# NORTH SUBURBAN COMMUNICATIONS COMMISSION
# CABLE FRANCHISE RENEWAL FACT SHEET

What does the cable franchise renewal process involve?

The formal franchise renewal process is one of administrative litigation. The process itself is spelled out in federal law in Section 626 of the Cable Communications Policy Act of 1984 (the "Cable Act"), and it is designed to protect the rights of the incumbent cable provider while also ensuring that a community's present and future cable-related needs and interests are satisfied, taking cost into consideration. Formal franchise renewal begins with the cable provider notifying the franchising authority of its desire to renew its cable franchise agreement. The franchising authority then begins by evaluating the cable provider's performance under the existing franchise, including the engineering of the cable system, and by ascertaining the cable and communications needs of the community. This typically involves hiring experienced engineering, legal, financial and ascertainment consultants and can take 6 to 12 months (or more) to complete. The franchising authority then may request that the cable provider submit a proposal showing how it will meet the needs identified in the ascertainment. The formal process also requires public input on the cable provider's past performance and on the needs ascertainment

While federal law also permits the use of informal franchise renewal negotiations with the cable provider at any time (including simultaneously with the formal process), a franchising authority must be prepared to follow the requirements of the formal process because either side may choose to return to that process at any time during the renewal proceedings. Typically, the renewal proceedings alternate between the formal and informal processes several times.

Can we negotiate with more than one cable provider?

The federal franchise renewal process is intended for the franchise of the incumbent cable provider. None of the franchises of the NSCC member cities are exclusive, however, so member cities may negotiate a new franchise with another cable provider at any time. That having been said, cable system overbuilds are not common because the new provider must invest a significant amount of money in the construction of a network with no customer income until the new system is built. In the meantime, the incumbent controls 60-65% of the market, and satellite providers have most of the rest. Overbuilding is a very difficult and expensive proposition requiring very deep pockets and long-term commitment. In recent years, the only providers that have tried overbuilding are traditional telephone companies Verizon and AT&T, neither of which have landline telephone companies in Minnesota. Furthermore, both have halted all new construction in order to concentrate on the systems they have already built. Meanwhile, Qwest has shown no credible interest in constructing an advanced wireline network that can compete with Comcast's cable system in the NSCC's member cities.

Can we simply extend the existing cable franchise?

This is a possibility, although the incumbent provider is not likely to want to do so. A typical goal of providers in franchise renewal is to eliminate and/or trim back obligations in the current franchise agreements, including the Institutional Network, the number of public, educational and government (PEG) access channels, and the financial support of those channels. Nevertheless, the commission will explore that option with the company.

Why should we have the NSCC and its staff handle our franchise renewal, rather than doing it ourselves?

First, cable franchising and renewal law is very complex, involving the interplay between federal, state and local laws and regulations with 30-40 years of legal and legislative history. It also is constantly changing and evolving. Second, Comcast is the largest cable company in the United States (if not the world) and has a full-time staff that does nothing but cable franchise renewal negotiations. As a result, the company's renewal staff and attorneys are very knowledgeable about the law and how to use it to the company's advantage. Success on the local government's side depends on having equally knowledgeable staff and legal counsel, devoting adequate resources to the renewal process and maintaining a united front. Sharing the cost of the staff, as well as the consultant expertise for the technical compliance review and needs ascertainment, has always made sense, but, in these difficult economic times, it is even more important. Further, having a number of cities (and their cable subscribers) on the local government side of the table provides more leverage against the attempts by Comcast to eliminate or diminish its franchise obligations.

<u>Why does Comcast need a cable franchise?</u>

As a cable provider, Comcast is required by both federal and state law to secure a franchise from the local government – typically a city, but the franchising authority can also be a collection of cities or a county – in order to provide cable television service using public rights-of-way. This franchise allows the cable provider to build its cable network in the public rights-of-way without having to negotiate with every property owner. In return for a franchise to use the rights-of-way, which are scarce and valuable public property, the cable provider pays a franchise fee, capped by federal law at 5% of gross revenues, and usually has obligations to provide channel capacity and financial support for public, educational and government access channels and to provide an Institutional Network for local government use.

<u>Why should we bother with franchise renewal when all television is moving to the Internet?</u>

Although a lot of video, including many traditional television programs, is now available over the Internet, it will be many years before <u>all</u> television programming currently distributed via cable and satellite providers is available over the Internet. In fact, there is some concern that the Internet as currently structured does not have enough capacity to handle that volume of video programming. Further, to date, we are not seeing any of the traditional programming networks abandon cable and satellite distribution, and new programming networks – including the recently introduced Oprah Winfrey Network (OWN) – are still being developed and introduced for cable and satellite distribution. So, given the state of the industry, technology and the market, local franchising authorities and cable providers must work with the laws and regulations that are currently in place.

<u>Can a renewal request be denied?</u>

Yes, both legally and practically. Although most communities do eventually renew the incumbent cable operator's franchise, several communities have successfully denied renewal. The Cable Act permits a community to deny renewal if past performance has been inadequate; or if the incumbent operator is legally unqualified or is unwilling or unable to devote the necessary technical skills and financial resources to the community; or if the operator is unwilling to reasonably satisfy the future, cable-related needs and interests of the community considering the cost of meeting those needs and interests.

<u>The operator says everything a local franchising authority asks for will be passed through to subscribers in rates. Is that true?</u>

Not necessarily. In rate regulated franchise areas (such as the NSCC's member cities), an operator can pass through *increases* in its external costs to subscribers. Some franchise requirements, such as PEG and franchise fee requirements, are external costs, but not all are. In addition, because the operator is only entitled to pass through the *increase in those costs,* renewal franchise requirements do not necessarily result in rate increases, depending in part on what was required under the prior franchise, the length of the prior franchise, and the operator's recovery schedule.

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