PROPOSAL TO PERFORM

CABLE FRANCHISE RENEWAL SERVICES

submitted to the

VILLAGE OF CROTON-ON-HUDSON

by the

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TABLE OF CONTENTS

I. INTRODUCTION

The Cohen Law Group ("CLG") welcomes this opportunity to submit a proposal for legal services to assist the Village of Croton-on-Hudson (the "Village") in cable franchise renewal with Altice U.S.A ("Altice"), formerly Cablevision of Wappingers Falls, Inc. The Village's current franchise agreement with Altice will expire soon.[1] As such, now is the time to begin the franchise renewal process.

Franchise renewal is the best opportunity for the Village to obtain significant benefits and assert its legal rights with its cable operator. As described in this proposal, we recommend that the Village: 1) **conduct a franchise fee audit** of the Altice to ensure that the Village has received all the franchise fee revenue to which it is entitled; and 2) **negotiate a new franchise agreement** with Altice that addresses the changes since the last franchise and secures increased financial and in-kind benefits, as well as legal protections for the Village.

There have been dramatic changes in video technology since the commencement of the Village's current cable franchise agreement, including the expansion of digital technology, increased high definition (HD) format, the growth in video-on-demand programming, and, perhaps most important, the introduction of internet-based video services (also referred to as video streaming) such as Netflix, Hulu, Paramount and Disney+.

In addition, there have been major changes in the franchise operations of the cable operator. First, the Village has had a new incumbent cable operator since 2016, when Altice acquired Cablevision. Second, Altice is experiencing more competition today than when it when it took the system over from Cablevision. Finally, there have been important recent changes in federal law and regulations applicable to cable franchising. For example, in 2019 the Federal Communications

1 Specifically, the Village's current Altice agreement will expire on May 29, 2025. Note that this expiration date does not take into account the date of the certificate of confirmation by the New York Public Service Commission.

Commission ("FCC") issued its *Third Report and Order,* which made fundamental changes to the cable franchise process and the benefits available to municipalities.

Municipal officials have two critical roles when it comes to renewing (or, in the rare circumstance, not renewing) a cable franchise. First, they are effectively the landlords of their cable company. The cable company utilizes the municipality's public rights-of-way to operate its cable system. Municipal officials manage those rights-of-way as a public trust and are entitled under law to a fair return for the cable company's use of those public properties.

Second, municipal officials have an obligation to protect and advance the interests of their residents. This means not only getting the best possible services from the cable operator today, but also doing everything possible to prepare for the future. Video technology changes very rapidly. A cable franchise agreement must provide for the benefits available from existing technologies as well as those that may become available from future technologies.

The Cohen Law Group is uniquely qualified to represent the Village in a franchise fee audit and franchise renewal negotiations with Altice. For 26 years, our firm has specialized in cable franchise matters on behalf of local governments, and we have negotiated more franchise agreements than any other law firm in New York and surrounding states. We have represented over 500 local governments in six states in negotiations with their cable companies. These include many in New York State. We have also negotiated many franchise agreements with Altice. We know the negotiator that the company has assigned to the Village. We also know Altice's franchise policies and its negotiating tactics.

The principal of the firm is Dan Cohen. He has assisted local governments in cable, wireless, and broadband issues for over 26 years. He was recently a Board member and Co-Chair of the Policy & Legal Committee for the National Association of Telecommunications Officers and Advisors (NATOA), which is the national organization that advocates for local governments in these fields. Aside from his credentials as a telecommunications attorney, Mr. Cohen is especially qualified to represent municipalities, because he was a municipal official himself. As a member of the Pittsburgh City Council for 12 years prior to founding CLG, he understands the practical needs and the financial constraints facing municipal officials. In addition, CLG has a strong and collaborative team that includes attorney Stacy Browdie, attorney Phil Fraga, attorney Joel Winston, attorney Mike Roberts, and Office Manager Victoria Novak.

CLG has developed a three-step approach to cable franchise renewal projects. The first is to identify the client's specific needs. Since needs often become better defined as the negotiation progresses, we maintain flexibility throughout the process to achieve a franchise agreement that accomplishes the client's specific goals. Second, we negotiate firmly and deliberately with the cable operator in order to reach agreement in a timely fashion. Finally, we work efficiently to achieve results that are cost effective for the client. We are keenly aware of the fiscal constraints facing municipalities today, and we focus on keeping our attorneys' fees as low as possible.

II. POTENTIAL FRANCHISE BENEFITS

There are significant benefits available to the Village in negotiating a new cable franchise renewal agreement. The key to receiving these benefits is to know the laws and regulations relating to each benefit and to negotiate from strength to obtain them from the cable operator. The following is a list of some of the more important potential benefits. We have also reviewed the Village's current agreement with Altice and offer a brief assessment in **bold** of the corresponding benefits in that agreement where applicable.

1. **Franchise Fee Revenue.** Under federal law, the Village may assess a franchise fee of up to 5% of the cable company's "gross revenues"

for cable services derived from the Village. 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 that now includes 27 eligible revenue sources. The Village's current franchise agreement with Altice includes only 13 of those revenue sources. The addition of new revenue sources to the definition of "gross revenues," absent other factors, will increase franchise fee revenue to the Village.** Please note that franchise fees are passed through to cable customers as a separate line item on their bills.

2. **Franchise Fee Accountability.** In addition to franchise fee revenue, it is also important for the Village to require franchise fee accountability. In a franchise agreement, these include: detailed franchise fee reports with each payment; the right to conduct franchise fee audits with a reasonable "look back" period, fair audit process and penalties for underpayments; and protections against franchise fee reductions due to bundled service discounts (referred to as the "triple play" of internet, television, and telephone services). **The Village's current agreement has virtually no accountability measures, including none of the protections described above.**

3. **Customer Service Standards.** In a franchise agreement, municipalities may impose customer service standards on a cable operator. It is important to include comprehensive and enforceable

standards, such as telephone answering time limits for cable company operators, refunds for service interruptions, appointment windows for technician visits, and procedures for resolving customer billing disputes. **The Village's current agreement has a vague reference to federal and state standards, but has no specific or enumerated requirements. There is also no practical enforcement mechanism.**

4. **Legal Protections of the Rights-of-Way.** Because cable companies place wires and equipment in the public rights-of-way, it is critical that the franchise agreements include legal protections for the Village. These protections include, but are not limited to, repair and restoration of property damage within a specified timeframe, emergency removal of equipment, permitting process for work in the rights-of-way, indemnification, and full insurance coverage. **The right-of-way provisions in the current Altice agreement are fair, but could be strengthened to protect the Village.**

5. **Public, Educational and Governmental (PEG) Channel.** Municipalities have a right under federal law to dedicated channel space for public, educational and governmental ("PEG") programming. Based on our discussion with the Village Manager and the agreement we reviewed, the Village has one Governmental Channel. **We recommend that the renewal agreement include key additions that include, but are not limited to, the following: 1) high definition (HD) format; 2) return line maintenance and relocation**

protections; 3) technical quality equal to that of commercial channels; 4) electronic programming titles; and 5) "rebranding" funds if a channel is relocated on the channel lineup.

6. **PEG Cash Grant.** Cable operators are required under law to meet the Village's "cable-related needs," including capital support for its PEG channels. **The current Altice agreement includes a grant of $13,500. Depending on the Village's PEG financial needs and its ability to document those needs, it may wish to work with CLG prepare a PEG needs assessment to substantiate the Village's grant request to the cable operator.**

7. **Free Services.** It is common in a franchise agreement for cable companies to provide complimentary cable service to municipal facilities, schools, and libraries. The major subject of negotiation is typically the number and specific community facilities that will receive the service and the level of service received. Please note that this benefit will be significantly impacted by the FCC's 2019 *Third Report and Order* and the Sixth Circuit Court decision on the *Order.*

8. **Competitive Equity.** A key issue in the negotiations will be competitive equity between Altice and any future cable and internet provider. This includes not only similar (but not necessarily the same) "business terms" in the agreements, but also a competitive equity provision that protects the Village. **The current agreement has an unduly restrictive competitive equity provision that could**

undermine potential cable and internet competition in the Village. This provision needs to be renegotiated.

9. **Enforcement.** Once the cable operator agrees to certain benefits for the Village through franchise renewal, the Village must be able to enforce these obligations. Practical enforcement tools are needed to ensure that Altice meets its contractual obligations. These include daily monetary fines (also known as liquidated damages), a substantial performance bond, and the right to revoke the franchise in extreme circumstances. **The current agreement does not include monetary fines or a performance bond. It is effectively unenforceable.**

10. **Length of Term.** Because video technology changes rapidly, municipalities typically seek a shorter length of franchise term. Cable companies typically seek longer terms to protect their capital investment in the cable system. The length of the franchise term is a negotiable issue.

III. SCOPE OF SERVICES

The following is the scope of services that the Cohen Law Group will perform if hired to assist the Village of Croton-on-Hudson in franchise renewal negotiations with Altice.

A. Preliminary Setting of Priorities

We will first arrange a virtual meeting or conference call with Village officials to kick off the project. We will describe the franchise renewal process, including both the formal and informal processes in the federal Cable Act. We will inform Village officials of their legal rights, including the areas in which they have legal authority and those areas in which their authority is limited. We will outline the potential benefits to the Village and solicit the concerns of Village officials with respect to the cable operator. Finally, we will prepare a public notice and written talking points for a public hearing on cable franchise renewal that is required by federal law.

B. Franchise Fee Audit

During the preliminary stage, we recommend that the Village perform a franchise fee audit of Altice. CLG performs such audits on a regular basis. In 2021-23, we performed over 120 franchise fee audits and discovered underpayments approximately 65% of the time. The Cable Act authorizes municipalities to assess up to 5% of the cable operator's "gross revenues" for cable services derived from the Village. "Gross revenues" consists of many distinct revenue sources. We will prepare a written Request for Information and Documents ("RFID") to Altice for specific franchise fee financial information relevant to the Village. CLG will then:

- Make a determination of all eligible revenue sources for the Village based upon the definition of "gross revenues" in the current agreement.
- Review Altice's supporting documentation for franchise fee revenue, including quarterly spreadsheets, worksheets, and other revenue reports for the Village.
- Identify the revenue sources that Altice has included in its franchise fee documentation. Determine whether the cable operator has applied the fee to all eligible revenue sources. Identify any revenue sources to which the municipality is entitled, but which the cable operator did not include in calculating "gross revenues."
- Ensure that all eligible revenues recorded in Altice's financial records are accurately included in the franchise fee payments in accordance with the Village's agreement.
- Determine whether non-subscriber revenues, such as advertising and home shopping commissions, which are typically recorded on a regional rather than a local basis, have been properly calculated and properly apportioned to the municipality.
- Review certain special revenue sources, such as "trouble call" fees and franchise fee-on-fees, to determine proper inclusion in franchise fees for the time period.
- Ensure that "bundled service" revenues (i.e. revenues applied to cable, internet, and phone services) have been accurately apportioned to cable service, which is the only service that may legally be subject to the franchise fee.

- Obtain a "homes passed list" from Altice for the Village to determine whether the cable operator is properly coding all cable customers to the correct municipality. This includes asking the Village to compare the homes passed database against its residential database for possible errors.

- Re-perform certain cable operator calculations determining franchise fee revenues for the period under review. These calculations include, but are not limited to, figures underlying the amounts reported for revenue sources on specific items comprising general franchise fee categories such as "miscellaneous revenues."

- Ascertain trends of major revenue categories to spot discrepancies and/or inconsistencies in the reporting of revenues over time and making inquiries with the cable operator to explain such discrepancies and/or inconsistencies.

- Determine whether there are franchise fee underpayments to the Village for the period under review, the amount of any underpayment, and whether any penalties and/or interest apply in accordance with each municipality's franchise agreement.

Our investigation includes follow-up requests for further information and discussions with the cable operator. Once the audit is completed, we will prepare a report that summarizes the results of the audit, including any franchise fee underpayments, describes the areas of inquiry, and provides charts showing subscriber and revenue trends. While CLG is fully qualified to file legal action against the cable operator to collect underpayments, the flat fee for this project does not include litigation (or mediation or arbitration). Such actions would require a separate engagement.

C. Drafting of Proposed Agreement

After the setting of priorities stage is completed, we will draft a proposed franchise agreement that provides the Village with the benefits and legal protections to which it is entitled under current law and technology. The agreement will include the results of the setting of priorities stage above, as well as our judgment as to the provisions that would advance the Village's interests and meet its future cable-related needs. We will submit the draft agreement to the Village for informal review and comment before presenting it to representatives of Altice.

If requested, we will also work with Village officials to prepare a PEG needs assessment for presentation to Altice. The assessment would include a narrative about the current programming and future plans for the PEG channel(s). It would also include a list of equipment and facility needs for the channel(s) along with the costs of each. There would be an additional fee for preparing a PEG needs assessment as detailed in Section VI below.

C. Negotiation with Altice

The most important stage in the process is negotiating a franchise renewal agreement with Altice. The working document for these negotiations will be the agreement drafted by CLG and informally approved by the Village. We will preserve the Village's rights under the formal process, negotiate under the informal process outlined in the federal Cable Act. The negotiation typically consists of conference call negotiations with the cable operator representatives, status conferences with the client, revisions of the proposed franchise agreement, redrafting specific franchise agreement provisions, and editing the final draft of the cable franchise agreement.

D. Consideration by the Board of Trustees

After tentative agreement with Altice has been reached on a franchise renewal agreement, CLG will report to the Village on the substantive provisions of the deal. Specifically, we will present the Village with the final cable franchise agreement (and any side agreements) negotiated by the parties and recommended by CLG. We will also draft an executive summary of the major provisions of the final agreement. Finally, we will draft a recommended resolution authorizing approval of the agreement for consideration by the Mayor and Board of Trustees.

IV. PROFESSIONAL BACKGROUND

For 26 years, the Cohen Law Group has specialized in representing local governments in cable, wireless, and broadband matters. Collectively, our attorneys have worked on cable franchise issues on behalf of local governments for over 70 years. CLG has represented over 500 local governments in six states in negotiations with cable companies. These include many local governments in New York State. We have also negotiated many franchise agreements with Altice. CLG's full array of legal services includes the following:

- Drafting cable franchise agreements
- Cable franchise renewal negotiations with cable companies
- Franchise fee audits
- Cable compliance reviews
- Drafting wireless facilities ordinances and design standards
- Negotiation with cellular tower and antenna companies
- Wireless facility litigation
- Drafting of right-of-way ordinances and development of right-of-way fees
- Right-of-way management and enforcement
- Pole attachment negotiations with cable and telephone companies
- Broadband expansion planning and implementation

As an active member of the National Association of Telecommunications Officers and Advisors (NATOA) and other related organizations, CLG stays current with frequent changes in cable, wireless, and broadband law. CLG attorneys have written many articles on these issues and have been frequent speakers at municipal conferences. Dan Cohen was a Board Member of NATOA from 2018-21 and Co-Chair of its Policy and Legal Committee from 2021-22.

Prior to providing professional counsel to municipalities on cable and telecommunications matters, Dan Cohen served as an elected municipal official for 12 years on the Pittsburgh City Council. He served as Chair of Council's Cable Television Committee for 10 years and also sat 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. In addition to Mr. Cohen, CLG has a strong and collaborative team that includes attorney Stacy Browdie, attorney Phil Fraga, attorney Joel Winston, attorney Mike Roberts, and Office Manager Victoria Novak.

IV. COST OF SERVICES

The following represents CLG's proposed cost of services to conduct a franchise fee audit and cable franchise negotiations with Altice. We propose to perform these services on a flat fee basis, because our significant experience in performing these projects over many years lends predictability to our efforts on behalf of the Village. In addition, a flat fee provides the Village with "price certainty." Our flat fees, before the discount as described below, is as follows:

Flat Fee for Franchise Renewal Negotiations with Altice: $9,900

Flat Fee for Franchise Fee Audit of Comcast: $6,500

The total fee for franchise renewal for both projects is $16,400. If the Village engages our firm for both projects, **<u>we will apply a 10% discount such that the total flat fee would be $14,760</u>**. **This flat fee includes all expenses except travel expenses if needed**. Our billing policy is to bill one-third of the fee for at the beginning of the total project, one-third at the middle of each project, and one-third at the conclusion of each project. As discussed in Sections II and III above, should the Village wish CLG to prepare or coordinate a PEG needs assessment to present to Altice for PEG funding, an additional flat fee of $1,920 would be charged for CLG to obtain the relevant information and draft and/or review a PEG needs assessment report.

The fee does not include work requested outside the scope of services in this proposal or any significant unforeseeable developments. In the event of such developments, we would contact the Village to discuss such them prior to rendering such services. If such services are authorized, CLG would charge a fee of $320 per hour. While it is not expected that travel will be necessary for this project (and is not included in the flat fee), if requested, our travel rate is one-half of our standard rate or $160 per hour. Thank you for the opportunity to submit this proposal.