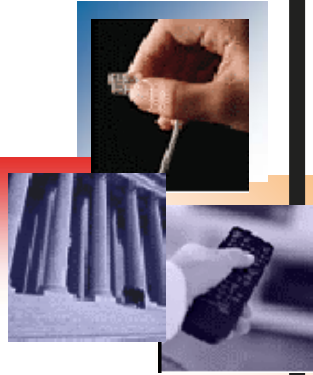


## MILLER & VAN EATON, P.L.L.C.

Website: [www.millervaneaton.com](http://www.millervaneaton.com)



# Cable Franchising: Renewals

December 2004

*Want more information on cable franchise renewals? Visit [www.millervaneaton.com](http://www.millervaneaton.com), click on "features" and look for "Cable Franchise Renewals." You can also call us at our Washington D.C. or San Francisco offices and find out how you can use the federal Cable Act to get better cable service for your community.*

### MILLER & VAN EATON, P.L.L.C.

1155 Connecticut Ave.  
N.W.  
Suite 1000  
Washington, D.C. 20036  
202-785-0600

### MILLER & VAN EATON, L.L.P.

400 Montgomery St.  
Suite 501  
San Francisco, CA. 94104  
415-477-3650

Through the cable renewal process, communities can obtain: (1) cable system upgrades that ensure that the system will support advanced cable services; (2) substantial improvements in the quality of cable service; (3) contributions of channels, facilities and equipment for local programming for and about the community; (4) video, data and voice facilities that link schools, libraries and government buildings so that these institutions can communicate more efficiently with one another and with the public; (5) a franchise fee equal to 5% of gross revenues derived from the operation of the cable system to provide cable service; and (6) in addition to the franchise fee, capital funding for public, educational and government use of the cable system.

A successful cable franchise renewal is not a matter of chance. The key for many communities is to develop and implement a carefully planned process that (1) reviews the past performance of the cable operator and (2) helps the community identify the future, cable-related needs and interests of the community. A good process often requires legal, financial, engineering, social studies and surveys.

### BACKGROUND

The federal Cable Act allows communities and cable operators to settle issues informally—through negotiations — or through a formal renewal process. The formal process and the informal process can, and often do, go forward at the same time.

The formal process only begins if the community or the cable operator activates it during the six-month period 30-36 months before the scheduled date for franchise expiration. If the process is not activated, the operator loses the formal Cable Act protections, and for that reason communities will rarely want to start the process on their own initiative. Once the formal process starts, the community must commence a process to review the operator's past performance and to identify future, cable-related needs and interests. Once that work is completed (there is no deadline for completion), the community can require the operator to submit a proposal for renewal that satisfies identified needs and interest of the community. Should the community not be satisfied with the proposal, it can issue a preliminary assessment that it intends to deny renewal, and must then conduct an administrative proceeding to make a final decision to deny or grant renewal (see the back for more details). The operator can appeal the decision to a court, but the court decides the appeal based on the record before the City—and the burden is on the operator to show that the City's decision was wrong.

While that process is moving forward, the community and the operator can negotiate. If negotiations are successful, the formal process ends. But the two processes work together: the information obtained through the formal process often bolsters the community's negotiating position, by helping it support demands, and by identifying past errors for which damages may be owed.

## The law

The key renewal provision is 47 U.S.C. §546, which defined a 4-step formal process for renewal:

- In step 1 the community reviews operator past performance and identifies future cable-related needs and interests. The public must have an opportunity to participate in the process.
- In step 2, after completing Step 1, the community can require the operator to submit a formal renewal proposal. The community has four months from the date of the operator's submission to grant renewal, or issue a preliminary assessment of denial.
- If there is a preliminary denial, the community holds an administrative hearing to consider (a) whether the operator has substantially complied with material terms of its franchise and applicable law; (b) whether the quality of the operator's past service has been reasonable in light of community needs; (c) whether the operator is financially, technically and legally qualified; and (d) whether the renewal proposal is reasonable to meet the cable-related needs and interests of the community, in light of the costs of meeting the needs and interests. Renewal can be denied if the community finds against the operator on any one of these four grounds.
- Very few communities go through the whole process; usually the community and operator settle. But cities which have gone through the process have successfully denied renewal, see *Union CATV, Inc. v. City of Sturgis*, 107 F.3d 434 (6th Cir. 1997).

## What to watch out for

While Section 546 is particularly important, many provisions of the law come into play at the time of renewal.

- Other parts of the Cable Act defines what a community can and cannot demand and enforce (a community cannot require that specific programs be provided, for example).
- State law may affect the renewal process, or what can be included in a franchise.
- The old franchise itself may itself establish some renewal requirements.

Every community will face challenges:

- Keep in mind that a cable franchise is worth thousands of dollars *per subscriber* to the operator, and is often one of the most valuable long-term deals a community negotiates. residential neighborhoods. *The phrasing of the franchise may determine whether the community franchise fees are protected as technology changes.*
- Don't rely on the operator for information about the law, or what your community needs. Consider conducting surveys, focus groups, engineering analyses and financial audits.
- The operator will often try to benefit by delaying tactics. Early on decide on a franchising strategy and schedule in conjunction with staff, elected officials and consultants.

## About us

[www.millervaneaton.com](http://www.millervaneaton.com)

The professionals at Miller & Van Eaton, P.L.L.C. has been representing local governments on communications issues for more than two decades. The firm assists localities working on cable, telecommunications and wireless issues. It has helped communities establish their own wireline and wireless networks. It helps communities develop communications plans, and protects their interests before state and federal legislatures and agencies, and in the courts.