

IMPORTANCE OF CABLE FRANCHISE RENEWAL

The cable franchise agreement is a grant of a special privilege to occupy public rights-of-way to provide cable service in return for the promise of specific and significant service and financial commitments by the cable operator. The agreement sets out the terms and conditions under which cable service is to be provided.

The expiration of the cable television franchise presents the City with the opportunity to examine past behavior and the City's needs for the future. It allows the City to pursue new requirements. Under federal law, the renewal process involves a comprehensive evaluation of the cable operator's past performance, current compliance with the existing franchise license and the identification of the City's future cable-related needs and interests.

A request to renew the cable franchise has been submitted by Comcast Communications. With the cable operator initiating cable franchise renewal proceedings, the City has commenced the proceedings to identify the future cable-related needs and interests of the City, as required by federal law.

During the renewal period, the City can establish requirements for system upgrades to ensure that the community has adequate infrastructure to accommodate future or advanced services. The City can also consider new customer service standards to ensure that service will be reliable. The renewal process is intended to look to the past, and to identify what is needed for the future. Based on this information, the City will ultimately determine whether or not the current operator may continue to operate in the City, and if so under what terms and conditions.

Developments in technology have transformed the cable television industry. In particular, the advent of compression and digital technology combined with the use of fiber optics has increased the capacity of the electronic pathways that the cable provider uses to reach into subscribers' homes. This additional bandwidth capacity allows the cable operator to venture into services that a few years ago required separate and distinct transmission technologies.

The City's objectives should be structured around a recognition that today's cable systems are not just merely one-way distributors of multiple television signals, but rather communications hubs capable of aggregating, processing, and distributing a plethora of information in a variety of formats; from voice, video, and data. The modern cable system is a converged, cohesive, and integrated network that not only provides access to information but also allows one to become an active participant in receiving, processing, and dispersing information.

During the renewal process, the City must identify future cable-related needs and interests and translate those needs and interests into franchise requirements.

THE FRANCHISE RENEWAL PROCESS

Federal law establishes two ways a community can grant a franchise renewal: informal negotiations or a set of formal procedures resulting in a decision to grant or to deny renewal.

Under the informal process, the cable operator and local government negotiate to resolve the terms of the renewal franchise. When agreement is reached, the City provides the public with an opportunity for comment and then proceeds to adopt a renewal franchise. The cable operator has no procedural rights under the informal process. The City can reject any specific negotiation proposals made by the operator.

Under the formal process, the City, following a prescribed procedure, issues a demand for renewal proposal to operator. Under federal law "Any such proposal shall contain such material as the franchising authority may require." The request is a sole source demand and not subject to competitive bidding. The operator, after examining the City's demand, submits a proposal it believes is appropriate. The City may evaluate the bid for up to 120 days. If the City concludes the bid is adequate, the operator and the City consummate an agreement and the process is concluded. If the City concludes the bid is inadequate, the City issues a preliminary decision of denial. The operator may then ask the City to conduct a formal hearing on the merits of the operator's proposal. The process becomes litigation oriented as both sides present evidence at the hearing. Based on the record from the hearing, the City makes a final determination.

Under the formal process, a decision to deny renewal must be based on one of four grounds (1) the cable operator has not substantially complied with the material terms of the existing franchise and with applicable law. (2) The quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has not been reasonable in light of community needs; (3) The operator does not have the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and (4) The operator's proposal is not reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests. Ultimately, Federal law gives the City broad authority to define the needs and interests of the community and to define what cable operator response is adequate to address those needs and interests.

The formal process and informal process are not mutually exclusive. Informal discussions to bring a formal process to resolution may take place and result in a franchise agreement. Yet, as noted previously, because of the litigation environment, the formal process requires a legitimate and methodical approach.