

Comments Regarding Franchising/Local Rights-of-Way

A New Paradigm for Federal/State/Local Partnerships

New York City Department of Information Technology and
Telecommunications

January 22, 2010

Local Franchising Key to Broadband Deployment

- Between 2.5% and 3% of all U.S. residential households located within New York City's five boroughs.
- Due to **local** cable franchising, within the next few years virtually *every* household in the City will have physical access to **two** wired, broadband (“triple play”) service providers.

Local Franchising Benefits

- Franchise negotiations on universal access are contentious.
- Potential franchisees reluctant to surrender discretion to leave unserved areas those neighborhoods offering low profit margins.
- Local franchising authorities, who are most familiar with the physical and economic conditions of a given area, are in best position to work with potential franchisees on developing plans that balance the incentive of access to high-profit neighborhoods in return for a commitment to build lower profit neighborhoods.

New York City I-Net

- City's internal broadband network largely consists of its I-Net.
- City's I-Net established through the use of funds, fiber and accessories provided by City's cable and other franchisees.
- Sharing resources with franchised providers is far more efficient than cities building or leasing their own separate networks.
- City uses I-Net for wide range of services, including, redundant capabilities for police, fire, and first responder needs.

Customer Service

- Customer Service – Customer service provisions contained in cable franchises enable municipalities to address many consumer concerns (e.g., service outages).
- Consumers of broadband and telecommunications services often contact City about assisting with service problems, but City authority is unclear.

Issues in Broadband Era

- How to speed deployment?
- How to increase adoption?

Speeding Deployment

- Old regulatory distinctions – telecommunications, cable, broadband – increasingly will not apply.
- Replace outmoded franchising categories with uniform system based on federal/state/local partnership.

Streamlined Franchising Process

- Each operator to be required to obtain a single communications franchise for *wired* services, irrespective of which and how many communications services the operator provides.
- FCC to establish set formula for calculating franchise fees nationwide.

Franchise Fees

- Congress established a workable template in 1984 Cable Act – 5% cap on fees.
- But, percentage of gross methodology problematic in Internet-driven environment.

New Approach to Franchise Fee Calculation

- Divide incumbent cable operator's 2009 franchise fee in each franchise area by the number of linear feet of incumbent operator's facilities deployed in the area.
- Apply result as standard fee for wired installs, regardless of services provided.
- Local authorities to retain flexibility to require above ground/below ground wiring, so long as result does not exceed actual 2009 cable fees if applied to incumbent cable operator.
- In future, formula to include an inflation adjustment factor.

New Approach to Franchise Fee Calculation cont'd

- Per foot amount to apply as a cap on franchise fee that can be charged to any operator using the rights-of-way for wired installs.

New Approach to Franchise Fee Calculation cont'd

- Reliance on current incumbent cable operator's franchise fees appropriate:
 - This is generally 5% of operator's gross revenue; and
 - This reflects population density in area, which reflects relative value of right-of-way property in the area.

I-Net and PEG

- Ensure continuity of I-Net and PEG commitments.
- Transition to uniform treatment across cable/telecommunications/information services divide.

Benefits to Operators

- Certainty regarding franchise fee commitment.
- Eliminate need to track and audit gross revenues.
- Eliminate major issues in franchise negotiations.

Benefits to Municipalities

- Certainty that all operators will obtain a franchise, and adhere to basic requirements associated with gaining access to the local rights-of-way.