

PLANNING FOR YOUR CABLE TELEVISION FRANCHISE RENEWAL

(Excerpted from The Cable Renewal Toolkit by Miller & Van Eaton)

A local government has enormous opportunities to enhance its public communications infrastructure and to advance the quality of life in the community through the cable television franchise renewal process. Some contend that the renewal process "is stacked against" cities. The experience of many communities suggests otherwise.

Recent renewals include:

- (1) substantial system upgrades;
- (2) substantial improvements in the quality of cable service;
- (3) contributions of television channels, facilities and equipment for local programming for and about the community;
- (4) advanced provider networks capable of supporting high speed Internet access; and
- (5) video, data and voice facilities that link schools, libraries and government buildings so that these institutions can communicate more efficiently with one another and with the public.

These benefits have been obtained in many communities without significantly increasing rates to consumers. A successful cable franchise renewal is not a matter of chance. Too many communities allow the cable operator to take control of the process. If a community fails to identify what it can and should obtain through the renewal process, the cable operator will have a large advantage.

SIX FREQUENTLY ASKED QUESTIONS

1. I understand that the federal law has a complicated formal process, and also an informal process. My operator wants me to ignore the formal process and just enter into negotiations. Is that a good idea?

It is generally not a good idea. Federal law does allow two ways to work a renewal: through a formal process, or by negotiated agreement. But the two processes can and should work in tandem.

The first step in the formal process is to identify future, cable-related needs and interests of the community and to review the past performance of the operator. By taking this first step, a community will obtain the information that it needs to be successful at the bargaining table, and it will be in a position to comply with the formal procedures if bargaining fails. An operator that suggests that you ignore this step often is seeking to bring the local franchise authority to the bargaining table before it has a good idea of community needs, and before it can understand or put itself in a good position to protect its interests.

2. Why can't I just kick my operator out of town and seek bids from others?

Federal law doesn't allow it. Under the federal Cable Act, the incumbent cable operator has special rights to consideration. If the operator activates the formal renewal process, it is protected against an arbitrary denial of renewal. A community has to go through certain steps and conduct certain proceedings before renewal can be denied. The process is not competitive. Renewal cannot be denied simply because someone else might be willing to offer more. An incumbent operator's past performance and proposal for future renewal must be evaluated on its own merits (or demerits).

3. Can a renewal request be denied?

Yes, both legally and practically. Although most communities do renew the incumbent'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 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).

4. How long does the renewal process take?

Communities usually devote one to three years, or more, to the renewal process. A longer period is possible but carries additional practical and legal risks.

5. What can I get through the renewal process?

Among other things, as part of the renewal process, you can ensure that the cable system is properly upgraded; require the operator to set aside channels for public educational and government use of the cable system, and require certain support for those channels (studios and equipment, for example). You can also require the operator to provide an institutional network providing, for example, a modem telecommunications link for schools, libraries and government.

A community can also ensure that any construction of the cable system proceeds in an orderly fashion, that all parts of the community can obtain service, and that the system is rebuilt in a reasonable period of time. The franchise term can also be established through the renewal process - renewals do not have to be for 15 years, and often are far shorter. In addition, as the renewal process proceeds, communities often will establish customer service standards; franchise fee requirements; procedures for reviewing operator performance and for ensuring that the operator continues to satisfy community needs throughout the franchise term.

There are some things that communities cannot do through the renewal process. Perhaps most importantly, a municipality cannot (1) require the operator to provide specific programs (a community should be able to establish channel capacity requirements); or (2) require the operator to provide service at a certain rate (other than the rate established consistent with federal regulations).

6. The operator tells me that anything I ask for will be passed through in rates. Is that right?

No, it is not. In communities that are regulating cable rates, an operator can pass through increases in its external costs to subscribers. Some franchise requirements, such as PEG and franchise fee requirements, are external costs, but not all are. In addition, because the operator is only entitled to pass through the increase in those costs, renewal franchise requirements do not necessarily result in rate increases, depending in part on what was required under the prior franchise. In several recent renewals, for example, operators have agreed that only a small part of the total renewal franchise requirements are eligible for rate pass-through under FCC rules. Moreover, the notion of a "passthrough" really only applies where rates are subject to rate regulation. If your operator is claiming a pass-through is necessary, ask for detailed information on its revenues and expenses. It is often rather simple to show that the community's needs and interests can be satisfied without raising rates.

Along with these questions and answers, you'll also find in the toolkit - Some basic descriptions of the renewal process; Four resources; Seven Hot Renewal Issues; What's hot and what's not? We've pinpointed some key issues that are arising in the renewal process. Finally, if you're interested in the results of recent renewals, we've described a few. Every renewal is different, and every community has different needs and interests. It is possible to satisfy the needs and interests of your community - if the community puts the effort into the renewal process.

Resources: For a copy of the Cable Renewal Toolkit,
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