

NYS Department of Public Service
ISSUES IN CABLE FRANCHISING

THE FRANCHISE RENEWAL PROCESS

The process for renewing cable television franchises is governed by Federal and State laws and regulations. Federal requirements are found in Section 626 of Title VI of the Federal Communications Act (47 USCS 546) of 1934 as amended. State requirements are set out by Section 222 of the New York State Public Service Law as delineated in Part 891 of the Rule and Regulations of the New York State Public Service Commission (16 NYCCR Part 891 and 897). Depending on the circumstances of a particular franchise renewal negotiation, any one or all of these will have some bearing on how the process ensues. However, in nearly all situations, the process will turn out to be less rigidly structured and complex than that described in Federal law. (The text of all laws, rules and regulations pertaining to the franchise renewal process are available on request from the Department. This information sheet concerns the procedures actually and most commonly used in negotiating a cable franchise renewal.)

How does the process typically start?

In most cases, the franchisee will formally notify the franchising municipality in writing of its intention to renew the franchise. **This notification almost always will be made between 30 and 36 months prior to the expiration date** of the existing franchise because Federal law extends certain potentially important procedural protections to franchisees that do so. In essence, by doing so, the franchisee is reserving its rights to renewal under the law. Federal law also permits the franchising municipality to commence the process on its own initiative during the same 30-36 month window.

In the very few cases where such notification is not given, State regulation requires that a franchisee notify the franchising municipality that it is seeking a renewal at least six months prior to the expiration date of the existing franchise.

Are there strict deadlines to meet?

Although the formal process written into Federal law has strict requirements and provides for a timetable (generally referred to as the “formal process”), **nearly all franchise renewals will proceed “informally”**—that is, without the strict requirements and timetables. However, the parties are always free to revert to the formal process at any time. Therefore, care should be taken by the franchising municipality to, in effect, preserve its own rights during the process.

How do municipalities protect the rights they have?

It all comes to down to preparation. Generally speaking, **a franchising municipality has a right to establish its “cable-related community needs” and expect the franchisee to agree to meet those needs in a renewed franchise agreement, provided those needs as expressed are reasonable in light of the costs that will be incurred in meeting them.** Admittedly, this is at best an imprecise standard. However, **a municipality is more likely to prevail in a dispute over interpretation of this standard if it has exercised due diligence in the research and discovery of its community needs**—something that is required under both Federal and State law and rules.

Determining community needs, and deciding what is economically viable, is only one important aspect of a municipality’s preparation for negotiations with a renewal applicant. **The municipality also should review the past performance of the applicant under the existing franchise.** Such a review may yield insights into weaknesses in the applicant’s current service plan that should be effectively addressed in a renewal document. There also may be some “unfinished business”, such as requirements that may have been overlooked, that should be addressed either prior to, or within the context of, the negotiation of a renewal agreement. Success in meeting past commitments can be an excellent predictor of future behavior in this regard. A substandard record may warrant more stringent enforcement language in a renewal

contract. (In especially egregious cases, there may even be grounds for denying the applicant a renewal—although, thus far, this has never been the case in New York.)

Negotiating a Renewal Contract

Many of the provisions in a renewal contract come from government mandates and references, as well as other language common to all such agreements--items often referred to as “boilerplate”. Therefore, in actuality, **it is only a portion of the contract that is actually negotiated.** (*Refer to the Department’s Information Sheet entitled “Issues in Cable Franchising: Elements of a Renewal Franchise Document”.*) In truth, this could be a relatively short part of the process—especially if the municipality is well informed about its options and well prepared in choosing and justifying them during negotiations. However, negotiating a renewal contract can get bound up over tangential matters including the interpretation of imprecise statutory and regulatory language, local issues, internal company policies and even philosophical differences. Ultimately, negotiations will be successful in reaching a resolution to the extent that both sides can stick to the facts, narrow the scope of their discussions to clearly relevant matters and, perhaps, agree to disagree over contentious matters with no recognizable prospect for immediate solution.

Public Hearing and Resolution

Federal and State law and rules require that a legally noticed public hearing be held prior to a vote of the municipality’s lawmaking body. Final approval takes the form of a resolution or ordinance. Once the document is signed by appropriate officials of the municipality and the franchisee, the franchisee is required to file an application for a certificate of confirmation with the Public Service Commission. The renewal only goes into effect when the Commission issues an order granting that certificate. (*Refer to the Department information sheet entitled “Issues in Cable Franchising: Filing for a Certificate of Confirmation”.*)

Is There Help Available?

Yes—and it’s free of charge. The Department provides municipal consulting services to municipalities to assist them in all their dealings with cable television service operators. The Office of Communications’ Cable Municipal Assistance Section has assisted hundreds of the state’s municipalities with the franchise renewal process for over two decades. Contact them at 518-474-2213 or by writing to the Cable Municipal Assistance Section, NYS Department of Public Service, Office of Communications, 3 Empire State Plaza, Albany, NY 12223.