

**"FORMAL" FRANCHISE RENEWAL PROCESS
UNDER FEDERAL CABLE ACT (47 U.S.C. § 546)**

Renewal Request and Public Proceeding:

47 U.S.C. § 546(a)(1). *"If the cable operator submits, during such 6-month period, [which begins with the 36th month before the franchise expiration] a written renewal notice requesting the commencement of ... a proceeding [which affords the public in the franchise area appropriate notice and participation for the purpose of (A) identifying the future cable-related community needs and interests, and (B) reviewing the performance of the cable operator under the franchise during the then current franchise term], the franchising authority shall commence such a proceeding not later than 6 months after the date such notice is submitted."* (Emphasis Added)

STEP 1. Cable Operator May Make a Request for Renewal of the Franchise Between 30 Months and Up to 36 Months Before Expiration.

STEP 2. Within 6 Months of Request for Renewal. City Shall "Commence" Community Cable-Related Needs Assessment Report

Request for Proposal: 47 U.S.C. § 546(b)(1)-(3).

"(1) Upon completion of a proceeding ... a cable operator seeking renewal of a franchise, at the request of a franchising authority may ... at the request of a franchising authority, submit a proposal for renewal.

(2) ... any such proposal shall contain such material as the franchising authority may require, including proposals for an upgrade of the cable system.

(3) The franchising authority may establish a date by which such proposal shall be submitted." (Emphasis Added)

STEP 3. Completion of Needs Assessment.

Once Needs Assessment Report is "Complete", City May Request a Formal Franchise Proposal from the Cable Operator or Cable Operator May Submit One

Preliminary Assessment Not to Renew: 47 U.S.C. § 546(c)(1).

"Upon submittal by a cable operator of a proposal to the franchising authority for the renewal of a franchise pursuant to subsection (b) of this section, the franchising authority shall provide prompt public notice of such proposal and, during the 4-month period which begins on the date of the submission of the cable operator's proposal pursuant to subsection (b) of this section, renew the

franchise or, issue a preliminary assessment that the franchise should not be renewed and, at the request of the operator or on its own initiative, commence an administrative proceeding, after providing prompt public notice of such proceeding, in accordance with paragraph (2) to consider whether ... (D) the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests." (Emphasis Added)

STEP 4. City Council Makes Preliminary Assessment not to Renew - Four Months After Proposed Franchise From Cable Operator

Only Four Statutory Reasons for Denial:

(1) Cable Operator's proposed franchise does not "reasonably" meet the Cable Needs Assessment Report.

[Most likely grounds for denial.]

(2) Operator does not have legal, technical or financial qualifications to operate cable system.

(3) After notice of non-compliance and a reasonable opportunity to cure there remains a material non-compliance with the existing franchise.

(4) After notice and a reasonable opportunity to cure there remains a material quality of service issue that has not been corrected.

[If denial, go to Step 5 - City Administrative Proceeding]

STEP 5. Administration Hearing by the City

A. City conducts an **ADMINISTRATIVE PROCEEDING**, before a Hearing Examiner selected by the City (or it could be City Council) which includes participation by the City and **Cable Operator**, with a transcript: The hearing is to give the **Cable Company the opportunity to present evidence** on whether the cable operators' proposal is reasonable to meet the Cable-Related Community Needs as set forth in the Assessment Report. (Based on a Denial under Item #1)

B. If Hearing Examiner Used:

Administrative Hearing Record to City Council for a Decision by Council on reasonableness of proposal based on Record of the Administrative Hearing.

[If denial, go to Step 6]

STEP 6. Federal District Court

CABLE ACT ALLOWS APPEAL BY CABLE OPERATOR to Federal District Court on the record on whether the City denial was reasonable, with the Court giving some deference to the City Decision, i.e., was it reasonable for the City to deny the cable operator's proposal based upon the proposal not reasonably meeting the future cable-related community needs taking into consideration the cost.

NOTE: Purchase of System Under Federal Law:

[Only if the "denial" is upheld by the Federal Court may the City purchase the cable system, and only then, at "fair market value," which maybe between \$10 million and \$20 million based on a \$3,600/per subscriber small system sale in the Houston area, (Cable Act, Sec. 626 - 47 U.S.C. § 547)]

Recent Case Law:

Cases Upholding Denials:

Rolla Cable System v. City of Rolla, 761 F.Supp. 1398 (E.D. Mo.-E.Div. 1991). Upheld denial on the record-not de novo.

Union CATV, Inc. v. Sturgis, Ky, 107 F.3rd 434, (6th Cir. 1997). Upheld denial, gave deference to City; cable operator proposal was not reasonable.

Cases not Upholding Denials:

Eastern Telecom Corp. v. Borough of East Cenemaugh, 872 F.2nd 30 (3rd Cir. 1989). City deadline for proposal was not lawful under state law so denial was not lawful.

Cases not on merits but on Cable Renewal:

Cablevision of the Midwest v. City of Brunswick, 117 F.Supp. 2nd 658 (N.D. Ohio – E. Div. 2000) - Denied City Motion to Dismiss.

“INFORMAL” RENEWAL PROCESS-Subsection (h):

47 USC Sec. 546, Subsection (h) provides:

“Alternative renewal procedures

Notwithstanding the provisions of subsections (a) through (g) of this section, a cable operator may submit a proposal for the renewal of a franchise pursuant to this subsection at any time, and a franchising authority may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings pursuant to this section have commenced). The provisions of subsections (a) through (g) of this section shall not apply to a decision to grant or deny a proposal under this subsection. The denial of a renewal pursuant to this subsection shall not affect action on a renewal proposal that is submitted in accordance with subsections (a) through (g) of this section" (Emphasis added).