CABLE FRANCHISE RENEWAL FACT SHEET

What does the cable franchise renewal process involve?

The formal franchise renewal process is one of administrative litigation. The process itself is spelled out in federal law in Section 626 of the Cable Communications Policy Act of 1984 (the "Cable Act"), and it is designed to protect the rights of the incumbent cable provider while also ensuring that a community's current and future cable-related needs and interests are satisfied, taking cost into consideration. Formal franchise renewal begins with the cable provider notifying the franchising authority of its desire to renew its cable franchise agreement. The franchising authority then begins by evaluating the cable provider's performance under the existing franchise, including the engineering of the cable system, and by ascertaining the cable and communications needs of the community. This typically involves hiring experienced engineering, legal, financial and ascertainment consultants and can take 6 to 12 months (or more) to complete. The franchising authority then may request that the cable provider submit a proposal showing how it will meet the needs identified in the ascertainment. The formal process also requires public input on the cable provider's past performance and on the needs ascertainment

While federal law also permits the use of informal franchise renewal negotiations with the cable provider at any time (including simultaneously with the formal process), a franchising authority must be prepared to follow the requirements of the formal process because either side may choose to return to that process at any time during the renewal proceedings. **Typically, renewal proceedings alternate between the formal and informal processes several times.**

Can we negotiate with more than one cable provider?

Federal law requires that franchise agreements are non-exclusive. In other words, another company other than the incumbent can apply for and receive a cable franchise. That having been said, cable system overbuilds are not common because the new provider must invest a significant amount of money in the construction of a network with no customer income until the new system is built. In the meantime, the incumbent controls 55-60% of the market, and satellite providers have most of the rest. Overbuilding is a very difficult and expensive proposition requiring very deep pockets and long-term commitment. In recent years, the only providers that have tried overbuilding are the major traditional telephone companies: Verizon and AT&T. However, both have halted all new construction in order to concentrate on the systems they have already built. Meanwhile, the other major traditional telephone company -- Qwest -- has shown no credible interest in constructing an advanced wireline network that can compete with an existing cable system.

Can we simply extend the existing cable franchise?

This is a possibility, although the incumbent provider is not likely to want to do so. A typical goal of providers in franchise renewal is to eliminate and/or trim back obligations in the current franchise agreements, including the Institutional Network, the number of public, educational and government (PEG) access channels, and the financial support of those channels. Nevertheless, the franchising authority may explore that option with the company.

<u>Why is the franchise renewal process so complicated and difficult?</u>

First, cable franchising and renewal law is very complex, involving the interplay between federal, state and local laws and regulations with 30-40 years of legal and legislative history. It also is constantly changing and evolving. Second, the cable companies have attorneys and staff that are experts in cable franchise renewal negotiations. Success on the local government's side depends on having equally knowledgeable staff and legal counsel, devoting adequate resources to the renewal process, and maintaining the support of elected officials.

<u>Why does the cable company need a cable franchise?</u>

The cable company is required by both federal and state law to secure a franchise from the local government - typically a city, but the franchising authority can also be a collection of cities or a county - in order to provide cable television service using public rights-of-way. Furthermore, some states have removed the authority of local government to grant the franchises and the franchises are generic in nature and issued by a state agency. The franchise allows the cable provider to build its cable network in the public rights-of-way without having to negotiate with every property owner. In return for a franchise to use the rights-of-way, which are scarce and valuable public property, the cable provider pays a franchise fee, capped by federal law at 5% of gross revenues, and usually has obligations to provide channel capacity and financial support for public, educational and government access channels and to provide an Institutional Network for local government use.

<u>Why should we bother with franchise renewal when all television is moving to the Internet?</u>

Although a lot of video, including many traditional television programs, is now available over the Internet, it will be many years before <u>all</u> television programming currently distributed via cable and satellite providers is available over the Internet. Further, we have not seen any of the traditional programming networks abandon cable and satellite distribution to date, nor have new programming networks abandoned cable for satellite- and Internet-only distribution. Therefore, given the state of the industry, technology and the market, local franchising authorities and cable providers must work with the laws and regulations that are currently in place.

<u>Can a renewal request be denied?</u>

Yes, both legally and practically. Although most communities do eventually renew the incumbent cable operator's franchise, several communities have successfully denied renewal. The Cable Act permits a community to deny renewal if past performance has been inadequate; or if the incumbent operator is legally unqualified or is unwilling or unable to devote the necessary technical skills and financial resources to the community; or if the operator is unwilling to reasonably satisfy the future, cable-related needs and interests of the community considering the cost of meeting those needs and interests.