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Cable TV Update: The Cable Communications Policy Act of 1984

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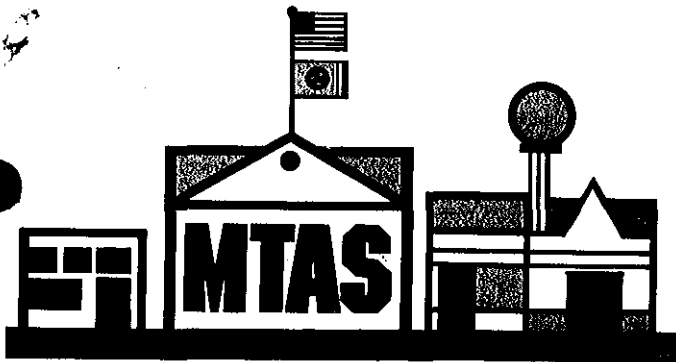
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TECHNICAL BULLETIN

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THE UNIVERSITY OF TENNESSEE
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November 5, 1984

CABLE TV UPDATE

The Cable Communications Policy Act of 1984
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Municipal Consultant

Congress gave final approval October 11 to comprehensive cable legislation that came from an agreement negotiated between the cities, represented by the National League of Cities and the U.S. Conference of Mayors, and the cable industry, represented by the National Cable Television Association.

Tennessee municipalities, who were just beginning to feel comfortable about their role of franchising and regulating cable systems, must now adapt to new game rules.

The legislation will not take effect until 60 days after its enactment (December). In addition, most of the provisions will not have an immediate effect upon existing franchises. Cities are cautioned not to rush into changes in their present franchises that might be urged upon them by cable operators.

Here are the major provisions of this new law:

"Grandfathering"

The provisions of existing franchises are "grandfathered" (continue in effect) for the life of the franchise except where they may be in direct conflict with the act (such as rate regulation renewal, and privacy).

Rate Regulation

The act "grandfathers" a city's authority to regulate cable rates for basic service (including multiple tiers of basic service) for any franchise granted prior to the act's effective date, for a two-year period following that effective date. However, during that two-year period, the cable operator may increase basic rates by up to 5 per cent a year without obtaining permission from the municipality, unless the rates are frozen under provisions of the franchise.

Within six months after the effective date of the act, the Federal Communications Commission shall prescribe and make effective regulations which authorize a city to regulate rates for the provision of basic cable service in circumstances in which a cable system is not subject to effective competition. For such cities, these special regulations for continuing regulation would not take effect until expiration of the two-year period mentioned above.

Franchise Fees

A municipality now may establish a franchise fee of up to 5 per cent of the annual gross revenues derived from the operation of the cable system without specific authorization from the FCC. Not to be included in computing the 5 per cent maximum are utility taxes imposed on the cable company, or payments made by the operator for the support of public, educational, and governmental access under terms of the franchise.

The cable operator may show the franchise fee as a separate item on subscriber bills.

Services, Facilities, and Equipment

Provisions of existing franchises for services, facilities, and equipment may be enforced for the life of the franchise. New or renewed franchises may establish facility and equipment requirements also, but may require only broad categories of video programming rather than specific programs.

Public, Educational, and Governmental Access

Cities may continue to enforce PEG access requirements, including monetary payments for the support of PEG use, in any existing franchise. The law establishes a process for requiring PEG access in new and renewal franchises.

Privacy, Consumer Protection, and Obscenity Rules

The cable operator is charged with informing new subscribers, and annually reminding all subscribers, of its safeguards for protection of individual privacy in respect to "personally identifiable information."

The city is authorized to establish and enforce customer service requirements dealing with interruption of service, rebates and credits, locations of consumer service offices, information on billing or services, etc.

A fine of up to \$10,000, imprisonment, or both, shall be levied against anyone transmitting over any cable system material that is obscene or otherwise unprotected by the U.S. Constitution. In addition, a cable operator shall make a device available, on the request of a subscriber, to prohibit the viewing of obscene or indecent programming during any time period specified by the subscriber.

Satellite Master Antenna Television Systems

This new law allows individuals to use earth stations (dishes) to receive unscrambled video programs from satellites for their own private viewing. Further, by definition, a "cable system" does not include "a facility or combination of facilities that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities use any public right-of-way."

Renewal of Franchise

The act establishes a renewal procedure which can be initiated by either the city or the cable operator. This provision does not establish a presumption of renewal for the cable company. The act establishes a two-step process for a renewal: first, public proceedings to identify the community's future cable-related needs and interests, and to review the operator's past performance under the franchise. Secondly, if the city has made a preliminary determination that the franchise should not be renewed, then the city is required to conduct an administrative proceeding to look into the operator's compliance in detail. Upon completion of the administrative proceeding, the city makes a decision to renew the franchise or not. A negative decision can be appealed by the operator to a federal district court or state court. The burden of proof is on the operator.

Although the law permits an operator to request a renewal without going through the above two-step process, the city could grant or deny the request without following the procedures also. This would weaken the city's stand in a legal challenge to a denial of renewal.

Municipal Ownership

Municipalities are explicitly authorized to own cable systems but programming decisions must be made by an "entity separate from the franchising authority."

NOTE

The material presented in this report was drawn primarily from an article by Cynthia Pols, Legislative Counsel, National League of Cities, that appeared in the Oct. 22, 1984, issue of Nation's Cities Weekly, and also from the text of the "Cable Communications Policy Act of 1984," as printed in the Congressional Record-Senate, Oct. 11, 1984.

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