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THE STATE OF CABLE FRANCHISING IN VIRGINIA

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Introduction

- Federal law.
- Virginia law.
- Practical effects of 2006 Virginia legislation and Verizon's presence.
- Strategies for localities.

Federal vs. State Law: Overview

- Federal Cable Act broadly limits local authority over substantive terms of franchises.
- Cable Act says little about process for making initial grants, but carefully regulates renewals.
- 2006 Virginia legislation further restricts substantive terms in case of “ordinance cable franchise.”
- Virginia law regulates process for both initial grants and renewals.

Renewals under Federal law: Formal Process vs. Informal Negotiation

- Cable Act (47 USC § 546) protects operator against denial of renewal.
- No denial without following “formal process” and applying four statutory standards.
- Alternative: Negotiate agreement through “informal process,” where substantive terms limited by framework of federal law.

Steps in Federal Formal Renewal Process

- 36-month notice.
- Needs assessment proceeding.
- Franchising authority may issue request for renewal proposal.
- Operator submits proposal.
- Preliminary denial.
- Administrative hearing, final denial.
- Appeal in federal district court.

Federal Renewal Standards

- Compliance with material terms.
- Quality of operator's service.
- Financial, legal and technical qualifications.
- Future cable-related needs and interests of the community taking into account cost.

Virginia law: OCF vs. Negotiated Franchise

- § 15.2-2108.21: Franchise applicant can choose OCF as alternative to negotiated agreement.
- § 15.2-2108.22: Sets terms of OCF.
- § 15.2-2108.26: Incumbent can demand terms granted to new entrant.
- § 15.2-2108.30: At renewal, operator can “opt in” to OCF, or pursue federal process, including negotiated franchise.

Key Franchise Terms under Federal and Virginia law.

- PEG channels.
- Capital support for PEG.
- Institutional networks, other in-kind support.
- Customer service regulation.
- Franchise enforcement.
- System build-out.

Practical Effects of the OCF Mechanism

- Rarely invoked.
- Verizon: successfully incorporated OCF terms in negotiated agreements.
- Operators still desire contractual certainty.
- OCF is *de facto* lowest common denominator for new grants and renewals: But should it be?
- Difficult for smaller communities, those with less favorable franchises, to improve at renewal time.

Federal-State Conflicts

- Formal process based on individual community's needs and interests.
- Formal process contemplates possibility of denial.
- If no OCF issued, nothing to “opt in to.”
- State reciprocity vs. federal modification.

Local Strategy

- Assume federal law controls: Make sure formal process triggered.
- Conduct needs assessment and past performance review: basic due diligence.
- If cable is low priority, make best negotiated deal available.
- If cable is higher priority, plan to issue RFRP.
- Be prepared to issue preliminary denial: operator will play hardball.
- Key practical issue: competitive effects of Verizon's presence and franchise terms.

Conclusion

- *Questions?*
- *Thank you for your attention.*