

# Cable Franchise Renewal

And How to Do a Community Needs Assessment

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# OVERVIEW

Cable Franchising

The Cable Act Renewal Process

Renewal Criteria

The Ascertainment Process

Community Needs Assessment

# CABLE FRANCHISING

“Franchise” is the right to use public rights-of-way to provide cable service

Cable franchises are governed by federal, state, and local law

Franchise renewal process is controlled by federal law

# CABLE FRANCHISING

Franchise *agreement* sets out the terms of the franchise

Individual franchise may be conferred by a granting ordinance

General regulatory ordinance governs all cable operators

# CABLE FRANCHISING

State law (§ 15.2-2108.19-22) allows operator to elect an “ordinance cable franchise” (OCF)

Few, if any, operators have actually chosen an OCF

Although use of OCF option may be unlikely, it will affect negotiations



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# THE CABLE ACT RENEWAL PROCESS

Cable Act § 626 (47 U.S.C. § 546) establishes two parallel processes

The formal process must be completed to deny renewal

The informal process (§ 546(h)) allows a negotiated agreement at any point

The two proceed at the same time

# THE CABLE ACT RENEWAL PROCESS

The cable operator is evaluated on its own merits, not vs. competitors

Expiration without renewal or denial

It is generally up to the franchising authority to move the process forward

# RENEWAL CRITERIA

A community may only deny renewal based on four factors (§ 546(c)(1), (d)):

- compliance with franchise and law
- quality of service
- financial, legal, technical qualifications
- proposal to “meet the future cable-related community needs and interests, taking into account the cost”





# RENEWAL CRITERIA

The most important criterion is generally that of future needs and interests

Defining needs and interests is a legislative act of the local community. *Union CATV, Inc. v. City of Sturgis*, U.S. Dist. LEXIS 20184, *aff'd*, 107 F.3d 434 (6th Cir. 1997).

# THE ASCERTAINMENT PROCESS

The Cable Act (§ 546(a)(1)) sets up a three-year window for renewal

During that time, the locality conducts studies and calls for public input to prepare

Doing this “homework” is essential to position oneself for an effective negotiation

# THE ASCERTAINMENT PROCESS

Studies typically include the following:

- Technical review of the system
- Franchise compliance review
- Financial:
  - PEG and other payments
  - Financial qualifications
- Needs assessment



# COMMUNITY NEEDS ASSESSMENT

Provides basis for community's negotiating position

Also provides basis for potential denial

Should be as comprehensive as possible

# COMMUNITY NEEDS ASSESSMENT

An outside consultant can bring both expertise and objectivity

Third-party report becomes an essential reference document

Consultant can serve as expert witness if renewal advances to formal process



# COMMUNITY NEEDS ASSESSMENT

Interested parties may include:

- Schools, libraries, parks, economic development, other municipal agencies
- Police, fire, rescue
- PEG access channels
- Minority and disability communities
- Business, especially small businesses



# COMMUNITY NEEDS IN NEGOTIATIONS

Typical renewal issues may include:

- PEG access channels, especially HD carriage
- PEG funding
- Upstream connections from PEG studios
- Institutional network (I-Net)
- Service to local government and school sites

# COMMUNITY NEEDS IN NEGOTIATIONS

Typical renewal issues may include:

- System capabilities
- Term
- Reporting and records requirements
- Customer service standards
- Enforcement mechanisms



# NEGOTIATIONS AND OCF

State law specifies many franchise terms for an OCF

Operators may argue such terms should be reflected in negotiations

However, negotiated agreements need not follow OCF terms

# CONCLUSION

Renewal is a lengthy and resource-intensive project

But the results can be worth the investment

Solid preparation is the foundation for success



# FAIRFAX COUNTY RESOURCES

## Communications Policy and Regulation Division

Assists consumers with cable-related problems and cable safety and construction issues

- Call: 703-324-5902
- email: CPRD@FairfaxCounty.gov
- Web: [www.fairfaxcounty.gov/cableconsumer/cable](http://www.fairfaxcounty.gov/cableconsumer/cable)
- Franchise documents:  
[www.fairfaxcounty.gov/cableconsumer/cable/cable-franchise-documents](http://www.fairfaxcounty.gov/cableconsumer/cable/cable-franchise-documents)