Impact:**

- *Direct Impact*

Enactment of CB-022-2023 will have a favorable fiscal impact in the form of franchise fees paid to the County. Council staff has been advised by Executive branch staff that the franchise fee terms are essentially the same as in the franchise being renewed.

- *Indirect Impact*

Enactment of CB-022-2023 is not likely to have an indirect fiscal impact on the County.

- *Appropriated in the Current Fiscal Year Budget*

No

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**Effective Date of Proposed Legislation:**

The Act shall take effect forty-five (45) days after it becomes law.

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If you require additional information, or have questions about this fiscal impact statement, please reach out to me via phone or email.

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<sup>7</sup> [Sec. 5A-109. - Consumer protection.](#)