

## RECENT STATE CABLE LAWS – A COMPARISON

Virginia Effective 7/1/2006	Process & General terms	Franchise Fee 5%	PEG CAPACITY ≥3 up to 7	PEG Support Up to 1.5%	Build-Out YES	Right-of-way management No Change
New Provider	Franchise process remains the same, i.e. locally negotiated with the option to demand an “Ordinance” franchise, the terms of which are set in statute. <sup>1</sup>	5% of gross revenues, unless incumbent is paying less.	<p>LFA may require the same number of PEG channels as the incumbent.</p> <p>If fewer than three channels, the Ordinance may require the new applicant to provide up to three channels.</p> <p>A locality that is “substantially utilizing” its existing channels may require additional channels, up to a maximum of seven.</p> <p>Operator may also agree to more than seven channels. [§15.2-2108.22(1)]</p>	<p>Match Incumbents, until expiration of franchise.<sup>2</sup></p> <p>After franchise negotiate, but cannot exceed standard of existing franchise.</p>	A locality may require service to 100% of residential dwelling units in the initial service area within three years and 65% of the residential dwelling units in the locality within seven years. Operator defines initial service area. In seventh year locality may require service to 80% of residential dwelling units. A number of limitations and exceptions, including a 30-homes per mile density standard. [§ 15.2-2108.22(12)]	Right-of-way management standards are limited to those appearing in Va. Code § 56-462(C)(i) and (ii). Locality construction standards and procedures will not apply to a telephone company. [§ 15.2-2108.22(10)]

<sup>1</sup> Likely that Verizon and other new applicants go straight to Ordinance franchise and bypass negotiations as terms are favorable. (Exception might be where community might be willing to accept lesser terms than Ordinance franchise.)

- Term of the franchise is 15 years.
- The applicant must provide a map showing its initial service area for cable service, as well as the area in which it has telephone facilities.
- An operator must assure that access to cable services is not denied to any group of potential subscribers because of the income of the area in which they reside.
- The locality has the right to monitor and inspect deployment of cable services, and the operator must submit semiannual progress reports.
- The locality may enforce this requirement using the same remedies provided under its franchise with the incumbent cable operator.

Required ordinance may address twelve specific topics commonly addressed in cable franchises.

Virginia Effective 7/1/2006	Process & General terms	Franchise Fee 5%	PEG CAPACITY $\geq 3$ up to 7	PEG Support Up to 1.5%	Build-Out YES	Right-of-way management No Change
INCUMBENT	<p>IDENTICAL TREATMENT FOR INCUMBENT</p> <p>EXCEPT FOR FAIRFAX COUNTY, WHICH ISSUED VERIZON A FRANCHISE, THE LAW PROVIDES THAT IF A LOCALITY GRANTS A COMPETITIVE FRANCHISE TO A NEW OPERATOR BY NEGOTIATION, THE INCUMBENT OPERATOR MAY REQUEST THE SAME TERMS AND CONDITIONS. IF A LOCALITY ADOPTS AN ORDINANCE UNDER THE NEW LEGISLATION, IT MUST ALSO ALLOW THE INCUMBENT TO OPT INTO AN ORDINANCE FRANCHISE.</p>	<p>IDENTICAL TREATMENT FOR INCUMBENT UPON REQUEST</p> <p>OR</p> <p>TERMS AGREED TO IN FRANCHISE INCLUDING PERCENTAGE AND DEFINITION UNTIL FRANCHISE EXPIRES. THEN ELIGIBLE FOR STATE FRANCHISE TERMS.</p>	<p>IDENTICAL TREATMENT FOR INCUMBENT UPON REQUEST</p> <p>OR</p> <p>TERMS AGREED TO IN FRANCHISE INCLUDING PERCENTAGE AND DEFINITION UNTIL FRANCHISE EXPIRES. THEN ELIGIBLE FOR STATE FRANCHISE TERMS.</p>	<p>IDENTICAL TREATMENT FOR INCUMBENT UPON REQUEST</p> <p>OR</p> <p>TERMS AGREED TO IN FRANCHISE INCLUDING PERCENTAGE AND DEFINITION UNTIL FRANCHISE EXPIRES. THEN ELIGIBLE FOR STATE FRANCHISE TERMS.</p>	<p>IDENTICAL TREATMENT FOR INCUMBENT UPON REQUEST</p> <p>OR</p> <p>TERMS AGREED TO IN FRANCHISE INCLUDING PERCENTAGE AND DEFINITION UNTIL FRANCHISE EXPIRES. THEN ELIGIBLE FOR STATE FRANCHISE TERMS.</p>	<p>IDENTICAL TREATMENT FOR INCUMBENT IS NOT AVAILABLE UPON REQUEST UNLESS THE NEW PROVIDER IS WOMEN OTHER THAN A TELCO. TELCO'S RETAIN TRADITIONAL RIGHTS-OF-WAY AUTHORITY.</p>

<sup>2</sup>In-kind compensation is prohibited, but local may require: PEG Capital Fee which is equal to the amount of any recurring fee based on gross revenues or a fixed amount per subscriber that is paid by the incumbent and PEG Capital Grant Surcharge Fee applies when the incumbent has made lump sum payments or provided equipment.

Indiana Effective 3/14/2006	Process & General terms	Franchise Fee Up to 5%	PEG CAPACITY	PEG Support	Build-Out NO	Right-of-way management
New Provider	<ul style="list-style-type: none"> <li>New providers are to be certified to operate within 30 days after applying with State Agency.</li> <li>Incumbent has until November 1, 2006 to determine if they want to opt out of current franchise.</li> </ul>	Definition reads close to Barton legislation except that it leaves open question of whether advertising will be included in definition of gross revenue. That will turn on debate as to whether advertising is a classified as a cable service by the Federal Communications Commission.	<p>At least the number of PEG channels as required under existing franchise agreement. [§ 25]</p> <p>Commission may adopt rules and procedures for the designation of PEG capacity. [§ 26]</p>	<p>Same financial support for PEG as required under franchise agreement. Amount will be determined on the same cash payments on a per subscriber basis .</p> <p>If No Peg Capacity or support in existing franchises, then state Commission may impose.</p>	State statute bans build-out requirements or required investments in, any infrastructure, facilities, or equipment.	Applicant must sign application which states it will “comply with any local ordinance or regulation governing the use of public rights-of-way in the delivery of video service.
INCUMBENT	IDENTICAL INCUMBENT MAY OPT OUT OF LOCAL FRANCHISE DURING 4 MONTH WINDOW.	GROSS REVENUE DEFINITION IN EFFECT UNDER FRANCHISE AS OF JUNE 30, 2006.	<p>IDENTICAL INCUMBENT MAY OPT OUT OF LOCAL FRANCHISE DURING 4 MONTH WINDOW.</p> <p>EXCEPT FOR I-NETS. INCUMBENT REGARDLESS OF OPTING IN OR OUT OF STATE FRANCHISE MUST CONTINUE I-NET SUPPORT UNTIL THE LATER OF THE LAPSE OF THE FRANCHISES OR JANUARY 2009.</p>	IDENTICAL INCUMBENT MAY OPT OUT OF LOCAL FRANCHISE DURING 4 MONTH WINDOW.	IDENTICAL INCUMBENT MAY OPT OUT OF LOCAL FRANCHISE DURING 4 MONTH WINDOW.	IDENTICAL. INCUMBENT MAY OPT OUT OF LOCAL FRANCHISE DURING 4 MONTH WINDOW.

Texas Effective 9/7/2005	Process & General terms	Franchise Fee  5%	PEG CAPACITY No less than 2 channels and as many as 10	PEG Grant  No less than 1%	Redlining and Build-Out  No	Right-of-way management
New Provider	Application filed with the State of Texas (the Public Utility Commission)	The holder of a state-franchise authority pays each municipality in which it provides cable service or video service a franchise fee of five percent of gross revenues as set forth in this chapter. Definition of Gross Revenues is comprehensive.	PEG channels -- Up to 10 as were <u>active</u> on 9-1-05, but no fewer than 2 channels for communities less than 50,000 population or three channels for communities larger than 50,000 pop.	Same as incumbent cable provider, on a per subscriber basis, until incumbent franchise expires, then one percent of Gross Revenues fee replaces PEG support payments and in-kind services priced at incremental cost to the operator or at City's option, the former per subscriber fee can be continued. [§66.006]	State-franchisee not required to comply with mandatory build-out provisions. [§66.007]	A municipality may enforce police power-based regulations in the management of a public right-of-way to the extent that reasonably necessary to protect the health, safety, and welfare of the public. Such management must be competitively neutral and not unreasonable or discriminatory. State PUC is barred from reviewing cities' police power based ROW management regulations
INCUMBENT	NOT ELIGIBLE FOR STATE FRANCHISE UNTIL FRANCHISE EXPIRES IN ANY COMMUNITY, UNLESS IT IS AN OVER BUILDER, IN WHICH CASE IT MAY SEEK STATE FRANCHISE UPON ENACTMENT.	BOUND BY TERMS OF FRANCHISE UNTIL EXPIRED.	BOUND BY TERMS OF FRANCHISE UNTIL EXPIRED.	BOUND BY TERMS OF FRANCHISE UNTIL EXPIRED.  AFTER EXPIRES IDENTICAL EXCEPT THAT I-NET MUST BE CONTINUED IF CITY PAYS INCREMENTAL COST OF MAINTAINING THE NETWORK.	BOUND BY TERMS OF FRANCHISE UNTIL EXPIRED.	BOUND BY TERMS OF FRANCHISE UNTIL EXPIRED.  STATE PUC IS BARRED FROM REVIEWING CITIES' POLICE POWER BASED ROW MANAGEMENT REGULATIONS.

Kansas Effective Date 7/01/2006	Process & General terms	Franchise Fee 5%	PEG CAPACITY No more than 2 channels	PEG Grant NONE	Redlining and Build-Out No redlining – allows universal service by means of any service.	Right-of-way management Must be consistent with the new law.
New Provider	<p>Application filed with the state corporation commission.</p> <p>Commission may assess fees against any parties for appeals and petitions brought to the Commission.</p>	<p>Due on a quarterly basis but the municipality must request the funds.</p> <p>Definition of gross revenues is very limited and probably does not include advertising fees as said fees are not collected from the subscriber.</p>	<p>A video service provider shall not be required to provide more than two PEG access channels.</p>		<p>Application must include means to provide video programming to <i>all households</i> but bill bans any buildout requirement.</p> <p>A video service provider may not deny access to service to any Group...because of the income of the residents in the local area in which such group resides .</p>	<p>Legislation has an interesting definition of PROW. [Public right-of-way'' means only the area of realproperty in which the city has a dedicated or acquired right-of-way interest in the real property.</p> <p>City cannot require a local office as a term for access to rights of way.</p>
INCUMBENT	MUST HONOR EXISTING FRANCHISES UNTIL EXPIRED OR A STATE FRANCHISED PROVIDER BEGINS SERVICE IN FRANCHISED AREA. IF BY CHANCE THE STATE FRANCHISE REQUIRES MORE THAN LOCAL, THEN LOCAL GOV'T HAS RIGHT TO PETITION TO UPGRADE.	MUST HONOR EXISTING FRANCHISES UNTIL EXPIRED OR A STATE FRANCHISED PROVIDER BEGINS SERVICE IN FRANCHISED AREA. IF BY CHANCE THE STATE FRANCHISE REQUIRES MORE THAN LOCAL, THEN LOCAL GOV'T HAS RIGHT TO PETITION TO UPGRADE.	MUST HONOR EXISTING FRANCHISES UNTIL EXPIRED OR A STATE FRANCHISED PROVIDER BEGINS SERVICE IN FRANCHISED AREA. IF BY CHANCE THE STATE FRANCHISE REQUIRES MORE THAN LOCAL, THEN LOCAL GOV'T HAS RIGHT TO PETITION TO UPGRADE.	MUST HONOR EXISTING FRANCHISES UNTIL EXPIRED OR A STATE FRANCHISED PROVIDER BEGINS SERVICE IN FRANCHISED AREA. IF BY CHANCE THE STATE FRANCHISE REQUIRES MORE THAN LOCAL, THEN LOCAL GOV'T HAS RIGHT TO PETITION TO UPGRADE.	MUST HONOR EXISTING FRANCHISES UNTIL EXPIRED OR A STATE FRANCHISED PROVIDER BEGINS SERVICE IN FRANCHISED AREA. IF BY CHANCE THE STATE FRANCHISE REQUIRES MORE THAN LOCAL, THEN LOCAL GOV'T HAS RIGHT TO PETITION TO UPGRADE.	MUST HONOR EXISTING FRANCHISES UNTIL EXPIRED OR A STATE FRANCHISED PROVIDER BEGINS SERVICE IN FRANCHISED AREA. IF BY CHANCE THE STATE FRANCHISE REQUIRES MORE THAN LOCAL, THEN LOCAL GOV'T HAS RIGHT TO PETITION TO UPGRADE.

<b>Arizona Effective Date  July 1, 2007</b>	<b>Process &amp; General terms</b>	<b>Franchise Fee  In effect reduced to approximately 3%</b>	<b>PEG CAPACITY  2 channels</b>	<b>PEG Grant  Zero</b>	<b>Redlining and Build-Out</b>	<b>Right-of-way management  Must be consistent with the new law.</b>
New Provider	Local franchising is retained	Limits the total rates of the license fee and any TPT taxes on gross revenue levied or assessed by a licensing authority to a maximum rate of 5%.	Channel capacity limited to:  Two channels of public, educational or government access (PEG) programming in the basic tier of the cable television system, and  Two channels of noncommercial governmental programming, at least one of which may be programmed by the federal government, in the digital programming tier of the cable television system.	All fees must not exceed 5% in the aggregate	Still available	Bear reasonable costs associated with damage caused to public streets, roads and alleys by construction, maintenance and operation of its facilities in the highways and that are imposed on other telecommunications corporations.  Pay fines, fees, charges or damages for breach of terms and conditions of the license.
INCUMBENTS	FRANCHISE TERMS HONORED IF ENTERED INTO BEFORE JULY 1, 2007.	FRANCHISE TERMS HONORED IF ENTERED INTO BEFORE JULY 1, 2007.	FRANCHISE TERMS HONORED IF ENTERED INTO BEFORE JULY 1, 2007.	FRANCHISE TERMS HONORED IF ENTERED INTO BEFORE JULY 1, 2007.	N/A	FRANCHISE TERMS HONORED IF ENTERED INTO BEFORE JULY 1, 2007.