Franchise Renewal 101

Presentation to the Alliance for Community Media

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Partner

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Who We Are

• BB&K Represents Municipalities Nationwide on a Wide Variety of Areas That Require Special Expertise
  ▪ Cable
  ▪ Water Law/Water Quality Law
  ▪ Environmental Law
  ▪ Finance
  ▪ Telecommunications
• Offices in California and Washington, D.C.
• Firm Has Represented Municipalities Across the Country on Franchise Renewal – in Formal and Informal Proceedings
Overview

• The Basic Laws

• Translating the Laws Into A Local Process –
The Basic Laws

- 47 U.S.C. Sec. 521 et seq. (the “Cable Act”), esp. Sec. 546
- Your State law’ e.g Chapter 166A in Mass.
- YOUR Charter, Franchise, Ordinances
Key Elements of Cable Franchise Renewal

- Renewal requirements are defined in federal & State law
- Review performance of cable operator
- Conduct a community needs assessment
  - Federal law requires community to identify “future cable-related community needs and interests”
- Negotiate a new franchise in light of changing technological, economic, and cultural conditions
- If negotiations reach an impasse, issue an RFRP soliciting a “formal” proposal
Renewal: Past Performance/Compliance Review

- Past performance review activities will include:
  - Franchise fee/financial review of cable operator(s)
  - Franchise compliance review
  - Technical review of the cable system
  - Telephone survey of cable subscribers

- Resulting reports will identify any contract non-compliance
Cable Act

• Defines what you can and cannot require, and can and cannot enforce
  ▪ Internet?
  ▪ Specific video programs?

• Defines the permitted franchise fee – and what counts against the fee?
  ▪ Renewal consultant fees?
  ▪ Capital support?
  ▪ Operating support?
  ▪ School and Government Building Drops
Cable Act

• Prescribes renewal process (Sec. 546)
• Two processes – “informal” and “formal”
• Informal process =
  ▪ Agree at any time;
  ▪ Must hold hearing where public can comment
  ▪ Otherwise, the process is done
Cable Act – Formal Process

• How it starts: You can start it; or operator can start it by submitting a request for renewal 30-36 months before franchise is scheduled to expire

• What happens when it starts: you then have six months to commence a proceeding in which the public has an opportunity to participate....
Cable Act – Formal Process

• What’s the proceeding?
  ▪ You are to determine the future, cable-related needs and interests of the community AND
  ▪ Review the operator’s past performance

• How formal do I have to be in starting the process
  ▪ Not very – BUT…. 

• When do I need to end it?
  ▪ No deadline for ending
Cable Act – Formal Process

• How do formal and informal fit together?
  ▪ You can assess community needs/past performance until you have a negotiating position with which you are comfortable.
  ▪ You can then negotiate informally.
  ▪ If negotiations fail, you can then complete the “assessment” process, and move forward formally.
Cable Act – Formal Process

What Happens When the Assessment is Completed?

- Community can issue a request for proposals OR operator can submit a formal proposal without waiting for an RFP.
- Once operator proposal is received, community has four months to decide to say “yes” or to say “we preliminarily deny the renewal request.”
- If you say no, operator may require community to promptly commence an administrative proceeds (almost like a trial).
Cable Act – Formal Process

• What Goes On at the Administrative Proceeding? You consider:
  ▪ Whether the operator has complied with its obligations under the franchise and applicable law (notice/cure)
  ▪ Whether the operator has provided adequate service in the past (notice/cure)
  ▪ Whether the operator has the financial, technical and legal ability to perform as promised
  ▪ Whether the operator’s proposal is reasonable to meet the future, cable-related needs and interests of the community in light of the costs thereof
Cable Act – Formal Process

- Denial permitted if you find against the operator on any one of those four grounds
- Operator can appeal to court
Key Questions

• When Do You Need To Start? When Do You Need to Finish?
  ▪ If you fail to complete before franchise ends, operator *theoretically* could ask court to direct you to move forward with the process or grant other relief
  ▪ In practice, an operator will typically take the position that until the formal process is completed, it may continue to operate under the terms of the existing franchise
  ▪ That may be good in some communities, costly in others
Key Questions

• How Does the Law Fit Into a Sensible Process?
  ▪ You need to coordinate the formal and informal processes, but set deadlines so you can complete renewal in a time frame that makes sense for your community
    • Rational process for gathering information required to negotiate
    • Set deadlines for negotiations
    • Keep elected officials informed and engaged
Key Questions

• Can I Still Get Benefits for My Community?
  § PEG Channels and Support?
  § Institutional Network?
  § Rebuilds?
  § Answer – YES!
  § But, you must be prepared to fight for those benefits
What New Challenges Will Arise?

• PEG
  - How do you define a channel in a digital world?
  - HD? What about future advancements?
  - Who can view the channels? [the basic service problem]
  - Operating support?
  - VoD?
What New Challenges Will Arise?

• I-NET – build v. “buy” equation is very different
• Most favored nations clauses – new risks
  ▪ OTT television
• How do I deal with the possibility of competitive entry?
• Scope of the franchise – cable communications? Or just cable
Should I Be Working With Other Communities?

• …it depends
• Exchange of information is important
• Working together at state/FCC is important
• …and if a fight develops, you may all have an interest in working together
Gross Revenue

- Does not address the allocation of bundled packages which are the new hot topic.
Overview

• Common Franchise Renewal Issues
  ▪ Franchise Fees
  ▪ Cable System Issues
  ▪ Customer Service
  ▪ Institutional Networks
  ▪ Competition and Level Playing Field
  ▪ Others
  ▪ PEG-Related Issues
Renewal Issues: Non-PEG-related
Franchise Fees

• Franchise fees cannot exceed 5% of operator’s “Gross Revenues” (47 U.S.C. § 542)
• How do you define “Gross Revenues”?
  ▪ Triple play
  ▪ Over the top services
  ▪ Advertising
  ▪ Programming launch fees
  ▪ Application of GAAP
System Issues

• System Build-out
  ▪ Density requirements
  ▪ Commercial areas
• System Upgrades:
  ▪ an LFA may not use its franchising authority to attempt to regulate non-cable services
  ▪ But many of the services using system capacity are not “cable”
# Customer Service

### 2013 Temkin Customer Service Ratings (TCSR): Top and Bottom Firms

#### Top Rated Companies

<table>
<thead>
<tr>
<th>Rank</th>
<th>Company</th>
<th>Industry</th>
<th>TCSR</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>USAA</td>
<td>Insurance carrier</td>
<td>76%</td>
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<tr>
<td>2</td>
<td>USAA</td>
<td>Bank</td>
<td>75%</td>
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<tr>
<td>3</td>
<td>A credit union</td>
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<td>73%</td>
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<td>4</td>
<td>Ace Hardware</td>
<td>Retailer</td>
<td>71%</td>
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<tr>
<td>5</td>
<td>Charles Schwab Investment firm</td>
<td>71%</td>
<td></td>
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<tr>
<td>6</td>
<td>Dollar Tree</td>
<td>Retailer</td>
<td>70%</td>
</tr>
<tr>
<td>7</td>
<td>Chick-fil-A</td>
<td>Fast food chain</td>
<td>70%</td>
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<tr>
<td>8</td>
<td>Sonic Drive-In</td>
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<td>69%</td>
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<tr>
<td>8</td>
<td>Hy-Vee</td>
<td>Grocery chain</td>
<td>69%</td>
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<tr>
<td>8</td>
<td>Costco</td>
<td>Retailer</td>
<td>69%</td>
</tr>
<tr>
<td>8</td>
<td>Trader Joe's</td>
<td>Grocery chain</td>
<td>69%</td>
</tr>
<tr>
<td>12</td>
<td>Advantage</td>
<td>Rental car agency</td>
<td>68%</td>
</tr>
<tr>
<td>12</td>
<td>Publix</td>
<td>Grocery chain</td>
<td>68%</td>
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<tr>
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<td>H.E.B.</td>
<td>Grocery chain</td>
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<tr>
<td>15</td>
<td>Aldi</td>
<td>Grocery chain</td>
<td>67%</td>
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<tr>
<td>15</td>
<td>Alaska Airlines</td>
<td>Airline</td>
<td>67%</td>
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<td>15</td>
<td>Amazon.com</td>
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<td>67%</td>
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<td>Sam's Club</td>
<td>Retailer</td>
<td>67%</td>
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<tr>
<td>15</td>
<td>Lowe's</td>
<td>Retailer</td>
<td>67%</td>
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#### Bottom Rated Companies

<table>
<thead>
<tr>
<th>Rank</th>
<th>Company</th>
<th>Industry</th>
<th>TCSR</th>
</tr>
</thead>
<tbody>
<tr>
<td>235</td>
<td>Charter Comm.</td>
<td>TV service</td>
<td>22%</td>
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<tr>
<td>234</td>
<td>Time Warner Cable</td>
<td>TV service</td>
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<td>231</td>
<td>Cox Comm.</td>
<td>TV service</td>
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</tr>
<tr>
<td>231</td>
<td>Optimum (iO)/ Cablevision</td>
<td>TV service</td>
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</tr>
<tr>
<td>231</td>
<td>CareFirst (BCBS)</td>
<td>Health plan</td>
<td>28%</td>
</tr>
<tr>
<td>229</td>
<td>Verizon</td>
<td>TV service</td>
<td>30%</td>
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<tr>
<td>229</td>
<td>Comcast</td>
<td>TV service</td>
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<tr>
<td>226</td>
<td>Qwest</td>
<td>Internet service</td>
<td>31%</td>
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<tr>
<td>226</td>
<td>Verizon</td>
<td>Internet service</td>
<td>31%</td>
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<tr>
<td>226</td>
<td>Charter Comm.</td>
<td>Internet service</td>
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</tr>
<tr>
<td>223</td>
<td>US Airways</td>
<td>Airline</td>
<td>32%</td>
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<tr>
<td>223</td>
<td>Highmark (BCBS)</td>
<td>Health plan</td>
<td>32%</td>
</tr>
<tr>
<td>223</td>
<td>Comcast</td>
<td>Internet service</td>
<td>32%</td>
</tr>
<tr>
<td>222</td>
<td>AT&amp;T</td>
<td>TV service</td>
<td>33%</td>
</tr>
</tbody>
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Base: 10,000 U.S. consumers  
Source: Temkin Group Q1 2013 Consumer Benchmark Survey  
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Institutional Networks

- Connect public buildings. Transport PEG programming
- Who owns what?
- Dark fiber vs. managed services
- New entrants vs. incumbents
• Federal law does not require such provisions
• Examples of Provisions Requested by Operators in Renewal Process
  ▪ Defining competitor as broader than other cable operators (OTT)
  ▪ Opt-out provisions to avoid franchise obligations
  ▪ Allowing operator to unilaterally modify franchise if different than competing franchise
Others

- Term / rights on termination
- Precedence of franchise vs. ordinance
- Reporting requirements
- Liquidated damages
- Security for performance
- Audit rights
Renewal Issues: PEG-related
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)

Ways to Impose PEG fee
- Upfront, pay as you go, periodic payments
- Payments tied to subscriber numbers
- % of “Gross Revenues”
- In-kind

Operating support
PEG Channels

• How do you define channel in a digital world?
• How many?
• What format? HD? Simulcast? What about future advancements?
• Channel placement
• Information about channels on EPGs
Summary

• Renewals only happen every 10-15 years
• Franchise renewals deal with a diverse range of issues negotiated over months or years
• Both sides bring issues to the table
• Relative importance of PEG-related issues:
  ▪ What other issues are under negotiation?
  ▪ What have other renewals done lately?
  ▪ How strong is community support for your issues and how do you demonstrate that?
• Working with the negotiating team
• Timing