

**THE VALUE AND IMPORTANCE OF CABLE TELEVISION FRANCHISE RENEWALS
AND THE PROCESS OF GATHERING INFORMATION
AND SUPPORT FOR LOCAL REQUIREMENTS**

We frequently receive questions concerning the local government role in franchise renewal. We are asked if the local government can realistically achieve a benefit from having a process to study and evaluate community needs.

The uncertainty of local officials is generally the result of not knowing their rights and not having past experience in negotiating a new cable franchise. We have listed below answers to questions and highlighted many of the important considerations to have in deciding a process for cable franchise renewal. Additionally, we have highlighted some of the subject areas in which local governments have the legal right to establish requirements.

Questions and Answers and Important Considerations

- It has been our experience that having a process to gather information and community support will enhance the local government leaders chances for achieving significant local benefits for their community in a renewal franchise.
- Cable operator's and their attorneys handle franchise renewals daily and are seasoned negotiators, although the Municipality may not have dealt with a franchise renewal for 10 or 15 years, with a little assistance and planning the Municipality can level the playing field and be ready to negotiate effectively with its cable operator.
- Cable operators often pursue a strategy of dragging out renewal negotiations until the local government body runs out of money or political will. They also pressure smaller communities into accepting a franchise that the operator has prepared which does not benefit or address the needs of the community. The community may have insufficient resources, the operator may have outgunned local staff or the community may be woefully unprepared to back up its demands.
- The most important factor in a franchise renewal is not the size of the local government but the degree of leverage, i.e., the type of information collected and how well it has been used to develop a plan.
- Why allocate adequate staff, resources/funding and time:
 - ◆ A franchise is granted for a long time, usually seven years or longer. Local governments need to address long term needs and interests and prepare for new technology and services.

- ◆ Franchise renewal is a very valuable asset or right for a cable operator, i.e., the use of the public rights-of-way for public profit. The local government is the steward or trustee of this asset for the public.
 - ◆ Compensation received by the local government in the form of franchise fees as well as compensation in the form of PEG access and/or I-Nets can be of considerable benefit to a community.
 - ◆ A local government that has adequate staff and resources and is prepared shows the cable operator that they are capable of taking steps to ensure or protect the community's cable needs and interests.
 - ◆ Although a needs assessment is not required under an informal process, it is advisable as it gives the local government leverage in negotiations with the cable operator and can be used in the formal process if necessary. It can identify public benefit requirements including capacity for government and educational use.
 - ◆ Will identify the value of and the needs and interests for local programming (PEG) and the level of funding, equipment and facilities a community will support.
 - ◆ If a local government decides to deny a renewal, it must have a solid record to back up the denial as it will be challenged.
 - ◆ A franchise renewal can be an opportunity to create an agreement that has positive long term effects on a community, an opportunity that is only available for a short time.
- The federal Cable Act provides the cable operator with a presumption of renewal. Therefore, the burden is on the Municipality to prove either that the cable operator does not have the financial, legal or technical qualifications to continue being the franchisee or that what the cable operator proposes does not meet the Municipalities' future cable-related community needs and interests. To address this burden, the Municipality needs to create a public record to support its decisions including proposed franchise requirements. For example, if there is a history of customer service problems, the Municipality can justify requiring enhanced customer service provisions in the franchise agreement.

Creating a Record

- Key Elements:
 - ◆ Customer Service: Locate and organize the Municipalities' information on what the public says about cable television services through citizen's complaints and the resolution of those complaints.
 - ◆ Franchise Compliance: Review the existing franchise and ordinance and determine if the cable operator is complying with each and every obligation due to the Municipality.

It is also important to track the obligations of the Municipality due to the cable operator and to determine if the Municipality is in compliance as well.

- ◆ **Surveys:** The cable operator as well as other cable operators routinely survey their subscribers and will use the results of these surveys to bolster their demands. If the Municipality has conducted surveys not only of subscribers, but non-subscribers, community leaders, and businesses and industries, it will be in a much stronger position to counter the cable operator's demands but to support its own requirements in a franchise negotiation.
- ◆ If the regional community channel and funding are a priority, it will be important to survey community interest and to demonstrate it is a service that is beneficial to the cable operator's subscribers. The cable operator needs to agree that it is an important part of its cable services and has an influence on local subscribership.
- ◆ **Public Hearings:** A public hearing(s) that is focused on the issues rather than one that is open-ended and allows the public to "come down and tell us how you feel" can be a source for important information relating to the renewal process. It is important to continue any public hearings until just before a decision about the franchise renewal is reached so that additional information can be considered.
- ◆ **Public Safety:** Often cable operators spend their capital dollars on programming and not on compliance with the various safety codes which define the safe construction and maintenance of a cable system. Cable system inspection often discloses a history of safety code violations and a record of these can assist the Municipality in determining if the cable operator has the legal, financial or technical qualifications to hold a franchise.
- ◆ **New Services/Technologies:** There are many new services and technologies just being introduced or soon to be introduced in many areas, it is important to ensure that the Municipalities' citizens have as modern and up to date system as possible and that these new technologies are used fairly, reasonable and safely.
- ◆ **Technical Standards:** The technical standards of the FCC only apply to analog channels. The FCC requires twice annual testing of systems, "Proof of Performance" testing. The results of these tests must be maintained by an operator for five years. A number of systems/operators either do not meet the FCC requirements or do not meet the FCC reporting rules. This again can speak to the issue of whether the cable operator has the legal, financial or technical qualifications to hold a franchise.
- ◆ **Franchise Fee Compliance:** A review of what the cable operator has claimed as revenue, whether all possible sources of revenue were included in the operator's figures and was the fee paid by the cable operator the fair and equitable amount due to the local government.

Important Subjects to Address in a Cable Franchise Renewal

Local government has the legal right to provide requirements for:

- The cable system design.
- The capacity of the cable system.
- Construction and safety requirements.
- The area served by the cable system.
- Will this cable system be extended to new areas of the City and how?
- How will the community needs be served in the future?
- Programming, both local and imported programming and new program services such as video-on-demand and interactive services. Note: Internet service has been classified as an “interstate information service” and not a “cable service.” However, it is a subject of discussion with cable operators.
- Notifications, instructions, and service changes.
- Public, educational, and governmental access channels, facilities and equipment and funding.
- Institutional network (connections between public buildings and/or school facilities with dedicated capacity and/or dedicated fiber).
- The customer practices of the cable company and location of customer service and technical personnel.
- Subscriber privacy.
- Complaint handling.
- The maintenance of the cable system.
- Enforcement procedures.
- Insurance and security for performance.
- Term of a franchise.
- Periodic review and evaluation.

- Discriminatory practices.
- Rates and charges.
- Franchise fee and identification of revenues. Verification procedure, i.e., audit.
- Reports and periodic community update.
- Changes in ownership and/or system sales.
- Emergency services.