

## **CABLE TELEVISION FRANCHISE RENEWAL**

Many things have changed since your community entered into its original cable television franchise agreement or last renewal agreement – rebuilds and digital technology have increased channel capacities, new services are offered, and the calculation of franchise fees and grants for public and governmental programming have changed. Though most communities in larger metropolitan areas have already renewed their original cable television franchises, some communities in and around smaller cities are only now being faced with the expiration of their original 15 or 20 year franchise. You should expect the franchise renewal process to begin 2-1/2 to 3 years prior to expiration of the existing franchise. The federal Cable Act (47 U.S.C. §521, et seq.) grants significant rights and protections to cable television companies seeking franchise renewal who submit a written renewal notice 30-36 months prior to the franchise expiration. Unless your cable company is negligent, you will receive a written renewal notice during that time period.

Submission of the written notice sets in motion a formal process that can impose significant time constraints on your community (the “Franchising Authority”). (See 47 U.S.C. §546(a) - (h).) However, Section 546(h), entitled “Alternative Renewal Procedures,” provides for an informal renewal process requiring a public hearing, but removing all of the time limitations and other requirements of the formal procedure. The alternative renewal procedures may be used at any time, even after the formal procedures have begun. We encourage all communities to hold discussions with their cable operator to work out any problems under the current franchise agreement and possibly to even work out a franchise renewal prior to the beginning of the formal process in order to avoid the time limitations which can put undue pressure on the franchising authorities.

Below is an outline of the “formal” franchise renewal process found in 47 U.S.C. §546 (A) - (G).

### **I. Proceedings**

- Commenced by the Franchising Authority or
- By the Cable Operator 30-36 months prior to franchise expiration with a submission of a written renewal notice requesting commencement of proceedings.

- Proceeding must be commenced within 6 months after submission of written request by Cable Operator.

A. Purpose of Proceedings

- “Identifying the future cable-related community needs and interest, and
- Reviewing the performance of the cable operator under the franchise during the then current franchise term.”

B. Review of Performance

- Thorough review of Franchise Agreement for current compliance
- Franchise fee audit
- Technical audit
- Customer satisfaction survey
- Public Hearing re: performance
- Determining future needs
- Competition - before cable and non-cable
- Technology needs and future changes
- Interconnection
- Institutional Network (I-net)
- Equipment and compatibility
- Access: Public, Educational, and Governmental (PEG)
- Future needs survey
- Public Hearing re: Future needs

## **II Submission of Renewal Proposal**

- A. By Cable Operator after public hearing.
- B. Franchising Authority may require certain materials be contained in proposal (including proposed upgrades and service offerings) and may set a time limit for submission of the proposal.
- C. Franchising Authority must provide “prompt public notice” of the proposal when it is submitted.
- D. Franchising Authority has 4 months from the date the proposal is submitted to either renew the franchise or “Issue A Preliminary Assessment That the Franchise Should Not Be Renewed”.
- E. If a “Preliminary Assessment of Non Renewal” is issued, the Franchising Authority may, on its own, or at the request of the Cable Operator, hold a public hearing to determine:
  - 1. Whether the Cable Operator has “substantially complied” with the “material” terms of the existing franchise.
  - 2. The quality of the service, (i.e. signal quality, response to complaints, billing, etc., **BUT NOT** considering the mix or quality of cable programming.)
  - 3. Whether the Operator has the financial, legal and technical ability to provide the services in its renewal proposal.
  - 4. Whether the proposal will meet the community’s future cable needs and interests, taking into account the cost of meeting those needs and interest.

**III.** After this public hearing, the Franchising Authority must issue a written decision including the reasons why the renewal was approved or denied. Reasons for denial must be based upon “one or more adverse findings” regarding the four factors above. However, the denial may not be based upon No. 2-(A) or (B) above unless the Franchising Authority has provided the Cable Operator with notice and an opportunity to cure the Franchising Authority has failed to object to a written notice that the Cable Operator is unable to cure the violation.

**IV.** If renewal is denied, the Cable Operator can appeal to the Federal Courts.

Based upon our analysis of the franchise renewal process, we recommend the following:

- A. Immediately begin the review your franchise agreement to determine if the cable operator has complied with all of its requirements. Seek to gain compliance where it is lacking.

- B. Begin to determine your future cable-related needs and desires, and the cost of those needs and desires. It should be decided whether a consultant will be needed to assist in the process.
- C. Begin an informal renewal process by holding a public hearing or public forum to listen to the public's cable-related needs and desires.
- D. Seek an "informal" renewal proposal from your cable operator. Once the proposal is received, notify the public and make copies available.
- E. Negotiate the renewal agreement with your cable operator keeping in mind the community's future needs and desires as well as the costs of implementation.
- F. Hold another public hearing on the renewal agreement pursuant to 47 U.S.C. §546 (h), prior to approval by the Corporate Authorities.

The franchise renewal process is heavily weighted in favor of renewal of the franchise. If the informal process fails, proceed through the formal process and be sure to investigate and back up your findings.

We believe the most important issues with which communities should concern themselves are the continuation or addition of requirements for the upgrading of technology, programming levels and services, as well as the ability to further regulate various matters, including rates, programming requirements and franchise fees, if the Federal statutes and FCC regulations are again amended to allow further control by Franchising Authorities. Franchising Authorities also need to reconsider whether the safeguards in their current agreement are adequate to deal with later system deficiencies.