
Insights for Local Communities on Local Competitive Franchising

**2016 VATOA Webinar
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FCC Report on Video Competition

- **Report released May 6, 2016**
 - Analysis of 2014 data
 - 18 months old already

Broadcast Services

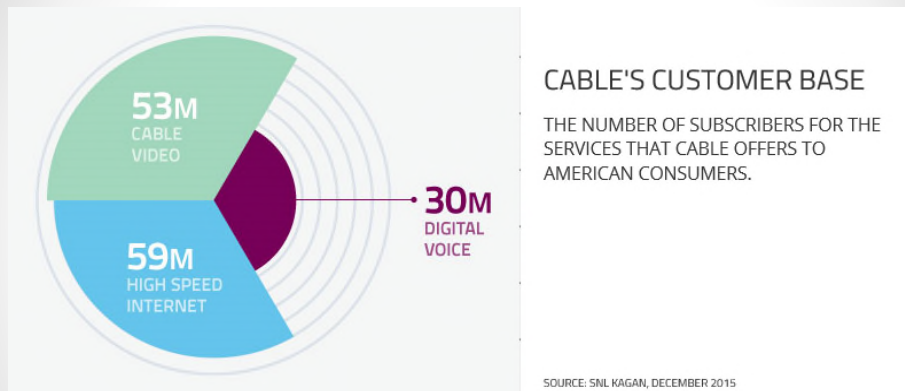
- **More households rely on over-the-air broadcast service**
 - Exclusive of any MVPD service
 - 11.4 m households in 2014
 - Slight increase - 9.9% of all TV households
 - 25 m television households
 - 22% of all television households
 - rely exclusively on over-the-air television service
 - on at least one television in the home

Multichannel Video Programming Distributors

- **MVPDs**
 - Entities that offer multiple channels of video programming to consumers for a fee
 - Cable, telephone and satellite operators that offer Cable TV
 - Comcast
 - Charter
 - Direct TV
 - AT&T
 - Verizon
 - Many others

MVPD (Cable) Subscribers

- **Telephone MVPD subscriptions rose**
 - 11.8 m to 13.2 m households
- **DBS MVPD video subscriptions held steady**
 - 34.4 m households
- **Cable MVPD subscriptions dropped**
- **55.1 m to 53.7 m households**
- **Total MVPD video subscribers dropped**
 - 101.7 m to 101.6 m households



MVPD Video Subscribers

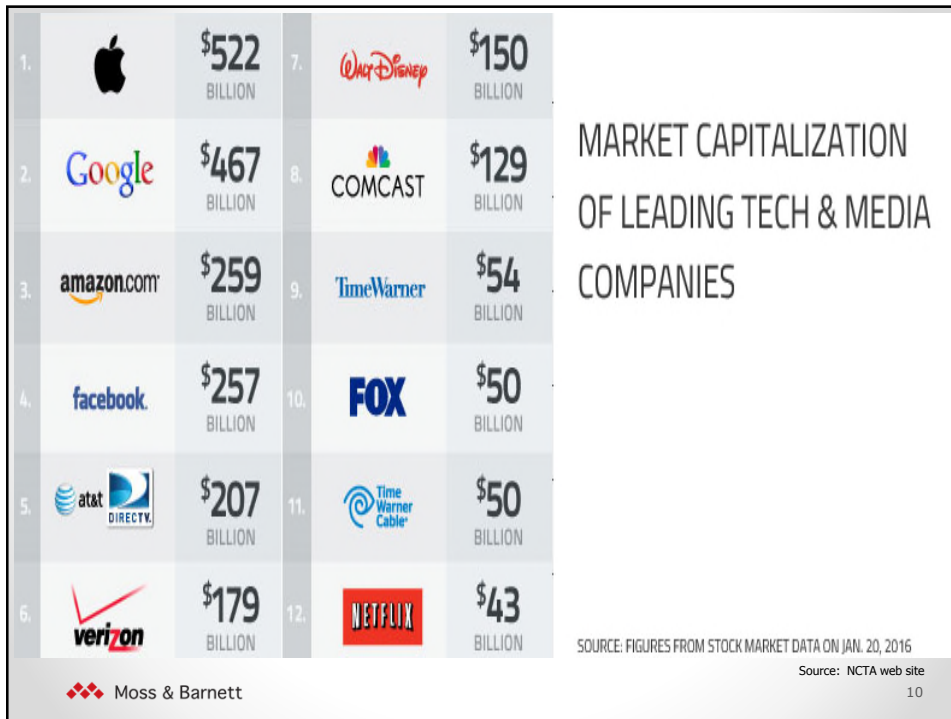
	Year-End 2013	Year-End 2014
Cable	55.1	53.7
Comcast	22.6	22.4
Time Warner Cable	11.2	10.8
Charter	4.1	4.1
Cox	4.3	4.1
Cablevision	2.8	2.7
DBS	34.3	34.3
DIRECTV	20.3	20.4
DISH Network	14.1	14.0
Telephone	11.8	13.2
AT&T U-verse	5.5	5.9
Verizon FiOS	5.3	5.6
CenturyLink	0.2	0.2
Consolidated Comm.	0.1	0.1
Cincinnati Bell	0.1	0.1
MVPD Total	101.7	101.6

Cable Video Revenue

- **Cable video revenue**
 - Increased 1.3%
 - From \$61.5 billion to \$62.3 billion
 - DBS video revenue increased 5.2%
 - From \$38.6 billion to \$40.6 billion
- **Additional video revenue generated has failed to keep up with increased MVPD costs**
 - Especially programming costs











MVPD Video Revenue (in billions)

	2013	2014	Percentage Change
Cable	\$61.5	\$62.3	1.3%
Comcast	\$20.5	\$20.8	1.2%
Time Warner Cable	\$10.5	\$10.0	-4.6%
Charter	\$4.0	\$4.4	10.0%
DBS	\$38.6	\$40.6	5.2%
DIRECTV	\$24.7	\$26.0	5.4%
DISH Network	\$13.9	\$14.6	5.0%



Online Video Distributors - OVDs

- **Any entity that provides video program**
 - by means of the Internet or
 - other IP-based transmission path
 - Transmission path is provided by a person other than the OVD
- **Netflix, You Tube, HBOGO, Hulu**
- **An OVD does not include an MVPD with OVD service inside its MVPD footprint**

SERVICE	SUBSCRIBERS	SERVICE	SUBSCRIBERS
1. 	43.2 MILLION	6. 	9.0 MILLION
2. 	25.4 MILLION	7. 	5.8 MILLION
3. 	22.3 MILLION	8. 	4.4 MILLION
4. 	13.9 MILLION	9. 	4.0 MILLION
5. 	11.0 MILLION	10. 	2.6 MILLION

TOP 10 VIDEO
SUBSCRIPTION SERVICES
AUDIENCE SIZE ACROSS THE MOST
POPULAR VIDEO PLATFORMS.

SOURCE: SNL KAGAN AND COMPANY-REPORTED DATA, Q3 2015

OVDs

- **91 m U.S. households**
 - Have high-speed data connections
- **Streaming video accounted for**
 - 68% of peak traffic – fixed networks
 - 40% peak traffic - mobile networks
- **98.3 m U.S. television households**
 - 85% of all TV households
 - Can receive digital signals - including HD

Why is Renewal More Difficult Now Than 15 Years Ago?

1. **Industry consolidation over the last decade**
2. **Increased competition from Direct TV/DISH**
3. **AT&T, Verizon and CTL franchising efforts**
4. **State franchising - impacting over 20 states**
5. **Online competition**
 - a. YouTube, Netflix and over-the-top competition (Hulu)
 - b. Wireless devices – “cable anywhere” (iPad, iPhone, laptops)
6. **Remaining effects of 2009 recession**
 - a. Fewer subscribers
 - b. Reduced cash flow for operator – less staff
 - c. Reduced capital expenditures
 - d. Tight restrictions on franchise commitments

Virginia Renewal

- **VA Code § 15.2-2108.30**
- **Renewal per 47 U.S.C. § 546**
 - 3 years advance notice
 - Informal
 - Formal
- **Ordinance cable franchise**
 - Notice not more than one year in advance of franchise expiration

Ordinance Cable Franchise

- **VA Code § 15.2-2108.21**
- **Cable operator**
 - Requests negotiated cable franchise
 - Elect to receive ordinance cable franchise
 - Contents of ordinance cable franchise
 - Shall not exceed the requirements imposed in any existing cable franchise
- **12 paragraphs in state law**
 - Set forth contents of ordinance cable franchise

Why Can't We Put the Cable Franchise Up For Competitive Bid?

- Cable Act prohibits a City from denying a cable operator's request for franchise renewal
 - Just because another operator may be willing to agree to more favorable franchise terms
- Under the Cable Act an operator can only be denied franchise renewal for one of the following four reasons:
 1. Operator's failure to comply with existing franchise
 2. Quality of operator's service
 3. Operator's legal, technical and financial qualifications
 4. **Reasonableness of operator's proposal to meet the City's assessment of needs and interests**
 - Taking into consideration associated costs

Should We Conduct Informal or Formal Renewal Process?

- **Short answer – prepare for both**
- **Operator must request renewal 3 years prior to franchise expiration**
 - Request triggers the formal protections
 - Failure to request renewal
 - Loss of Cable Act formal protections
 - Request will also ask for informal negotiations
 - City has 6 months to "initiate" renewal
- **If you chose to proceed informally -**
 - Be careful not to "paint yourself in a corner"

Informal Process

- 1. Most franchises are negotiated informally**
- 2. Still need to know local needs/interests**
 - Needs Assessment remains crucial
- 3. Be careful not to get backed into a corner**
 - a. Nowhere to go – must accept poor proposal
 - b. What if operator changes deal at 11th hour
 - What is City's recourse?
- 4. Preparation for formal**
 - a. Provides City with options
 - b. Allows for successful negotiations

What is a Needs Assessment?

- 1. Franchise fee and PEG fee review/audit**
- 2. Technical/engineering review of the cable system**
 - Condition of current cable plant
 - How well the system has been maintained
 - Compliance with electric safety code
- 3. Telephone survey of cable subscribers**
- 4. Nonprofit/civic organizations/departmental surveys**
- 5. Review of current PEG Access facilities and operations**
 - Evaluate condition of equipment and facilities
 - Evaluate services offered and channels utilized
 - Evaluate operational procedures and connectivity
- 6. Public hearings**

FCC v. Local Government

1. FCC 621 Order

2. FCC Effective Competition Order

- **Impact on 2016 Cable Franchising**

FCC 621 Order – Part III

- **Jan. 21, 2015**
- **State Level Franchising**
 - **621 Orders apply only to actions or inactions**
 - at the local level where a state has not specifically circumscribed the LFA's authority.
 - **Prior 621 rulings on**
 - Franchise Fees
 - PEG and I-Net obligations
 - Non-cable related services and facilities
 - **Do not apply to state level franchising**

Impact on Cable Franchising

- **Offsets**
 - Citing FCC 621 Order
 - Operators argue about in-kind obligations
 - Free service to schools and public buildings
 - Connections to city hall or other locations
 - Transport fees to origination sites
 - Operational v. Capital use of PEG Fees
 - If Operator executes Franchise (agrees)
 - Is the issue solved?
 - Waiver language in Franchise?

FCC 621 Order – Part III

- **Mixed use Networks**
 - Under the Cable Act -
 - LFAs have jurisdiction only over the provision of “cable services” over “cable systems”
 - **FCC held**
“LFAs may not use their franchising authority to regulate non-cable services provided by either an incumbent or new entrant.”

Impact on Cable Franchising

- **Operators often seek authority for ROW**
 - Not just for cable
 - Title VI of the Cable Act
 - For broadband and telecommunications
- **Cable franchise should be limited to Cable**
 - Nothing in franchise should preclude
 - City's right to impose fees
 - For non-cable services
 - FCC 621 Order
 - Don't allow it to be expanded

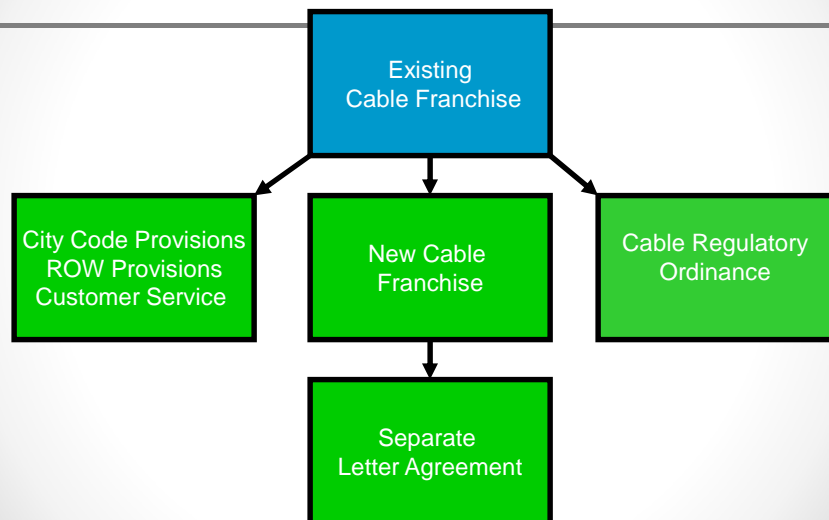
Impact on Cable Franchising

- **Right-of-Way Regulation**
 - Separate ROW rules in cable franchise?
 - ROW Code v. franchise/ordinance
 - Code provisions often not updated
 - No longer just utilities using ROW
 - Different ROW rules for different users?
 - Gas, electric, water, telecom, cable, wireless
 - Underground
 - Above ground pedestals
 - Back-up power

Why Does One Contract Require So Much Effort?

- **Because it's not just the cable franchise that is impacted**
- **During renewal cities must also consider:**
 - Cable regulatory ordinance
 - Right-of-way ordinance or code provisions
 - Customer service provisions
 - General code provisions
 - Competing operators' franchises
 - Gas, electric, telephone franchises
- **Some of the City Code may require redrafting**
- **Certain agreements with operator may be in "side letter"**

Renewal Documents



No More Rate Regulation

- **The issue of greatest concern to residents**
- **Cities are powerless to impact rate**
- **Court case could change outcome**

Effective Competition Order

- **June 3, 2015 (3-2 vote)**
- **FCC concludes that all cable operators are subject to**
 - “Competing Provider Effective Competition”
- **LFAs are prohibited from regulating basic cable rates - *unless***
 - LFA successfully demonstrates that the cable system is not subject to Competing Provider Effective Competition
- **Burden of proof shifted entirely to LFA**

Key Renewal Issues

- 1. Consideration**
- 2. Customer Service**
- 3. Competitive Equity**
- 4. PEG**
- 5. Institutional Network**

Consideration

- **Franchise Fee**
 - **Now covered by state law**
 - **But cities still have audit rights**

Consideration

- **PEG Fee**
 - Upfront, pay as you go, periodic payments
 - Tied to subscriber numbers?
 - % of "Gross Revenues" v. per sub dollar amount
 - CPI
 - MDU – bulk accounts
 - Can PEG fees be offset from franchise fees?
 - Capital v. operational costs
- **The term "Franchise Fee" does not include:**
 - *Capital costs* which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities.
 - 47 U.S.C. § 542

Consideration

- **In-Kind Services**
 - Schools and public buildings
 - I-Net, return capacity
- **FCC 621 Order**
 - January 2015 3rd Order
- **Offset from Franchise Fees?**

Customer Service

1. City can adopt separate Customer Service Ordinance

Part of City Code

2. FCC Standards:

- a. Office hours and telephone available
 - b. Installations, outages, and service calls
 - c. Comm. b/t operators and subscribers
 - d. Billing, refunds, and credits
 - e. Local office
- Look to both 47 C.F.R. § 76.309 **and** § 76.1601 - 1604 (notices)

3. Reporting/Enforcement - not in FCC regs

- a. Specify in franchise or City Code
- b. Regional call centers – how to enforce?

4. Operator may argue - competitive disadvantage

- May want relief if FCC amends regulations

Competitive Equity

▪ Operator may demand Level Playing Field

- Nothing in federal law requires such a provision
- Check state law for state obligation
 - Why should the City agree to any language more burdensome than state or federal law?
 - Fairness?
 - Why waive legal rights?

▪ Issues to watch for in proposed language

- “Opt-out” provisions that allow operator to avoid franchise obligations without City approval
- “Line item veto” - allows the operator to unilaterally modify franchise if different than competing franchise
- Consider “all or nothing” approach
 - Operator can have the same terms as the competitor
 - But it must take all requirements – no pick and choose

Level Playing Field

- **VA Code § 15.2-2108.20**
- **LFA shall not adopt franchises**
 1. that are more onerous than those adopted for existing cable operators
 2. that unreasonably prejudice or disadvantage any cable operator whether existing or new; or
 3. that are inconsistent with any provision of federal or state law.

PEG

Start with the four "C's"

1. **Content** –who will program the channels
 - a. City, schools, colleges, non-profit, public users
2. **Channels** - Identify needed PEG Channels – are they used?
 - a. Analog/digital migration (HDTV - VOD)
 - b. Location, location, location
 - c. Transmission compatibility – picture quality
3. **Connectivity** - with origination facilities
 - a. Two-way connections – how configured?
 - b. Existing I-Net obligations
4. **Cash** - capital and operational support
 - a. Capital - equipment and facilities = "depreciable life"
 - b. Operator may argue against "operational support"

Institutional Network

- **Institutional Network “I-Net” means:**
§611(f) [531(f)]
 - *A communication network which is constructed or operated by the cable operator*
 - *Generally available only to subscribers who are not residential subscribers*
- **In practice an I-Net is typically:**
 - a dedicated network built by an operator
 - used by a city free of charge or at a low cost
 - for voice, video and data transmissions
- **Operators may want to convert I-Nets to:**
 - Commercial services contracts - increase profits
 - Can the operator “mandate” a commercial contract?

Can an Operator Say NO to a Requested I-Net?

- **Cable operator usually cites to:**
Cable Act §621(b) [541(b)]

A franchising authority may not impose any requirement that has the purpose or effect of prohibiting, limiting, restricting, or conditioning the provision of a telecommunications service by a cable operator or an affiliate thereof.
- **Cities should look to:**
Cable Act §621(b) [541(b)]

*Except as otherwise permitted by sections 611 and 612, a franchising authority may not require a cable operator to provide any telecommunications service or facilities, **other than institutional networks**, as a condition of the initial grant of a franchise, a franchise renewal, or a transfer of a franchise.*

Questions

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