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**CABLE TELEVISION
RENEWALS IN AN IP ERA**

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Top Five Renewal Issues

1. Consideration

- Franchise Fee
- PEG Fee
- In-Kind Services

2. PEG Issues (covered by Ken and Rick)

3. Institutional Network

4. Customer Service

5. Competitive Equity (operator issue)

Franchise Fee

- **Cable Act – provides :**
 - *during any 12 month period the franchise fees paid by the cable operator with respect to any cable system shall not exceed 5% of the operator's **gross revenues** derived in such period from the operation of the cable system to provide cable services*
 - 47 U.S.C. § 542
- Key in franchise negotiations is how the parties define "**gross revenues**"

Defining “Gross Revenues”

- All Cable Service fees
 - Basic/expanded/digital tiers/premium/pay-per-view/pay television
- late fees, return check fees.
- revenues from program guides and electronic guides.
- home shopping revenue.
- PEG fee, FCC fees.
- advertising revenue.
- upgrade and downgrade fees.
- installation and reconnection fees.
- additional outlet fees.
- converter rental fees and lockout device fees.
- revenue from Interactive Services to the extent they are considered Cable Services under applicable law.
- Any and all other revenue derived by the operator from the operation of operator’s Cable System to provide Cable Services in the city.

"Gross Revenues" - ??

1. **Copyright fees or other license fees as offset?**
2. **What about "pay by phone fees," CSR surcharges?**
3. **In-person cable store fees?**
4. **Watch for operator requested exclusions:**
 - Fee on fee
 - Fee on PEG fee
 - Fee on FCC fee
 - Late fees, return check fees
 - Bundling
 - Advertising revenue/home shopping – gross or net?
 - Other "non-subscriber" revenues
 - GAAP exclusions

Don't leave money on the table

- **Example: Bundled Rates**
- **Is LFA receiving full payment on cable services?**
- **How is discount being applied?**
 - Line backer fees
 - Service call fees
- **Must address issue in renewed franchise**
 - Allocate revenue on a “pro rata basis”
 - i.e. equal allocation of any package discounts
- **Spend time in renewal**
 - on details of all compensation terms

PEG Fee

- **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
- **What is a capital cost?**
 - Depreciable asset
 - Fixed, one-time expense
 - Land, buildings, construction, equipment
 - Total cost needed to bring a project to a commercially operable status
- **Is that what the Cable Act intended?**
- **What is a capital cost in the production of a television show or movie?**
 - Total cost of production – including labor, production and marketing

PEG Fee

- **Who pays for the equipment required to deliver a PEG HD signal?**
 - After it leaves city hall – demarcation point
 - Is city responsible for production equipment?
 - Is operator responsible for transport?
 - Are all of the these costs “capital”?
- **PEG signals transported over an I-Net**
 - Is the I-Net a PEG capital cost?
 - Is I-Net management a capital cost?

Offsets From Franchise Fee

- **PEG fees offset from franchise fees?**
 - Operator may seek language to allow “offset”
 - Based upon 47 USC 542 “Capital v. operational”
 - Watch out for:
 - “as permitted under federal law” or
 - “So long as payment of PEG fees does not serve to reduce the amount of franchise fees paid to City”
- **If an operator offsets fees what can City do?**
 - Violation proceeding?
 - Court challenge?
 - Contract terms are critical

Schools and Public Buildings

- **How many free drops are in place today?**
- **How many additional outlets are in use?**
 - Has digital conversion occurred?
 - Is equipment required for every TV set?
 - Who pays for equipment and service?
- **Existing drops v. new drops**
 - Construction cost allocation for new drops
- **Can operator offset all in-kind costs?**
 - From Franchise fees?
 - Operator will cite FCC 621 Order

Institutional Network “I-Net”

- *A communication network which is constructed or operated by the cable operator*
- *Generally available only to subscribers who are not residential subscribers* §611(f) [531(f)]
- *A franchising authority may require as part of a cable operator’s proposal for a franchise renewal*
 - *that **channel capacity . . . on institutional networks be designated for educational or governmental use**, and*
 - *may require rules and procedures for the use of the channel capacity designated pursuant to this section.* 47 U.S.C. §531(b).

Institutional Network "I-Net"

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.*

Customer Service

Simple path

- Use FCC standards in franchise
- Look to both
 - 47 C.F.R. § 76.309 and
 - 76.1601 - 1604 (notices)
- Reporting/enforcement - not in FCC regs
 - Specify in franchise or city code

Aggressive path

- Adopt separate Customer Service Ordinance
 - Part of city code

Competitive Equity

- **Operator will demand Level Playing Field language**
 - Nothing in federal law requires such a provision
 - Check for state obligation
 - Why should the city agree to any language more burdensome than state or federal law?
 - Fairness?
- **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

Thank You!

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