



Leveling the Playing Field for Cable-TV Franchise Renewal

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The process of renewing a cable-television franchise often starts as an uphill journey on an uneven playing field. The "tilt" comes from the fact that a local government may only deal with a franchise renewal or transfer once every eight to 15 years, or even less frequently. For all but the smallest cable operators, however, repeated franchise renewals are daily occurrences and are handled by experienced negotiation experts who often work behind the scenes at the corporate level. Local cable-system managers rarely have a real role in the process, other than to serve as mouthpieces for the corporate cable negotiators.

On the other hand, even those local governments that staff a post responsible for day-to-day cable-franchise administration are unlikely to approach the franchise renewal process with the seasoned expertise possessed by nearly all cable operators and their attorneys. Yet, with just a bit of forethought, planning, and the application of laws already on most local books, the cable negotiation playing field can be evened out with remarkable ease. Once it has been leveled, managers can reach for those franchise requirements designed to protect and benefit their own communities.

Ready or Not

Federal law controls the franchise renewal process. The underlying law is the Cable Communications Policy Act of 1984, 47 USC 546, as amended ("the Cable Act"). The law provides that a cable operator or a locality may request that the renewal process start between 30 and 36 months before the end of the existing franchise term. This is commonly called "the renewal window." But a community does not usually benefit from reminding the cable operator to start the renewal process; it may actually give the cable operator a distinct advantage by doing so.

If a cable operator requests the start of a renewal proceeding during the renewal window, however, it gains certain rights to what's called "the formal process" of renewal, in the event that an informal negotiation fails. Under the formal process, for example, a cable operator gains rights to additional formal administrative hearings at which it can cross-examine witnesses under oath. This process is unavailable if the cable operator does not make a timely request for renewal proceedings to begin.

Surprisingly, some cable operators do forget to request the start of the renewal process during the renewal window, and if yours does, then no news is good news.

A Stitch in Time

Benjamin Franklin had it right. Taking a few well-planned steps before the time for franchise renewal will save you considerable negotiating energy during the actual renewal process.

The Cable Act presumes that your locality will renew the franchise with your cable operator, generally placing the burden on you to prove either that 1) the cable operator doesn't have the financial, legal, or technical qualifications to continue to be your franchisee; or that 2) what the cable operator proposes doesn't meet your community's "future cable-related community needs and interests."

Knowing that the burden is on you, not on the operator, you'll see that planning in advance of franchise renewal time is the key to leveling the playing field between you and the operator. Creating a public record before renewal time is the simplest and easiest way to get ready for the renewal process.



Here, the cable code violation is a cable-TV drop touching a power drop.

Making a Hit Record

Cities and counties keep records—many records, like parcel maps, tax receipts, and meeting and action minutes. Contacts with the public about cable TV, as well as contacts with the cable operator, merit the same level of record keeping, especially when the franchise is within five to eight years of renewal.

By supplying you with feedback on the cable operator's level of customer service, your constituents are your first-line eyes and ears as to the cable operator's treatment of the public. It's vital to record what your constituents are telling you.

Whether your record-keeping system involves handwritten notes on "While You Were Out" pads or information entered into a computer database, the goal is the same: to record and keep an accurate, contemporaneous accounting of cable issues that you'll use before and during the renewal process to claim any negotiating advantage you can.

With the burden usually on the locality to justify a nonrenewal or to make a persuasive case for special conditioning of the franchise (such as enhanced customer-service protections based on a history of cable operator problems), this written record will provide the basis for your decision to renew or not, and on what terms. Take notes, track subscriber complaint resolutions, keep the notes in an orderly fashion, and use them during the renewal proceedings to justify your actions.

The Obligations / Compliance Matrix

Other keys to evening out the advantages at renewal time are to review your existing franchise and cable ordinance, if you have one, and to create an obligation grid through reference to these documents. In the left-hand column of your grid (see Figure 1), list every obligation due your community by the franchisee and every obligation your community owes to the cable operator. Include the section number for easy cross-reference, and your matrix will become a quick table of contents for your key documents.

Using your cable file information and other documents at hand, determine whether the cable operator is complying with each and

	May '05	Jun '05	Jul '05	Aug '05	Sep '05	Oct '05	Nov '05	Dec '05	Jan '06	Feb '06
5% Franchise Fee (2.4) Due 9/16, 9/16, 9/16, 9/16		X								
Service Fee (12.0) Due 9/16, 9/16, 9/16, 9/16		X	X	X	X					
Due FCC WCP Fee (2.4) Due 9/16, 9/16		X								
Subscriber Court Fund (8.0) Due 9/16, 9/16, 9/16, 9/16		X								
Wireless Comp. Fee (3.1) Due 9/16			X							
Gen. Liability Ins. Cost (2.2) Due 9/16				X						

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every obligation on the grid. If not, mark down the last time compliance occurred, if ever.

Figure 1. Sample Compliance/Obligation Matrix

There will be some obligations on your list, probably related to technical and construction requirements, for which you won't be able to determine compliance immediately. Find out whether the expertise exists within your government (or externally, using specialized contract inspectors) to determine compliance in these areas or locate outside help, if necessary.

As you'll see in the following section of this article, this is a particularly fertile area, often rife with instances of noncompliance by the operator. This information can be a tremendous field-leveling tool for you.

On a separate page, perform a similar task for any obligations you owe your cable operator. When you've completed these grids, you'll have gained an excellent understanding of any current noncompliance matters, so that you can start sending "cure" letters to your operator to come into compliance and to address any open issues on the government side. When you're done, you should have two charts similar to the sample shown in the figure.



This cable-TV system hangs too low over a roadway.

“Survey Says . . .”

One of the most amazing things you'll discover about your community is that people are begging for the opportunity to talk about cable service and about your cable operator. While a general mail-back survey will produce a respectable 2 to 5 percent response rate, cable-TV surveys regularly produce 20 percent or greater response returns. Use this fact to your advantage to bolster the public records you'll be collecting before and using during franchise negotiations.

Some localities perform statistically accurate surveys; others cobble together surveys using the key questions that the elected officials and management staff consistently hear. Whatever your approach, consider your survey instrument as another tool in your field-leveling kit. Ask the questions that you hear most from your constituents, as you may only be observing the tip of an iceberg. Cable operators also use survey tools, so you should be prepared to know how your constituents are feeling about cable service and about your cable operator.



In this grounding violation, the cable-TV system wire is undersized and blocks meter panel access.

Public Hearings: In Sharp Focus

Public hearings can be another valuable playing-field leveler, if properly prepared and managed. The worst way to conduct a public hearing is to treat it like a "come on down and tell the council how you feel about cable" meeting. Useful public hearings are based on focusing public testimony on those areas defined by the Cable Act: financial, legal, technical, and future cable-related needs. Rather than simply inviting open-ended, hard-to-categorize testimony, follow a few simple steps to maximize the value to your local government of the hearing.

In addition to posting your notice of a hearing on the bulletin board at the municipal building, consider a press release announcing it in your community newspaper and on local broadcast outlets. Disseminate information about the hearing on the government-access channel, if one is available. If your community publishes a newsletter, advertise the hearing and the availability of a survey, as described above.

Audio- and/or videotape the hearing. Put up a slide or



large checklist that the public can easily read from the podium and that asks people testifying to supply useful data about themselves (see Figure 2).

When opening or reopening a public hearing, the person who serves as the hearing officer should ask public speakers to refer to the posted slide, to identify themselves and their address for the record, to use the chart for guidance during their testimony, and to identify the area they are testifying about. This simple technique will tend to produce sharply defined testimony that will fit into valuable categories that you'll be able to use during the negotiations and in defense of your government's franchise renewal decisions.

It also helps to discourage rambling testimony.

Figure 2. Sample Slide or Checklist to Maximize the Value of Public Hearing Testimony

Please state your name and address for the record. Also, please discuss where applicable:

- 1. Legal qualifications.**
- 2. Financial qualifications.**
- 3. Technical qualifications.**
- 4. Future community cable-related needs and interests.**
- 5. Other comments.**

Finally, don't close the public hearing process until just before the governing board takes action on renewing the franchise, so you can continue to accumulate evidence.

Safety First

Over the past 10 years, cable deregulation and satellite competition have focused cable operators on spending their capital dollars on equipment to deliver new channels. Not surprisingly, operators don't spend as much money on complying with the public safety codes that already have been adopted by virtually every state and locality, including the National Electrical Code® (NEC), the National Electrical Safety Code® (NESC), and/or substitute state codes like General Orders 95 and 128 in California.

These codes define the minimum safe construction and maintenance standards that cable companies must meet. Cable system inspections, however, have disclosed that many cable operators do not adequately construct and/or maintain their systems to meet these mandatory safety codes.

Identifying and quantifying safety code violations in the cable system and securing cures for these violations fall under one of the most important functions performed at the local government level—promoting public safety. Enforcing safety codes also is one of the most powerful tools you have to equalize the negotiating advantage and to secure a consistently safe cable system for your community.

Here are the most common system-construction code violations that your inspectors are likely to find in your community's cable system:



Here, the cable-TV system also is grounded to the natural-gas meter pipe.

- Failure to ground the cable system properly. Code-compliant grounding is required to prevent electrical shock to cable subscribers and electrical fires in structures served by cable TV. The rules for grounding are primarily found in the NEC and secondarily in the NESC. It's common to find 25 percent or more of the cable drops to homes and structures not properly grounded to code. In all but the smallest communities, this means that you are likely to find hundreds or thousands of code violations. Some examples of grounding code violations are seen in the accompanying photographs.

Your constituents often will alert you to grounding problems. Constituent calls after an electrical storm complaining that a TV set connected to cable burned out during the storm, while another set in the house connected to a TV antenna or satellite TV system did not, should alert you to potential cable-system grounding violations.



In this underground code violation, cable-tv pedestal lid and coaxial cable lie on the ground rather than under it.

So why hasn't your local code inspector caught these violations? The answer is that in most jurisdictions, code inspectors evaluate structures for proper grounding before they are occupied; and cable TV is usually not installed until much later.

Also, this is a specialized area of inspection. Few communities have inspectors experienced in the cable-TV technical requirements of the codes. This is no excuse, however, for a cable operator to circumnavigate the safety laws as some do.

- Overhead cables hanging too low over roadways or located too close to utilities. The NEC and the NESC or substitute codes govern overhead cable construction. These codes are designed to prevent accidental contact 1) between the cable-TV system and the power or other telecommunication systems; and 2) between the cable-TV system and vehicles or people. Accidental contacts can result in service disruptions, interferences between different services, property damage, personal injury, or even the death of one or more utility workers on the pole.

When a cable operator notifies you that it will be rebuilding or upgrading its system, you should have your inspectors verify that the cable operator's work meets safety code requirements. You need to know when it does not and should thoroughly document the violations so you can demand and secure a proper cure. Use these documents later to level the playing field.

- Violations in the underground portion of the cable system. The NEC and the NESC, or substitute codes, also control underground plant construction and maintenance. The most common violations, and those most valuable in boosting your clout at the negotiating table, are related to cable operators' failures to maintain the vaults and pedestal housing in good and safe condition. Examples of such failures are missing or cracked vault lids, razor-sharp jagged edges on broken pedestal covers, and the like.

Other common underground code violations include cables laid on top of the ground rather than buried (a "trip hazard" looking for a victim; see photo), as well as cables not buried to the proper depth.

- FCC Proof-of-Performance reports unavailable for review, or unsatisfactory. The FCC sets the cable signal-quality rules for all U.S. cable systems, and it also requires that every cable system with 1,000 or more subscribers conduct "proof-of-performance" testing twice each year to demonstrate that it complies with these signal-quality rules. The FCC does not usually review these test results. Instead, it relies on local governments to ensure compliance with federal picture-quality standards. This means that it's your job to use the FCC rules to ensure that your constituents receive good picture quality from your cable operator.

A cable operator is permitted to dispose of its original results report after five years. Luckily, the FCC

rules require that a cable operator make proof-of-performance reports available for local government review, and most will provide copies at no charge. A vital task in leveling the playing field with your operator is getting and keeping copies of these reports over the course of the franchise. The reports are valuable to you because they provide a historical record of compliance and noncompliance with the FCC signal-quality rules and of overall system condition—information that will prove useful at the time of renewal or transfer.

Remember that a cable operator that repeatedly breaks your laws, or that isn't capable of building a code-compliant system, may not be legally, financially, or technically qualified to hold a franchise.



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[Back to top](#)