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# CABLE TELEVISION RENEWALS IN AN IP ERA

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# Nothing may change

- It is possible that Cable TV as we know it will:
  - Remain available primarily via cable and DBS
  - People will continue to pay for bundled services
  - Franchise fee rev will remain at current levels
- But it is also possible that change will occur
  - Perhaps not overnight – but slowly over time
- Better to be prepared
  - Ahead of the change
  - Rather than reacting after the fact

# 2012 Top 15 Cable Operators

| | | |
|---|---|---|
| 1. | Comcast Corporation | 21,995,000 |
| 2. | Direct TV | 20,080,000 |
| 3. | Dish Network Corporation | 14,056,000 |
| 4. | Time Warner Cable, Inc. | 12,218,000 |
| 5. | Verizon Communications, Inc. | 4,726,000 |
| 6. | Cox Communications, Inc. | 4,540,000 |
| 7. | AT&T, Inc | 4,536,000 |
| 8. | Charter Communications, Inc. | 4,158,000 |
| 9. | Cablevision Sys. Corp. | 3,197,000 |
| 10. | Bright House Networks, LLC | 2,013,000 |
| 11. | Suddenlink Communications | 1,211,000 |
| 12. | Mediacom | 1,000,000 |
| 13. | Insight Communications | 710,000 |
| 14. | WideOpenWest Networks, LLC | 702,000 |
| 15. | CableOne, Inc. | 593,000 |

Source: NCTA website – June 2010

# DBS Subscribers

| | |
|---|---|
| 2006 | 29,100,000 |
| 2007 | 30,600,000 |
| 2008 | 31,300,000 |
| 2009 | 32,600,000 |
| 2010 | 33,400,000 |
| 2011 | 33,900,000 |
| 1st half of 2012 | 34,000,000 |

Source: July 2013 and July 2012 FCC report on competition

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# Has Cable Lost Subscribers?

**56.4 Million subs**

- Incumbent cable operators
  - basic cable subscribers

**46.1 Million subs**

- Non-Incumbent Cable Multichannel Video Service Customers
  - Includes DBS, Verizon, AT&T and others

Source: SNL Kagan - NCTA website (visited August 2013)

# Cable Industry Data

- Homes Passed 130.7 M
- Basic Cable Subscribers 57.3 M
- Basic Cable Penetration 44.4%
- Homes Passed by Internet 125.4 M
- High Speed Internet subs 50.3 M
- Cable Phone subs 26.7 M

Source: SNL Kagan – NCTA website (visited August 2013) and July 2013 FCC report on competition

# Cable Industry Revenue

| Year | Res Video | Other Rev | Total Rev |
|---|---|---|---|
| 1996 | $24,136 | $2,984 | $27,120 |
| 1997 | $26,270 | $3,532 | $29,802 |
| 1998 | $27,626 | $6,152 | $33,778 |
| 1999 | $30,050 | $7,341 | $37,391 |
| 2000 | $32,541 | $9,575 | $42,116 |
| 2001 | $35,734 | $9,743 | $45,477 |
| 2002 | $36,738 | $11,160 | $47,898 |
| 2003 | $39,338 | $15,056 | $54,394 |
| 2004 | $41,813 | $18,212 | $60,025 |
| 2005 | $43,832 | $21,846 | $65,678 |
| 2006 | $46,518 | $25,354 | $71,872 |
| 2007 | $49,105 | $29,719 | $78,824 |
| 2008 | $51,811 | $34,470 | $86,281 |
| 2009 | $53,040 | $36,861 | $89,901 |
| 2010 | $55,470 | $38,310 | $93,780 |
| 2011 | $56,938 | **$40,660** | $97,598 |

(in millions)

Source: SNL Kagan – NCTA website (visited August 2013)

# Cable Statistics

- National Cable Programming Networks
  - **800** (2012)
- Price per viewing hour of video programming
  - **23¢** (2013)
- Cable advertising revenue
  - **$29 B** (2012)
- Franchise Fees paid by cable operators
  - **$3.2 B** (2011 est.)

Source = NCTA website (visited August 2013)

# How do you watch TV?

- Nielsen Co. study
  - the average TV household has well over 130 chs
  - but watches just 16 of them...
  - Less than 13%
- What would you pay to watch your 16 channels?
- Average price per channel is $.23
  - If you only bought your 16 chs, what would it cost?

# Cable over the Top Models

- Pay-per-view via:
  - micro payments;
  - subscriptions – monthly payment - all you can eat
  - standard pay-per-view - $5-8 per movie
- $1.99 (e.g. iTunes rate)
  - for every hour of television watched online
  - for every show downloaded
  - will 1.5 million people pay to view <u>each</u> show?
- If you pay to view – will you accept ads?

# 1. Why is renewal more difficult now than 10 years ago?

- Industry consolidation over the last decade
- Increased competition from Direct TV
- AT&T and Verizon franchising efforts
- State franchising - impacting over 20 states
- Online competition
  - YouTube and over-the-top competition (Hulu)
  - Wireless devices (iPad, iPhone, laptops)
- Tight economy
  - Reduced cash flow for operator – less staff
  - Less capital expenditures
  - Tight restrictions on franchise commitments

# 2. Why can't we put the cable franchise up for competitive bid?

- Cable Act prohibits City from denying a cable operator's request for franchise renewal
  - 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 in relation to costs.

     Based upon City's assessment of needs and interests

# 3. Should we conduct informal or formal renewal process?

- Operator must request renewal 3 years prior to expiration of its franchise.
  - Request triggers the formal renewal protections
  - Failure by the operator to submit renewal request
    - May result in a loss of the formal protections afforded under the Cable Act
  - Request will also ask for informal negotiations
    - Be careful not to invest too much time in informal process

# Informal Process

- Many franchises are negotiated informally
- Still need to know local needs/interests
- Be careful not to get backed into a corner
  - Nowhere to go – must accept poor proposal
- Preparation for formal
  - Provides City with options
  - Allows for successful negotiations
- More formal renewal today than ever before

# 4. How can City maximize franchise fee payments?

- 47 U.S.C. § 542 provides that:
  - *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*
- Key in franchise negotiations is how the parties define "gross revenues"

# Defining "Gross Revenues"

- Best definition =
  - Any and all revenue in any way derived, directly or indirectly, by the Grantee or any affiliated entity from the provision of cable services in the City.
- Listing revenue categories is fine, however
  - Watch for operator requested exclusions:
    - Fee on fee
    - Late fees
    - Advertising revenue
    - Affiliated revenues
    - GAAP exclusions
    - Other non-subscriber revenues

# 5. Can City obtain PEG support beyond the 5% fee?

- "Franchise fee" - *Cable Act §622(g) [542(g)]*
  - Includes any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such
- 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

# 6. Can Operators itemized fees on subscriber bills?

- Subscriber bill itemization - *Cable Act §622(c) [542(c)]*
  - Each cable operator may identify as a separate line item on each regular bill of each subscriber:
    1. The amount of the total bill assessed as a franchise fee
       - And the identity of the LFA (City) to which the fee is paid
    2. Franchise imposed support for PEG channels
       - Or the use of such channels
    3. The amount of any other fee, tax, assessment
       - Imposed by any governmental authority
       - On transaction between the operator and subscriber

# 7. What are the key PEG issues to consider?

- Identify needed PEG channels/capacity
  - Analog/digital migration (HDTV)
  - Location, VOD
  - Transmission compatibility
- Decide who will control channels - playback
- Identify needed financial “capital” support
  - For equipment and facilities
  - Operational support?
- Connectivity with origination facilities
    - I-Net

# 8. Can City's still regulate Customer Service?

- FCC standards
  - Office hours and telephone available
  - Installations, outages, and service calls
  - Comm. b/t operators and subscribers
  - Billing, refunds, and credits
  - Local office
- Reporting/enforcement
- Operator will want relief if law changes
- City can adopt separate ordinance

# Conclusion

- Charles H. Duell, Director of the U.S. Patent Office 1899
  - Everything that can be invented has already been invented.
- Charles was wrong
  - Every month a new threat to cable TV is developed
- What local options are available?
  - Do not grant too much authority in cable franchise
    - Preserve right to regulate Title I and II services
  - Telecommunications tax
  - Consider ROW fees
    - Compensation for access to ROW
      - Percentage of revenues
      - Physical occupation – linear feet
      - Watch for section 253 implications – other federal laws
  - Business tax

# Thank You!

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