

**COMMUNITY NEEDS
ASCERTAINMENT
&
FRANCHISE
RENEWAL**

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by

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BUILDING COMMUNITY SUPPORT, ASSESSING “CURRENT AND FUTURE CABLE RELATED NEEDS OF THE COMMUNITY” AND PREPARING FOR FRANCHISE NEGOTIATIONS

Obtaining a good cable franchise is the result of an informed and active Franchising Authority. It also depends on the knowledge and experience of those assisting and representing the municipality as well as the efforts of organizations and individuals throughout the community prior to and during the negotiation of the new contract. Often PEG access providers need to take a dynamic role in the process.

It is important that all parties familiarize themselves with the provisions that can be negotiated and the time frame for ascertainment and negotiation. The results of the renewal process have less to do with the cable provider and more to do with the cooperation of all concerned parties within the community. The willingness of the franchising authority (state or local government) and cable advisory board to support the process, the quality of the needs ascertainment that is performed, the knowledge and experience of those who sit at the table and negotiate with the cable operator, the ability of the access community to supply information and the energy of a cable lawyer or cable consultant to work for and with the community.

The community needs which should be considered are such things as I-Nets, wiring for the schools, interconnects with neighboring communities, customer service standards, channel capacity on the system, cable system upgrades and/or rebuilds, density requirements for cable service, PEG channels, franchise fees and provision of non-television services as InterNet access. One of the most important services that can come back to the community is provisions for PEG access. The main areas for PEG access to be considered are: yearly operating budgets, capital grants for equipment and facilities and the number of channels allocated for exclusive PEG use.

Yearly PEG Operating Budget

The operating budget for PEG access is usually derived from the franchise fees that the cable operator pays to the franchising authority. This franchise fee is capped by federal law to be a maximum for 5% of the cable company's total gross revenue in the franchise area. It is important for all or some of this franchise fee to come directly to the access corporation to provide for operating expenses such as rent, utilities, employee salaries, equipment repair, office and production supplies and other operational expenses. This operational budget should be either a percentage, up to the full 5% of the cable company's total gross revenues per year or a designated amount per year. There are many smaller communities who have been successful in getting the full 5% for PEG access operations and larger urban areas typically obtain and require between 1-4%.

Some contracts call for a specific cash amount but it is important if doing this to remember to build in an escalator tied to Consumer Price Index or increases in cable revenues or some fixed percentage per year to account for increased costs. Also remember, total gross revenues include more than basic or pay television. Revenues also come from installation, connection and reconnection fees (called churn), advertising, pay-per-view, pay back from home-shopping networks, converter box rentals, fees and any other services. (See paragraph below: **Channels, Interconnects, I-Nets and InterNet Access**)

Of importance to the ability to operate an access center are the terms of payment. Generally the cable operator provides support in 4 (quarterly) payments per year. This is much more desirable then contracts that restrict your cash flow to monthly payments.

Capital Grant(s)

The Telecommunications Act allows municipalities to require special capital grants for PEG access equipment and facilities, beyond the 5% franchise fee cap. The capital grants usually take the form of a large initial grant and periodic smaller grants during the term of the contract. The large initial grant is usually used to provide the initial equipment base and to provide for design and renovation of a facility. The smaller periodic grants are to provide for equipment replacement and upgrade. It is important that the language "replacement and upgrade" is used in reference to these grants so that the access center can keep up with changes in technology as well as replace worn equipment.

Some contracts require that the capital payments be made directly to the access center's interest bearing account for capital expenditures rather than sitting in the cable company's account until used. This gives the access corporation the very important control that they need to select their own equipment as well as giving the interest from this money to the access corporation as they take the necessary time to put together an equipment package and select and renovate a facility. Capital funds are not just for video equipment but will also be needed for office furniture, office equipment and computers, design of the equipment package, installation of equipment, as well as design and renovation of a facility. Please note that capital cannot be used for operating costs but operating money can be used for capital costs.

Operating and Capital Amounts

Franchise provisions vary greatly. Here are several examples of successfully negotiated contracts from small to large communities.

Freeport, ME

Cable Co.	Freeport Community Television FrontierVision
Subscribers	1,700 in 1997
Length of Contract	10 years, 1997-2007
Company's Gross	\$600,000/year (approx.)
PEG Annual Operating	5% of Gross (approx. \$30,000 in 1997) plus additional support from the Municipal Government
PEG Capital Grant	\$115,000 - (Year 1 = \$75,000, Year 3 = \$15,000, Year 5 = \$15,000, Year 7=\$15,000 and Year 9 = \$15,000)
PEG Channels	3 Channels
I-NET	Yes - 10 channels upstream and 10 channels downstream after rebuild. Three channel pairs to be equipped for video transmission and up to \$15,000 for equipment for data uses of the I-Net.

Amherst, MA

Cable Co.	Amherst Community Television MediaOne
Subscribers	6,500 in 1996
Length of Contract	10 years, 1996-2006
Company's Gross	\$2,400,000/year (approx.)
PEG Annual Operating	5% of Gross (approx. \$120,000 in 1996)
PEG Capital Grant	\$425,000 - (Year 1 = \$150,000, Year 2= 75,000, Year 4 = \$50,000, Year 6 = \$75,000 and Year 8 = \$75,000)
PEG Channels	3 Channels (1-Public, 1-Education, 1-Government)
I-NET	Yes - 15 channels upstream and 15 channels downstream after rebuild. Three channel pairs to be equipped for video transmission and up to \$25,000 for equipment for data uses of the I-Net.

Iowa City, IA

Cable Co.	Public Access Television TCI
Subscribers	21,000 in 1995
Length of Contract	10 years, 1995 - 2005
Company's Gross	\$8,820,000/year (approx.)
PEG Annual Operating	\$150,000/year with annual inflation adjustment
PEG Capital Grant	50¢/subscriber/month (approx. \$126,000/year)
PEG Channels	6 channels
I-NET	No

Cincinnati, OH	Public Access Television
Cable Co.	Time Warner
Subscribers	60,000 in 1996
Length of Contract	
Company's Gross	\$25,200,000/year (approx.)
Annual Operating	96¢/subscriber/month (approx. \$691,200/year)
Capital Grant	None (Capital included in Operating)
PEG Channels	9 channels
I-NET	Yes
Tucson, AZ	Tucson Community Cable Corp.
Cable CO.	TCI
Subscribers	81,000 in 1997
Length of Contract	10 years, 1997-2007
Company's Gross	\$34,000,000/year (approx.)
Annual Operating	2% of gross for PEG and I-NET operational support (approx. \$680,000/year)
Capital Grant	40¢/subscriber/month (approx. \$388,800/year)
Channels	7 initially going up to 9 analog or 20 digital after rebuild
I-NET	Yes

Channels, Interconnects, I-Nets and Internet Access

The number of PEG access channels, cable drops for the origination of programming at organizational, governmental, and educational sites and the internal wiring and interconnection of schools need to be considered. Also you will want to consider negotiating for a number of modulators for accessing those drops for live cablecasting. Numbers of channels and drops vary depending on need and the size of the community. It is better to get one or more exclusive channels rather than shared channels. There are provisions that can be added to the contract to trigger additional channels as the programming need arises.

Community needs for I-Net bandwidth for linking municipal buildings, schools and area nonprofits into video and data networks and the availability of free cable service and Internet access to schools, libraries and municipal buildings needs to be considered and negotiated. When considering networking possibilities current statewide and local telecommunications initiatives also need to be researched and considered.

The 1996 Telecommunications Act separated cable services from "other telecommunications services". Until recently some cable operators have been including Internet access revenues into the gross revenue for cable services for franchise fee calculation purposes. Due to a recent ruling by the Federal Communications

Commission (the "FCC") cable operators have ceased this practice and are no longer including Internet access revenues with the cable revenues, resulting in a loss of income for some communities and access providers. This ruling is under appeal. The renewal contract needs to be written in such a way that the definition for gross revenue includes Internet access revenue, so that it can be collected if and when it is deemed to be a "cable service" revenue.

Renewal Process

Now to the more complex issue of how to have a successful negotiation or renewal process.

As an access provider you need to:

- Educate, stay informed, question, articulate and become pro-active.
- Work closely with all boards, committees, commissions and municipal representatives and advocate for a strong renewal. Build a strong community base. Create new partnerships that may be retained after renewal. Build a strong position from which negotiations take place
- Help to identify the future access needs and interests of your community. Develop a record of needs and uses and projected budgets. Develop a 10 year plan that demonstrates needs and that can be turned into contract provisions.
- Prepare presentations for public hearings. If there have been problems for access acknowledge them and present clear remedies and needs for the future. Create awareness of the need for access and the advantages not only to the subscribers but to the entire community and all its organizations. Mobilize your community and nonprofit organizations to speak at public hearings, write letters, make phone calls and talk with officials.
- Keep communications open with municipal officials prior to, during and after the process. If you are not getting a fair share let your officials know. Find out what your cable company is doing in its other systems. The Cable Fact Book lists the different operators and where they have systems. Many libraries have copies of this reference book on hand. Find out what other communities in your area, in your state and other states are getting in new and old contracts.

As a municipal representative you need to:

- Create a plan for renewal. Cable Advisory Committees are often charged with the responsibility to oversee the ascertainment and often to be part of a negotiating team. The Cable Advisory Committees typically holds one or more Public Hearings to solicit input from the citizens. This group should be reporting to the franchising authority on a periodic basis to keep them updated and informed.

- Create a negotiation team that is experienced and is willing to learn and understand cable, community service needs, PEG access and to work cooperatively on behalf of the educational, governmental and the public sectors.
- Hire a cable lawyer or cable consultant who works for municipalities to help obtain a good contract with an emphasis on community services. Create a strategy that considers both formal and informal negotiation scenarios.
- Initiate a Community Ascertainment Study also called a Community Needs Assessment. From this study establish and document the community needs through an Ascertainment Report and a Vision Plan that describes how future money will be used. Create a Request for Renewal Proposal (“RFRP”) based on those documented needs. Create a model contract from that RFRP from which negotiations will take place.
- Go into negotiations with as much information as possible. As part of Ascertainment: review the operator's compliance record under the existing contract; hold workshops to educate and solicit needs from nonprofits such as human services groups, arts groups, educators/schools, religious and government groups; conduct surveys of access producers and subscribers; review any current cable services including PEG access; perform a technical review of the current cable plant when needed; analyze customer service logs and annual proof-of-performance data; and in some cases it may be necessary to perform an audit of the cable operator to assure that past franchise fee payments have been correctly calculated and paid.
- Allow plenty of time. The formal process must be reserved 36 to 30 months before the end of the current franchise. When informal negotiations are taking place be prepared to trigger the formal process. Two to three years of preparation and negotiation is usually needed for a successful renewal.

Key Points

It is important to note several key points.

- 1) The cable company is usually a large corporation that takes out a tremendous amount of dollars from your community and sends it to their home office, usually in another state. Access and other Telecommunications Services are a primary way for the cable company to return something of worth to the community in exchange for long term, usually exclusive, contracts which allow the company to use public right-of-ways for their own financial gain. Renewal is the once in approximately 10 year opportunity to upgrade the system and services.
- 2) Know your company's gross revenues and let people know what the revenues are over the ten year contract, so that they can put the cable company in perspective as well as your figures for service needs in perspective. An easy way

- to arrive at an approximate figure of the company's annual gross revenue is to use \$35.00 as an average for each subscriber per month times twelve months.
- 3) When cable companies say that subscriber rates will have to go up if they pay for PEG access services, know that this is not documented nationally. In many areas where there is good support for access and other services, subscribers are not paying any more than where there is little or no support for community telecommunication needs - sometimes less. Check around - get actual facts and figures.
 - 4) What keeps the company at the negotiation table, besides large, long term contracts, are the provisions of the Cable/Telecommunications Act which allows franchising authorities (Select boards, City Councils, Mayors, State Boards in VT, CT, HI or RI) to deny contracts or renewals for any one of four reasons. The most likely reasons for denial is if either the cable operator's past performance or proposals for the future that are not reasonable to meet future cable-related community needs and interests, taking into account the costs of meeting those needs and interests.
 - 5) The cable company will have experts and/or cable lawyers at the negotiation table whose main job is to be up on technology and franchising questions. Even the best of companies are paying these people to contain cable company costs. In order to have the best contract for your community it is necessary to bring in people who also have the technically and legal expertise to work for your City. Keep the playing field equal - hire a cable lawyer or cable consultant to obtain the best services for your community.

Telecommunications Infrastructure

Renewal is a long process that deals with the community's telecommunication services for at least the next 10 years. Be prepared and be open to using this as a time to learn about current technologies and how they may be applied for the good of the community. This is a time for building your telecommunications infrastructure, networking capability, activating possibilities of coalitions and collaboration and obtaining funds and services to provide your community with access to video, data and networking possibilities for years to come.

FORMAL RENEWAL PROCESS

Declaration of Formal Proceedings:

Either Cable Operator or Franchising Authority may invoke formal proceedings 36-30 months (6 Month Window) before expiration of the current franchise.

Ascertainment Process:

Within 6 months of the invoking of the formal proceedings the franchising authority may “commence a proceeding” to review the operator’s past performance under the franchise and to access future community “Cable-Related” needs and interests.

There is no set time for this ascertainment process to conclude. The franchising authority has the discretion to take as long as it thinks necessary to review the operators past performance, to provide the opportunity for the public to express their needs, views and opinions, and to define the future needs of the community.

Renewal Proposal:

Once the franchising authority has concluded the ascertainment process two different rights are triggered:

1. The franchising authority may issue a formal “Request for Renewal Proposal” which establishes the conditions that it believes must be satisfied for the operator to receive renewal. The franchising authority may also issue an “ideal” contract or do both. The operator is then required to submit a proposal that responds to these requests.
2. The operator, on its own, has the right to create its own proposal, even if the franchising authority has not issued a request for a proposal.

Negotiation/Preliminary Determination of Renewal:

Once the franchising authority receives the renewal proposal it must promptly notify the public of the renewal proposal. The franchising authority has 120 days, once the cable operators renewal proposal is received, in which to informally negotiate with the cable operator and to issue a “preliminary determination” as to whether to grant or deny renewal.

If the preliminary determination is to deny renewal the operator has the right to request a formal administrative hearing. After hearing full evidence from both sides the franchising authority must reach a final decision to renew or not to renew. If the franchising authority decides not to renew the franchise it must justify its decision based on at least on of the following criteria:

- 1) Whether the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;
- 2) Whether the quality of the operator's service, including signal quality, response to consumer complaints and billing practices, but without regard to the mix, quality or level of cable services or other services provided over the system, has been reasonable in light of community needs;
- 3) Whether the operator has the requisite financial, legal and technical ability to satisfy its proposal; and
- 4) Whether the operator's proposal is reasonable to meet the future cable-related needs and interests of the community, taking into account the cost of meeting such needs and interests.

If renewal is denied the operator has the right to appeal the decision to the state or federal court.

Summary of Time Line:

- Invoke Formal Proceedings, 36-30 Months before expiration of Franchise
- 6 Months after the invocation of formal process the ascertainment process must begin
- Ascertainment process - variable time frame
- At completion of ascertainment process issue "Request for Renewal Proposal"
- 4 Months - Informal negotiation then grant/deny renewal

ELEMENTS OF COMMUNITY ASCERTAINMENT AND RENEWAL

1. Analyze the current franchise for compliance and review all other related documents, and federal, state and local legislation.
2. Request and review customer service records, system performance records and other pertinent documents.
3. Plan, implement and analyze surveys of subscriber's cable-related needs and interests with special emphasis on customer service and PEG access.
4. Plan and conduct community workshops/focus groups for current and potential government, educational, nonprofit and public users of community cable related services.
5. Evaluate the current PEG access facility(s), equipment, capital and operating budgets and other cable related services (when applicable).
6. Participate in any public hearings conducted by the local government to discuss cable related issues and community needs.
7. Research franchise stipulations of other communities of comparable size with emphasis on the communities served by the same cable company. Understand embedded costs.
8. Identify future municipal and educational cable related interest and needs including the need for distance learning, I-Nets, Data transmission, and access to the InterNet.
9. Determine specific needs for PEG access, and all other public, educational and municipal services.
10. Perform a technical review of the existing cable plant including analysis of proof of performance data, system maintenance records and physical inspections of the system and headend. (when applicable)
11. Recommend bandwidth, channel capacity, architecture, construction timetable and other technological characteristics of the cable system
12. Prepare an Ascertainment Report and Vision Plan to detail current and future public services and capital allocations. This report forms the basis for renewal stipulations.
13. Develop the RFRP (Request for Renewal Proposal) and "Model" Renewal Franchise Contract
14. With the designated local negotiation team negotiate the terms of the cable contract including the development of financial impact projections and all contract stipulations and language

15. Work closely and communicate with the Issuing Authority, appropriate boards, committees, groups, and the designated negotiating team in all phases of ascertainment and the negotiations

Methodology:

- Create survey(s) to assess Subscriber needs and interest, mail survey to all cable subscribers and analyze the responses
- Interviews with municipal officials, educators, nonprofit organizations, advisory council members, designated community leaders
- Community workshops for Government, Educators, Nonprofits, Access Producers and the General Public. Create Questionnaires for distribution at the workshops and analyze the responses.
- Evaluate the current PEG access facility(s) and other cable related services (if applicable).
- Analyze capabilities of the current cable system with on-site field inspection.
- Municipality may decide to audit gross receipts to determine compliance with franchise fee requirements, request pro forma data, create tables showing monthly per subscriber impact of capital grants amortized over the remaining years of the franchise
- Look over cable company customer service records and past technical evaluation/proof-of-performance data on the system.
- Gather information on other systems operated by the cable provider and compare subscriber rates in relation to services provided, such as PEG access and I-Nets.

NEGOTIATION POINTERS

Whether negotiating for a renewal franchise, buy sell agreements, leases, or contracts:

- Almost every interaction in life is a negotiation
- Ask yourself "How do we build from what we have?"
- Expectations effect outcomes; know what your present needs are and where you are going
- Look at possibilities; do not get caught in limitations
- Remember that negotiation does not have to be adversarial but be prepared to stand strong
- Find your own style
- Take risks
- Be willing to find solutions to differing needs or impasses when they arise
- Whenever possible use a team approach
- Make sure all members of the negotiating team are informed; caucus when needed; no surprises; send in experienced people
- Have clear goals; specifics as well as general goals to produce an "agreement that will work"
- Establish what you need and what you can give - fallback position
- Do not trust in assumptions
- Do your research; knowledge is power; go in with as much knowledge as possible
- Know the law and maximum you can aim for
- Consult with colleagues who have negotiated with the same company or individuals; find out what worked and what did not
- Get help from others outside the negotiation whenever possible
- Research what happened in other locations; go in with documentation
- Maintain awareness of the human factors while keeping an eye on your needs
- People generally want to reach agreement
- Look for mutual gains and present them
- Develop options; be willing to explore options and share information
- Work with community people, municipal government, organizations & press to create a positive environment

**SAMPLE
 ASCERTAINMENT REPORT - TABLE OF CONTENTS**

This table of contents is provided to give an idea of how an Ascertainment Report can be structured. The actual table of contents and the report will vary from community to community. The areas studied and the report made will be based on the particular community and its needs and interests.

The Ascertainment Report, along with the Telecommunications Vision Plan, serves as the basis for the provisions contained in the Request for Renewal Proposal (RFRP) that is sent to the cable operator. The Ascertainment Report also serves to provide backup during any ensuing contract renewal negotiations.

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CABLE FRANCHISE PROVISIONS AND THE TELECOMMUNICATIONS VISION PLAN

Renewal of a cable franchise is governed by Federal, State and local laws. The basis for formal and informal renewal is found in the provisions of federal law, specifically Section 626 of the Telecommunications Policy Act. When considering what you are asking for it is helpful to create a Telecommunications Vision Plan that turns documented community interest and needs into an actual scenario that will serve to guide the municipality in the use of these funds and provide the cable operator with material that shows how the funds being asked for are going to be used to meet the current and future needs and interests of the community.

Federal law allows municipalities to, among other things:

- require that the cable operator pay franchise fees, up to 5% of their gross revenue, to reimburse the community for the cable operator's profit making use of public property - the public right-of-ways - i.e. the streets and byways over which and under which the cable lines run. This fee can be used to provide for operational funding for PEG access.
- negotiate for total cable system capacity and line extension standards for the community
- negotiate for channel capacity for public, educational and government access channels
- negotiate for I-Net (Institutional Networks) to connect municipal, educational and other public buildings which sometimes include other nonprofit organizations, for the transmission of audio, video and data
- negotiate for capital packages to fund facilities, equipment and equipment replacement and upgrade to make use of these PEG channels and I-Nets. It is important to note that the capital package, channels and I-Net provisions are not part of the 5% franchise fee calculations but are in addition to
- request live insertion points, classroom wiring, interconnects, low income/senior citizen discounts, customer service standards and InterNet access for schools, libraries and municipal buildings

The franchise fees (up to 5% of gross) may be used to provide operational funds for PEG operations while the capital grants are used to provide for the necessary equipment and facility or lease-hold improvements that allow the community to make use of the PEG channels. Capital funds must be used for equipment purchases, facilities and renovations and may be used to help pay for consultants, engineers, contractors and other personnel hired to help the community make best use of these capital funds.

The Telecommunications Vision Plan provides the details of how the capital money and the other franchise provisions are anticipated to be used in the community. A Telecommunications Vision Plan and an accompanying Narrative is in effect a capital plan that outlines the specific capital grants requested and identifies how they will be used in each specific application as well as how the parts will be used in a unified plan to satisfy the current and future community needs and interests.

This Vision Plan is the product of the ascertainment study . The vision plan differs for each community and may cover the following:

- necessary production facilities, modifications or renovations
- purchases of an initial 1st year equipment packages for public, educational and government access
- allocations of fund for replacement and up grade of that equipment on a specific time schedule over the length of the contract
- funds for I-net development or specific types of equipment to make use of I-net capacity and anticipated uses for that I-net capacity
- how these facilities and equipment will connect with each other and how they will relate to other federal, state or local telecommunications initiatives
- locations of PEG access facilities and equipment with specific services anticipated i.e. studios, remote equipment, editing capabilities, editing and video production training; computer needs, teleconferencing and distance learning capabilities
- how and by whom the PEG facilities will be operated and anticipated staffing levels
- how various segments of the community will be served
- provisions for high-speed data access i.e. InterNet to schools, libraries and municipal buildings
- details of other sources of funding and in-kind support that will be used in conjunction with those funds asked for in the new cable contract
- wiring for local and regional school classrooms,
- location and anticipated use of live insertion points

A well crafted Telecommunications Vision Plan will serve not only to aid in the negotiation process but will also serve as a blueprint for the use of funds and services over the life of the new franchise contract.