

Cable License Renewal, Transfers, and Regulatory Process

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What's Been Happening in Renewal in the Past Year?

- Delays, roadblocks, and paralysis
- FCC 621 Order and related Court activities on license/franchise renewal
 - Order issued August 1, effective September 27
 - Court appeals filed by ACM, ACD, U.S. Conference of Mayors and a number of local governments
 - Stay of the order filed with FCC
 - Will be followed by a stay request to the Court
 - The Order (now in effect) may be stayed or overturned on appeal

What's Been Happening in Renewal in the Past Year?

- Principle features of the FCC Order:
 - PEG capital grants required by license/franchise do NOT count against the 5% franchise fee cap
 - But payments for PEG operations and the fair market value of “in-kind” contributions DO count against the 5% franchise fee cap
 - Including I-Nets and discounted municipal services
 - Order does not include value of channel capacity, but FCC promised to review this determination within the next year

Important to Remember!

- When drafting license/franchise language, do not box yourself in by making unnecessary concessions, giving away your right to take advantage of any court decision (or legislation) that overturns (in whole or part) the FCC's Order

Outline for Success

- **Build an educated renewal team**
 - Create license/franchise renewal leadership team
 - Include community leaders, PEG leadership, and City staff
- **Brief City officials & staff, CMC board, and community leaders on renewal basics, the anticipated process, and timeline**
 - Initial and ongoing
- **Determine information needed**
 - Past performance of the cable operator
 - Current and future community needs & interests
- **Determine ways to gather that information**
 - Research tools
 - Use multiple information-gathering techniques

Renewal Process

- **The Basic Law**

- 47 U.S.C. Sec. 521 et seq. (the “Cable Act”)
- State Law
- Local City Code/Charter, Cable Ordinances

- **Cable Act**

- Prescribes the renewal process (Sec. 546)
- Two processes: “informal” and “formal”

- **The following slide makes things simple....**

Key Elements of Franchise Renewal Process

- Starts 30-36 months before current franchise expires
- Requires franchise performance review of operator
- Community needs assessment
- Determine renewal goals and prepare draft Franchise Agreement
 - Must be based on needs assessment and past performance review
- Conduct an Informal Process -- Negotiations
 - Negotiations can take a year or more
- If negotiations reach an impasse, move forward with the issuance of a RFRP

Renewal: Past Performance/ Compliance Review

- **Past Performance Review activities include:**
 - **Franchise fee / financial review of cable operator**
 - **Franchise compliance review**
 - **Technical review of the cable system**
 - **Telephone survey or on-line survey -- customer service, PEG, other related issues**
 - **Public input gathered during needs assessment process**
 - **Reports that document the findings**

Needs Assessment Process

- Needs Assessment activities to identify current and future community needs and interests may include:
 - Community focus groups
 - Telephone survey
 - On-line community survey
 - Stakeholder meetings
 - Evaluation of current PEG access equipment, facilities, and services
 - Identify & recommend upgrades in facilities and services
 - Public hearing
 - Reports that document the findings of all activities and make recommendations

Renewal Process

Next Steps

- Determine renewal goals and prepare draft Franchise Agreement
 - Must be based on needs assessment and past performance review
- Conduct an Informal Process -- Negotiations
 - Negotiations can take a year or more
- If negotiations reach an impasse, move forward with the issuance of a RFRP and conducting the formal process
 - Occurs rarely – current example is North Dakota County Cable Commission, Minnesota

Key PEG-Related Franchise Provisions

- PEG Access Channels
 - PEG Access channels delivered in equivalent quality to local network and PBS affiliates
 - On lowest cost tier of cable service and HD tier (or most advanced tier)
 - Number of channels can be increased
 - PEG channels located in a consecutive or near consecutive “run” of channels
 - PEG channel locations cannot be changed without local approval, and then only for “must-carry” or technical reasons
 - PEG Video-on-Demand
- PEG channels and program listings on EPG/IPG

Other Key PEG-Related Franchise Provisions

■ Interconnection

- Between all cable operators serving the community
- Between adjacent cable systems
- PEG facility as interconnection point

■ PEG Signal Origination

- PEG master control
- Other locations for live origination
 - Town/City Hall
 - Schools
 - Other locations in community

Other Key PEG-Related Franchise Provisions

- Funding for PEG
 - Facilities and equipment
 - Replacement of facilities and equipment over life of franchise
 - Annual PEG support (for access services)

Key Franchise Provisions

Communities with PEG HD Channels

(More complete list available at www.thebuskegroup.com)

■ Massachusetts (RCN)

- Brookline, Burlington, Framingham, Lexington, Natwick, Newton, Needham, Revere, Somerville, Stoneham, Waltham, Weston

■ Massachusetts (Verizon)

- Easton, Framingham, Lakeville, Newton

■ Massachusetts (Comcast)

- Avon, Brockton, Easton, Longmeadow, Quincy, Raynham, Revere

■ Minnesota (Comcast)

- Minneapolis, St. Paul, Burnsville, Bloomington, Coon Rapids, Eagan, Hastings, North Suburban Communications Commission, North Metro Commission, Quad Cities Cable Communications Commission, etc.

Key Franchise Provisions

Communities with PEG HD Channels

(More complete list available www.thebuskegroup.com)

- **Burlington, Vermont (Burlington Telecom)**
- **Barre and 10 other communities, Vermont (Charter)**
- **Manhattan, NY (Verizon, Charter, RCN)**
- **Brooklyn, NY (Altice, Charter, RCN)**
- **Queens, NY (Charter, Verizon)**
- **Montgomery County, MD (Comcast, RCN)**
- **Washington, DC (Comcast)**
- **Philadelphia, PA (Comcast)**
- **Portland and Gresham, OR (Comcast)**
- **Vancouver, Renton & Seattle, WA (Comcast)**
- **Pasco & Richland, WA (Charter)**

Key Franchise Provisions

Communities with PEG Channels on EPG

(More complete list available www.thebuskegroup.com)

- **Portland, Maine (Charter)**
- **Newton, MA (RCN)**
- **Shrewsbury, MA (Shrewsbury Electric/Cable Co-op)**
- **Burlington, Vermont (Burlington Telecom)**
- **Barre and 10 other communities, Vermont (Charter)**
- **Manhattan, NY (Verizon, Charter, RCN)**
- **Brooklyn, NY (Verizon, Charter, Altice)**
- **Bronx, NY (Altice)**
- **Montgomery County, MD (Comcast, RCN)**

Key Franchise Provisions

Communities with PEG Channels on EPG

(More complete list available www.thebuskegroup.com)

- **Washington, DC (Comcast)**
- **Fairfax County, VA (Cox)**
- **Philadelphia and Pittsburgh, PA (Comcast)**
- **Kalamazoo, MI (Charter)**
- **Chicago, IL (Comcast & RCN)**
- **Minnesota (Comcast)**
 - **St. Paul, Burnsville, Bloomington, Eagan, St. Louis Park, etc.**
- **California (Comcast)**
 - **San Jose, Sacramento, Fresno, Marin County, Santa Maria, etc.**
- **Portland and Gresham, OR (Comcast)**

License/Franchise Transfer

- Cable operator will benefit from transfer (or would not be doing it)
- Franchise is a contract between the City and the cable operator
- Cable operator is required to comply with all contract terms
- Cable operator is asking for something only City can give

License/Franchise Transfer Federal Process

- No substantial Federal requirements for City to reject or approve transfer
- Certain procedures must be followed
- City has 120 days to act once it receives completed FCC Form 394 and information required by City
- If City doesn't act in 120 days, transfer is deemed approved
- Federal process includes procedures at FCC and Dept. of Justice or FTC

License/Franchise Transfer

■ Things to Consider

- Buyer's financial, technical, and legal qualifications
- Identify any noncompliance issues of seller and seek resolution of those issues
- Consider whether the effect of the transfer will reduce level of competition

■ Determine Terms/Conditions of Approval

- Evaluate options to cure franchise noncompliance
- Damages (if any) owed with regard to noncompliance

License/Franchise Transfer

- **Determine Terms/Conditions of Approval**
 - Address issues (if any) identified with review of FCC Form 394 and Asset Purchase Agreement
 - Evaluate conditions relating to past noncompliance of seller (known and unknown at time of sale)
 - Transfer Agreement
 - Buyer to abide by Franchise Agreement
 - Ongoing renewal negotiations at time of transfer
 - Can simplify or complicate the situation

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