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technical bulletin

Municipal Technical Advisory Service
Institute for Public Service, The University of Tennessee
In cooperation with the Tennessee Municipal League

September 10, 1981

NEW DEVELOPMENTS IN CABLE TV

By E. W. Meisenhelder, Municipal Consultant

More than 100 municipalities in Tennessee have a cable television system operating within their boundaries, and probably in as many more cities, municipal officials have been approached by cable companies, or are considering proposals, or are in the process of granting franchises.

Cable TV has changed radically in the last 10 to 15 years. It's no longer just a method to get better TV pictures in mountain valleys or other remote areas. Today we see an explosive growth in channel capacity, two-way interactive cable, delivery of programs from satellites, basic services with super-imposed tiers of pay channels, cable radio, and the coming attractions of home security, fire alarm and patient monitoring, and in-home shopping. Furthermore, the Federal Communications Commission's decontrol in the mid-1970's places a far greater responsibility on local governments at a time when there is intense competition for cable franchises.

CITIES WITHOUT CABLE

What do these trends mean to the local government that has not yet awarded a cable franchise? In one word, it is "Beware!" You are caught between the demands and hyped up expectations of citizens who can hardly wait to turn on the TV set on the one hand, and the competitive scramble for a franchise from new and existing cable operators on the other.

1. Beware of an offer of a franchise fee of less than the "going rate" of 3% that the Federal Communications Commission readily allows. As city officials become more knowledgeable, this is becoming rarer.
2. More likely is a proposal of a 3% franchise fee based only upon "basic subscriber receipts," in the hope that city officials do not realize that about four years ago the FCC lifted this restriction. Section 76.31 of the FCC regulations now states that "franchise fees shall be no more than 3% of the franchisee's gross revenues per year from all cable services in the community (including all forms of consideration, such as initial lump sum payments)." Franchise fees of above 3% and up to 5% require FCC approval, which is difficult to obtain and usually necessitates a showing of a need to assist the

city's regulatory program or to help finance local programming. The four big areas of potential CATV gross revenues on which your franchise fee should be levied are: basic subscriber services, pay cable, advertising revenues, and leased channel revenues.

3. Beware of the "Rent-a-Citizen" practice, where one or more local businesspeople of good reputation are offered stock in the cable company, or other inducements, to use their influence with city officials on behalf of the cable company. A somewhat similar idea is "Hire a City Employee." At least two Tennessee cities recently have lost capable employees to attractive positions with the local cable company.
4. Do not attempt to do by a simple resolution what should be done by ordinance--authorizing and granting a cable franchise.
5. Be wary when adopting your cable franchise ordinance. Most cities realize that a 15-year franchise period is the norm. When you grant that franchise, you are substantially locking in a set of conditions that are unlikely to be changed materially for the next decade and a half. It behooves you to strike the best deal you can for your community.
6. Don't forget to include such provisions as a Performance Bond to protect the city during construction of the system, a Letter of Credit or a Security Deposit to run with the term of the franchise to ensure compliance with all provisions of the ordinance, and, of course, requirements for handling customer complaints and the authority of city officials to examine the company's records and to approve any changes in ownership.

CITIES WITH CABLE

But what if you inherited an old franchise, or have recently awarded a franchise lacking certain desirable safeguards? There may still be some teeth in the franchise document that allow you to effect favorable changes, especially at such times as negotiations for increases in basic rates, approval of change in ownership, and, of course, as the end of the franchise term approaches.

A cooperative attitude between the city and the company is always the best. It should be borne in mind that the cable company is a private entity, in business to make money; that it provides a service which is growing in popularity and has great potential; but that, on the other hand, it is obtaining the valuable right to use public rights-of-way, for which it is paying a franchise fee. A cable system is not a public necessity in the sense of a fire or police department, and the company realizes that it cannot price itself out of the market. Even the highly promoted "tier" system of pricing the "pay cable" channels can be modified, as recently happened in one of our medium-sized cities in response to citizen and official complaints.

NEW DEVELOPMENTS AND PROBLEM AREAS

The development of home security devices brings with it the obligation to develop as fool-proof a system as possible, as well as the requirement for

continuous monitoring. A new wonder is the "Qube" system, where the audience can punch buttons to respond to questions on the screen. While these are instantly totalled, it is acknowledged that this is an "unscientific count." Among other new developments are inter-governmental cooperation in franchising (as in the case of Alcoa, Maryville, and Blount County) and the adoption of a National League of Cities Code of Cable Franchising Conduct.

Coming over the horizon, and already included in bids to some Tennessee cities, is the concept of "universal service," which would be a city-wide offering of a limited number of channels at no monthly service charge. Such free service would be financed by the receipts from subscribers to one or more tiers of service.

Problem areas include subscriber privacy, and a determination of who serves a territory annexed to a city after a franchise has been awarded. Since the Tennessee Public Service Commission no longer has the authority to assess the cable industry, one of the challenges in our state is to train county assessors in the techniques of appraising cable properties. The National League of Cities has recently been warning municipal officials of the legislation in Congress that would strictly limit local regulatory authority over cable TV.

TECHNICAL ASSISTANCE IS AVAILABLE

The Cable Television Information Center, 2100 M Street, N.W., Washington, DC 20037 (telephone: 202/872-8888) is a technical assistance agency devoted to helping local governments on matters of cable TV. The Center issues an informative monthly newsletter, Cable Reports, and can provide consulting services on a fee basis.

MTAS has been helping Tennessee cities with cable television matters since 1973. In the past fiscal year alone, half a dozen MTAS staff members have provided 31 instances of cable television assistance to 19 Tennessee cities ranging in size from 1,000 to 54,000 in population. MTAS can assist you with franchise drafting or review, with specification writing, with bid analyses, and with the task of monitoring the operation of a system. Contact the Municipal Consultant serving your city.

Addendum called in by Ed M. Sept. 28, 1981.

It should be mentioned that the provisions of Section 76.31 do not apply to cable television systems serving fewer than 1000 subscribers. Where such small systems are proposed, the municipality can negotiate any franchise fee (3%, 5%, or more), which can be applied to all gross revenues of the cable system. (Reference section 76.30).

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