

Cable Franchise Negotiation

January 2014

It has been brought to the League's attention by several of our members that cable companies are recommending cities either sign a document that allows them to perpetually offer cable services under the terms of existing franchises or enter into a new document prepared by the company that contains many provisions that are not in cities interest.

With few exceptions, the cable television renewal process has remained unchanged since it was enacted into law 20 years ago. The renewal process is governed in accordance with the Cable Act (47 U.S.C § 546). It is important for city officials to know and understand their rights in the renewal process. Below, Greg Fender with Local Government Services, LLC, has outlined several key items cities should carefully consider if approached by a company to enter into a cable/video franchise agreement.

1. **Franchise Fee.** Cities should pursue authority to impose up to the maximum 5% franchise fee on all gross revenues derived from the provision of services within the city consistent with 47 U.S.C. § 542.

- **Gross Revenue.** "Gross Revenues" should be broadly defined to encompass any and all revenue derived from the provision of cable/video services. In particular the definition should include the franchise/video service fee, FCC regulatory fee, late fees, home wire maintenance service revenue, advertising revenue, home shopping commissions, cable service revenue, equipment revenue and related revenue sources. We do not recommend cities use the term subscriber revenue or recurring revenue in the definition of Gross Revenue.
- **Bundled Services.** Language should be included in the Agreement to clarify that if a cable/video company offers voice, video and data services for one bulk fee, cities should still receive a 5% franchise fee on the amount of the bulk fee attributable to video services.
- **Fee Verification.** The Agreement should contain a provision allowing cities the right to verify franchise fee payments by conducting a review or audit of a cable company's books and records. Language should be included to permit such a review and to ensure that no limitation on the relevant state statute of limitation is applied (in Alabama that is 6 years). In other words, a cable company may want to limit the review period to 2-3 years - this type of limitation should be rejected.

2. **Grant of Authority.** The Agreement should clearly define what authority a city is granting regarding use of the right-of-way. This provision must be carefully drafted to ensure no waiver of rights by cities.

3. **Term.** Generally the term of an Agreement will extend between five and fifteen years. A ten-year Agreement term has become standard depending upon relevant state law issues.

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4. **Public, Educational and Governmental Channels (PEG).** Language should be included in the Agreement to provide sufficient capacity, connectivity and funding to support local PEG programming as may be desired by a City. These issues will vary depending upon the historical use of such channels within a community and in certain cases depending upon the size of the jurisdiction.

- **Channel Capacity.** Language should be included to ensure that sufficient capacity will be reserved for local PEG channels. Ideally cities should have the ability, should they so desire, to obtain a minimum of one channel regardless of historical use.
- **Capital Support.** If channel capacity is required in the Agreement federal law at 47 U.S.C. § 542 permits cities to obtain additional support for PEG capital purchases over and above the 5% franchise fee.

5. **Free Service to Buildings.** Language should be included to require the cable company to provide free basic and expanded basic services to various public facilities including police, fire, city hall, libraries, as well as educational institutions (K-12).

6. **Build Out.** The Agreement ideally should deal with some form of build out requirement whether it extends over several years or is based on various benchmarks.

7. **Customer Service Standards.** Generally most cable companies agree to comply with the FCC's customer service standards found at 47 C.F.R. §76.309. Ideally these standards should be incorporated by reference into the Agreement and, if possible, an exhibit should be added to the Agreement setting forth the customer services standards. These standards include everything from telephone response time to service installations and refunds to subscribers.

8. **Emergency Alerts.** Standard language should be included for an EAS in compliance with all federal and state requirements.

9. **Insurance and Indemnification.** Standard language should be included to provide adequate protection for cities as is typically included in any cable franchise.

10. **Right-of-Way.** The Agreement should include right-of-way protections within the Agreement clarifying how and when cable should be buried, collocation on facilities, restoration issues and other standard right-of-way protections.

This list is by no means complete but it does represent ten (10) key issues, which should be focused on during any negotiations with a cable or video service provider.

For additional information or assistance please contact the League's Legal Department at 334-262-2566 or Greg Fender with Local Government Services, LLC at 1-800-978-0071