

Massachusetts Municipal Association
Annual Meeting and Trade Show
January 24th & 25th, 2020
Saturday, January 25
2:00 p.m.



Massachusetts
Municipal
Association

Newest FCC Preemption: Cable Franchising Fees

New FCC rules threaten:

- *Local Public, Educational and Governmental (PEG) access providers,*
- *Affect existing cable franchising agreements and Strip power from local governments to control use of the rights of way.*

The FCC and Cable Franchising: What Cities & Access Centers Need to Know

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Third Report and Order (FCC 19-80), Franchising & In-Kind

What happened?

Franchising as we know just got turned on its head!

For 35 years, LFA's and Operators pretty much saw Franchising the same way (1984 Cable Act)

FCC's order demands cable operators take significant offsets against franchise fees

What's next?

The Order took effect September 27.

Litigation is in play -- A Petition for Review (Appeal) of the FCC's 3rd 621 Order has been filed in the DC Circuit

A (Court) stay would be great, but not likely

Expect to hear soon from your Operator and work to resolve views within 120 days

What do I do?

Review all:

1. Franchises
2. Side Letters
3. Settlements
4. Operator offerings (marketing) v. (requirements)
5. Institutional Network and Service Agreements (I-Net's and SLA's)
6. State franchising statute, if applicable

Third Report and Order (FCC 19-80), Franchising & In-Kind

Research

Confirm PEG Access:

- *Funding -- in particular, differentiate capital from operating.*
- *In-Kind contributions (programming, resources, etc.)*
- *For both I-Net and PEG Video Return - estimate number of lines, mileage or linear footage, equipment & maintenance.*
- *Connections & drops -- how many & what level of service (Basic, Standard, etc.?)*

Inform

The Order is a done deal. So far, cable operators have been quiet.

- *Litigation is planned by coalitions of cities, towns, associations -- all need help (\$\$\$\$).*
- *A (Court) stay would be great, but not likely*
- *Anticipate loss of revenue (or service) in February/March, 2020*
- *Urge/encourage/plead with Revenue & Law departments, as well as PEG Media Centers, to join planned appeal of the Order!*

Prepare for notice

Prepare to ask Operator Q's (RFI)!

Confirm/settle views on:

1. *Franchises*
2. *Side Letters*
3. *Settlements*
4. *Operator offers (marketing) v.*
5. *(requirements)*
6. *Institutional Network and Service Agreements (I-Net's and SLA's)*
7. *State franchising statute, if applicable*

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Research

Funding

Review & organize your buckets of capital v. operating:

- *Assign values to muni-contributions (staff, office space, leases, etc.*
- *Prepare an all-funds view of cable & PEG*
- *Identify any 'pass thru' to subscriber of existing costs*
- *Fair market value (FMV) - challenge Operator's calculations by researching comps!*

What You Receive for FF and PEG Fees & Other

1. Fees
2. PEG "capital grants"
3. PEG operating
4. Equipment, studios or facilities from Operator
5. PEG transport (Video Return)
6. Free or discounted muni-service
7. Institutional networks ("I-Nets")
8. Any other non-cash benefits to gov or PEG - not the public!

Do not include:

1. *Capital expense/contributions for PEG Access.*
2. *Build-out of cable plants for subscribers,*
3. *Customer service -- offices, CSR's, etc.*
4. *Channel capacity -- (though this might change in a year - thank you Cmmr. O'Rielly!)*

Third Report and Order (FCC 19-80), Franchising & In-Kind

Inform

Educate

“First, we conclude that cable-related, “in-kind” contributions required by a cable franchise agreement are franchise fees subject to the statutory five percent cap on franchise fees set forth in section 622 of the Act, with limited exceptions, including an exemption for certain capital costs related to public, educational, and governmental access (PEG) channels.”

3rd R & Order

Dust off your renewal cheat sheet of terms and review for impact through the lens of this Order.

Prepare a risk memo for Revenue Dept. outlining estimated financial and services impact of Order implementation.

Copy to your Law Department & Electeds..... loss of longtime revenue and services is a compelling argument for legal action.

Inform policy, digital equity & IT staff -- you'd be surprised how few will realize the impact of reduced services and revenue.

PEG & Franchising benefits have a 35-year history in cities, town & counties.

Younger residents and public employees have no idea of the relationship between public right-of-way access and franchise support.

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Prepare for notice

Franchise Agreement(s)
Side Letters
Settlements
Operator offers (marketing) v. (requirements)
Institutional Network and Service Agreements (I-Net's and SLA's)
State franchising statute, if applicable

Offsets at “fair market value” (FMV)

No idea what that FMV means not cost-based, but what the operator thinks something is worth.

And, it needs to be a franchise in-kind benefit -- differentiate between what the Operator gives in “community benefits” v. what is “required” in the contract.

No clarification on who receives the write-off -- the operator or the consumer. Assuming subscribers are paying for these LFA requirement, subscribers should be reimbursed. If not, it's just a wealth transfer from local governments to Cable Operators!

LFA's have 120 days to negotiate with the operator (from when -- I don't know!)

Don't go looking for trouble, let the Operator knock first.

Third Report and Order (FCC 19-80), Other issues

What the heck is Mixed Use?

When cable isn't cable

Licensors can't demand/require non-cable services

Remember the cable modem ruling of 2002?

A "cable system" includes "installation of Wi-Fi and small cell antennas attached to the cable system."

Non-Cable Services

Offsets at "fair market value" (FMV)

No idea what that FMV means not cost-based, but what the operator thinks something is worth.

And, it needs to be a franchise in-kind benefit -- differentiate between what the Operator gives in "community benefits" v. what is "required" in the contract.

No clarification on who receives the write-off -- the operator or the consumer. Assuming subscribers are paying for these LFA requirement, subscribers should be reimbursed or credited on their next bill. If not, it's just a wealth transfer from local governments to Cable Operators!

State Franchising Laws

State franchising, as applicable in 23 states:

"..... Commission requirements that concern LFA regulation of cable operators should apply to state-level franchising actions and state regulations that impose requirements on local franchising."

(I noticed that NLC shared a great report on state preemption just this past week!)

Third Report and Order (FCC 19-80), Franchising & In-Kind



Assess the impact

Alert internal stakeholders

Advise the external stakeholders

Await the cable knock on the door

Ask for support to challenge

THANK YOU!

A special thank-you for advice, content & discussion to:

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