

Comments Regarding Franchising/Local Rights-of-Way

A New Paradigm for Federal/State/Local Partnerships

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Franchise Compensation Concepts

- Streets are valuable taxpayer-owned and maintained real estate.
- When for-profit companies permanently occupy such property for for-profit purposes, rent to taxpayer owner/investors is appropriate.
- Not monopoly rents, but rents above mere incremental costs.
- Imposing incremental cost limit is a forced subsidy of for-profit companies by local taxpayers to implement a federal policy.
- If federal government wants to subsidize private broadband providers, *use federal \$\$*, do not commandeer local taxpayer assets and dollars.

Franchise Compensation/New Approach

- We recognize that franchise compensation should not be based on *monopoly* rents (though federal government continues to collect monopoly profits for itself through spectrum auctions), but there is a middle ground between monopoly rents and a limitation to incremental costs.
- Congress sought out just such a middle ground when it enacted a 5% of gross revenue cap in the 1984 Cable Act.
- The City proposes an alternative method for franchise compensation which derives from that Congressional middle ground, but streamlined, easier to administer, non-discriminatory across both companies and services.

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 pay a single communications franchise rent for all *wire transmission facilities*, irrespective of which and how many communications services the operator transmits.
- Default formula for calculating franchise fees nationwide would be applicable to all telecom wire transmission facilities unless company and franchise authority enter new agreement otherwise going forward.

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 transmission facilities, 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 default franchise rent for all wired transmission facilities, but franchise authority and company can enter into new agreements going forward, for example, to encourage buildout

New Approach to Franchise Fee Calculation cont'd

- Reliance on current incumbent cable operator's franchise fees appropriate:
 - Congressionally-mandated compromise that avoids monopoly rents
 - 5% of operator's gross revenue reflects population density in area, which reflects relative value of right-of-way property in the area.

Benefits to Operators

- Certainty regarding franchise fee commitment
- Eliminate need to track and audit gross revenues
- Eliminate major issues in franchise negotiations
- Nondiscrimination among companies and services

Benefits to Municipalities

- Certainty that all operators pay fair franchise rent
- Eliminates uncertainty arising from diverse federal law treatment of different types of telecom services
- Streamlines both franchise process and enforcement

I-Net and PEG

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