

# Cable Franchise Management for a New Decade



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## 2019 Top Pay-TV Providers = 86.2 million subscribers

- Top 7 cable companies = 45.8 million subscribers;
- Satellite TV services = 25.4 million subscribers;
- Top telephone companies = 8.3 million subscribers
- Top 3 multi-channel Internet-delivered = 6.7 million subscribers
  - Hulu + Live TV, Sling TV, and AT&T TV NOW

Source: March 3, 2020 - — Leichtman Research Group, Inc. (LRG)

## Top Pay-TV providers

- representing about 95% of the market
- **lost 4,915,000 subscribers in 2019**
- compared to a 2018 loss of 1,585,000 subscribers
- **Seems very bad – but lets dig deeper**

## Satellite TV services lost 3,700,000 subscribers in 2019

- A loss of 12.7% of subscribers
- compared to a 2018 net loss of 2,360,000 subscribers

Source: March 3, 2020 - — Leichtman Research Group, Inc. (LRG)

## **The top 7 cable companies lost 1,560,000 subscribers in 2019**

- **3.3% of video subscribers**
- **compared to a 2018 net loss of 920,000 subscribers (1.9%)**

## **The top telephone companies lost 665,000 subscribers in 2019**

- **2019 loss of 7.4% of video subscribers**
- **compared to a 2018 net loss of about 245,000 (2.6%)**

Source: March 3, 2020 - — Leichtman Research Group, Inc. (LRG)

## Top 3 multi-channel Internet-delivered

### **(Hulu + Live TV, Sling TV, and AT&T TV NOW)**

- added 1,010,000 subscribers in 2019 - **18% increase**
- compared to 1,940,000 net adds in 2018 – **50% increase**

Source: March 3, 2020 - — Leichtman Research Group, Inc. (LRG)

## **AT&T had a 2019 net loss of 4,120,000 subscribers**

- DIRECTV, AT&T U-verse, and AT&T TV NOW
- Compared to a 2018 net loss of about 750,000 subscribers
- **DIRECTV lost 3,190,000 subscribers in 2019**
- **compared to a 2018 net loss of 1,235,000 subscribers**

## **AT&T accounted for 84% of 2019 Pay-TV net losses**

- compared to 48% of net losses in 2018

Source: March 3, 2020 - — Leichtman Research Group, Inc. (LRG)

# Its been a long journey...

- Docket No. 05-311
  - First Report and Order issued 2007 – focus on new entrants (e.g. Verizon/Frontier)
  - Second Report and Order issued 2008 – focus on incumbent cable operators
    - Clarification of costs that are *incidental* to the award of the franchise.
  - Order on Reconsideration issued 2015
- *Montgomery County, MD. et al. v. FCC*, (6th Cir. 2017)
  - Remands to Commission to explain “to what extent cable related in-kind contributions are franchise fees under the Act.”

...and its not over yet

# Reframing Franchise Fee Concept

- Franchise Fee → limited to 5% cap
- 47 USC 542: *"franchise fee" includes any **tax, fee, or assessment of any kind imposed by a franchising authority** or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such;*
- Only enumerated exceptions may be excluded from Franchise Fees
- FCC: Statutory Interpretation therefore mandatory enforcement
  - “Complying with the terms of the statute is not optional.” FN 251.
- City may not ask a cable operator to:
  - “voluntarily waive the statutory cap.”



# Statutory Exclusions from Franchise Fees



Taxes and fees of general applicability



Capital Costs for PEG channels.



Requirements or charges incidental to the awarding or enforcing of the franchise



Any fee imposed under title 17.

# Cable Franchises – FCC 621 Order

- **“In-kind” franchise obligations**
- Valued at **“fair market value”**
  - Includes, but not limited to:
    - Free or discounted service to schools and public buildings
    - Institutional networks
      - Separate network serving cities and schools
- **Excludes customer service and buildout franchise obligations**

# RCW 35.99.070

- City may require that franchisee provide additional ducts and conduits.
- Sets out formula:
  - If not for resale – City only pays incremental costs
  - If for resale – City pays allocated cost
- Preempted by FCC Order – FCC states it preempts state law
- Argument that the State set the Fair Market Value?

# Cable Franchises – FCC 621 Order

- **PEG Transport**

- “Maintenance and use” for PEG transport
  - Does not include cost of construction

- **PEG Capital**

- Costs incurred in acquiring or improving PEG facilities
- Not - costs incurred in *using* those facilities

# Cable Franchises – FCC 621 Order

- **PEG Channel Capacity**

- FCC promises decision in 12 months
  - LFAs “may only require ‘adequate’ PEG access channel capacity, facilities, or financial support”
  - Adequate = satisfactory or sufficient
  - Impact on franchise renewal?
- If operators are allowed to charge for channel capacity, PEG operations are seriously threatened.

# Cable Franchises – FCC 621 Order

- **Mixed Use**

- City can't regulate non-cable (services, facilities, equipment)
- City can't impose any fees on non-cable services
  - Wi-Fi and small cell antennas = cable system
- Impacts broadband and telecom operations
- *Preempts* conflicting local and state law/regulations



# King County Case - 194 Wash.2d 830

- WA Supreme Court upholds King County “franchise compensation”
  - Similar to rent for usage of the ROW.
  - Challenged by water districts
- Important Notes from Case
  - Utilities have no general right to use ROW without a franchise
  - Franchise compensation not a tax – but bargained for amount for the use of the ROW.
  - Home Rule Counties do not need statutory authority (unlike cities)
- So What?
  - RCW 35.21.860 does not apply to counties – no express prohibition on franchise fees for telecommunications.
  - Except, FCC preemption under Mixed Use Rule from FCC 621 Order

# Police Powers

- Cities may still exercise police powers over telecommunications service
  - City Code
  - Permit requirements
- FCC Order: *“As the U.S. Supreme Court has found, ‘[w]hen federal officials determine, as the FCC has here, that restrictive regulation of a particular area is not in the public interest, [s]tates are not permitted to use their police power to enact such . . . regulation.’”*



# FCC 621 Appeal

- **City of Eugene, Oregon v. FCC, et al.**
  - Seeks review of the FCC 621 Order
    - Arbitrary, capricious, and an abuse of discretion
    - Violates federal law
- **Final decision on merits of case unlikely before Spring 2021**
- **Will your 2020 franchise fee revenue be impacted?**
- **Legislation has been introduced in House and Senate:**
  - **Protecting Community Television Act**

# Franchise Necessities

- FCC left untouched general franchising authority
- Management of ROW
  - Either in franchise or code
- Bonding/Letter of Credit
  - *Old: \$250K for all work in ROW*
  - Follow Development Standards
  - \$50,000 Bond/Letter of Credit for Franchise Compliance
- Statute of limitations – 6 years
- Indemnification – sole negligence and intentional misconduct
- Insurance – Review with Risk Manager/AWC/WCIA



# Top 2020 Issues in Franchise Renewals

1. **PEG Channels**
  - a. Capacity – HD
  - b. Cost for PEG transport - fiber returns
2. **PEG Financial Support**
  - a. What is “capital”?
  - b. Does FCC 621 Order help or hurt?
3. **Complimentary Service to Public Buildings**
  - a. What to do about 6th Circuit challenge to 621 Order?
4. **Competitive Equity Provisions**
  - a. To whom do these provisions apply?
  - b. Small cell providers? Internet based multi-channel providers?
5. **Managed/Business Service Agreements**
  - a. Broadband services
  - b. I-Nets

# Thank you!



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