

FRANCHISE FEE AUDITS & RENEWALS:

How to Get More Money and
Other Benefits from Your Cable
Company

PSATS Annual Conference
April 18, 2016


PRESENTERS

Daniel S. Cohen
Attorney, Cohen Law Group
Pittsburgh, PA

Natausha M. Horton
Attorney, Cohen Law Group
Pittsburgh, PA



INTRODUCTION

- ▶ Background: The Federal Cable Act
 - ▶ Recent Changes in the Law
 - ▶ Municipal Rights in Cable Franchising
 - ▶ Cable Franchise Renewal Process
 - ▶ Franchise Fee Audits & Needs Assessments
 - ▶ Franchise Renewal Negotiations: What Benefits Should You Be Seeking?
 - ▶ “Over the Top” Video and Other Industry Developments
 - ▶ ROW Fees for All Utilities? Stay Tuned!
- 

BACKGROUND

▶ Federal Cable Act

- ▶ In 1984, Congress gave municipalities the legal right to franchise cable companies and obtain benefits for the companies' use of the public rights-of-way
- ▶ The Cable Act applies only to cable companies, not internet or telephone providers
- ▶ Overall goal in implementation was to impose regulatory order and foster a competitive cable market
- ▶ In 1992, Congress prohibited exclusive cable franchise agreements and allowed municipalities to impose customer service standards

RECENT CHANGES IN THE LAW

- ▶ Federal law relating to cable franchising is ever evolving
- ▶ In 2015, the FCC issued an Order on Reconsideration regarding complimentary cable and internet services
 - ▶ The Order directly affects cable franchise negotiations
 - ▶ Free services are now more of a negotiable issue
 - ▶ Order gives cable operator the ability to offset franchise fees by the amount of in-kind services provided to the municipality

MUNICIPAL RIGHTS IN CABLE FRANCHISING

- ▶ Municipal Officials are the “Landlords” of their Public Rights-of-Way
- ▶ Cable Operators Use Municipal Rights-of-Way to Install Wires and Other Equipment to Offer Cable Service
- ▶ Municipality is Entitled to a “Fair Return” on the Cable Operator’s Use of Municipal Property
- ▶ Franchise Renewal is the Best Opportunity to Assert Your Rights and Obtain Benefits

CABLE FRANCHISE RENEWAL PROCESS

- ▶ Formal Process v. Informal Process of Franchise Renewal - Section 626 of the Cable Act
 - ▶ Review Cable Company's Past Performance
 - ▶ Franchise Fee Audit
 - ▶ Identify Your Future Cable-Related Needs
 - ▶ Needs Assessment
 - ▶ Notice and Comment Requirement

CABLE OPERATOR'S PAST PERFORMANCE: FRANCHISE FEE AUDIT


▶ Purposes:

- ▶ To ensure that your municipality has received all the franchise fees to which it is entitled under the controlling franchise agreement and state/federal law.
- ▶ To collect any franchise fee underpayments from the cable operator
- ▶ To hold the cable operator accountable for franchise fee payments and to bring accountability to the franchise fee line item in municipal budgets.
- ▶ To send a message to the cable operator that your municipality takes its role as “cable compliance officer” seriously.

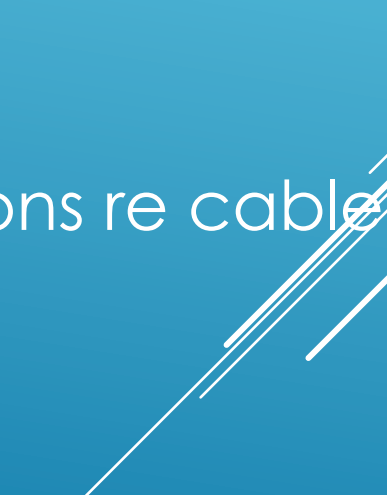
CABLE OPERATOR'S PAST PERFORMANCE: FRANCHISE FEE AUDIT

- ▶ What are the audit rights in your current cable franchise agreement?
 - ▶ Right to audit or inspect books and records
 - ▶ “Lookback” period
 - ▶ Penalties for underpayments
 - ▶ Definition of Gross Revenues
 - ▶ Different types of revenue sources – about 25 different revenue source groups
 - ▶ Subscriber based vs. non-subscriber based revenue sources
 - ▶ Allocated vs. non-allocated revenue sources: How to ensure you receive the correct share of “triple play” services (cable, internet, and phone)
 - ▶ Bulk Service Accounts
 - ▶ i.e., universities and colleges
- 


CABLE OPERATOR'S PAST PERFORMANCE: FRANCHISE FEE AUDIT

- ▶ Franchise Fee Audit Process
 - ▶ "Homes Passed Lists"-Are all residential addresses correctly coded in the cable operator's accounting system?
 - ▶ Franchise Fee Findings Reports
 - ▶ Negotiations for underpaid franchise fees
- 


FUTURE CABLE-RELATED NEEDS

- ▶ Municipal Compliance Review
 - ▶ Complaints made to municipality
 - ▶ Municipality-wide cable issues (i.e., frequent outages, service to unserved areas, etc.)
 - ▶ Needs Assessment
 - ▶ Gather community's input/opinions re cable system
 - ▶ Cable system technical review
 - ▶ PEG channel assessment
- 


FRANCHISE RENEWAL NEGOTIATIONS

- ▶ Franchise Fee Revenue
 - ▶ Definition of “gross revenues”
 - ▶ Frequency of payments
 - ▶ Pass through issue
 - ▶ Strong audit provisions
 - ▶ Cable System Specifications
 - ▶ Is Your Cable (and Internet) System Technologically Current?
 - ▶ Cable system upgrade request
 - ▶ Strong and Enforceable Customer Service Standards
- 

FRANCHISE RENEWAL NEGOTIATIONS

- ▶ Public, Educational and Governmental (“PEG”) Channel
 - ▶ Possible Cash Franchise Grant
 - ▶ Free Services to Community Facilities (still a negotiable item)
 - ▶ Right-of-Way Protections for Municipality and Residents
- 
- A decorative graphic consisting of several parallel white lines of varying lengths, slanted upwards from left to right, located in the bottom right corner of the slide.


FRANCHISE RENEWAL NEGOTIATIONS

- ▶ Enforcement of Violations
 - ▶ Revocation alone is *not* sufficient
 - ▶ Practical enforcement mechanisms
 - ▶ Length of Franchise Term
 - ▶ Shorter term vs. longer term
 - ▶ Cable operator's desires vs. municipality's needs
 - ▶ Don't agree to a 15-year term!
- 
- A decorative graphic consisting of several parallel white lines of varying lengths and orientations, located in the bottom right corner of the slide.


“OVER THE TOP” VIDEO AND OTHER INDUSTRY DEVELOPMENTS

- Cable industry has become much more competitive
 - Video service from satellite dishes (DBS) and phone companies (e.g. Verizon)
 - “Over the top” (OTT) video: video programming distributed over the internet rather than via cable television. OTT is currently treated differently under the law than cable service.
- FCC decided in 2002 that video programming over the internet, even if it is distributed over the cable system (cable modem service), is not a “cable service”. Upheld by the U.S. Supreme Court.
- Result: Cannot obtain franchise fees from OTT service revenues.

“OVER THE TOP” VIDEO AND OTHER INDUSTRY DEVELOPMENTS

- What to expect in the future:
 - Cable operators may be forced to change their “large bundle of channels” business model to a more “skinny bundles” or “a la carte” models
 - FCC is undergoing a Notice of Proposed Rulemaking (NPRM) process now on how to classify OTT providers.
 - Congress is considering rewriting or amending the Cable Act.
 - Municipalities need to be flexible to adapt to changes.
- 

LOOKING AHEAD: ROW FEES FOR ALL UTILITIES?

- Municipalities in Pennsylvania have the right to assess fees on all utilities, not just cable companies, based on the municipalities actual costs for managing its rights-of-way (ROWs)
 - Key Case: PPL and UGI v. City of Lancaster: Lancaster assessed fees on utilities based on their share of the City's ROW costs, including direct costs, indirect costs, and street degradation
 - Commonwealth Court found in favor of Lancaster on fee issue in interim decision
 - Lancaster's ROW Ordinance also gives the City more control over utility activities in the ROWs.
 - Stay tuned!
- 

QUESTIONS?



THANK YOU FOR YOUR TIME!

CONTACT INFORMATION

Daniel S. Cohen, Esq.

(412) 447-0130 ext. 11

dcohen@cohenlawgroup.org

Natausha M. Horton, Esq.

(412) 447-0130 ext. 17

nhorton@cohenlawgroup.org

