

# The Future of Local Franchising: An Overview of Key Federal and State Franchising Activity

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Television

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# The Basics: Franchise Requirement

47 U.S.C. § 541(b)(1): “. . . a cable operator may not provide cable service without a franchise”

# The Basics: Definition of "Cable Service"

Cable service means --

- (A) the one-way transmission to subscribers of
  - (i) video programming, or (ii) other programming service, and
- (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. 47 U.S.C. § 522(6)

## Why Now?

- Bell telephone companies entering video business
- Bells argue that local franchising is a barrier to entry, and that new entrants deserve reduced regulation
- AT&T argues IPTV is not cable service

# Overview of Activity

- FCC, Congress, States, and the courts are all active
- “Activity” ≠ “results”

# Federal Overview

- Federal Legislation
  - Passed by House
  - Approved by Senate Commerce Committee
  - Hung up on net neutrality
- FCC
  - “621” proceeding
  - AT&T petition on IPTV

# State Franchise Legislation

- 9 states have passed legislation
- Active debate ongoing in Michigan
- Many states expected to take up debate in 2007, including some states that rejected legislation in 2006

# Big Issues in State Legislative Debates

- Definition of “video service”
- Who serves as franchising authority
- Limited scope of application review
- Shot clocks for decision
- Level playing field for incumbents
- Build-out/Anti-Discrimination
- Extent of local control
- Severability

# Video Service Definition

- Definition must cover all wireline-delivered MVPDs, regardless of technology
- Some provide exception for video provided via Internet access service
- Some distinguish between video service and cable service

# Who is the Franchising Authority?

## Various Approaches:

- State is sole franchising authority
- State is default franchising authority
- Locals remain franchising authority, subject to some uniform franchise requirements

## Limited Scope of Review

- New State laws generally impose strict limits on what can be requested and considered in the franchising process
  - New Jersey
  - California

# Shot Clocks

- Nearly every new state law imposes some time limit in which the franchising authority must act to approve or disapprove a franchise application
  - North Carolina

# Level Playing Field

- Availability and timing of opt-in rights for incumbents
  - New Jersey, Indiana, California
- Comparability of regulatory requirements, including how prior obligations for PEG, I-Nets, and free service are treated when incumbents transition to new franchise
- Comparability of franchise fees

## Build-Out/Anti-Discrimination

- Definition of franchise area and ability to amend that franchise area description can moot discussion
  - House bill vs. state approaches
- Exceptions swallow rule even where imposed
  - New Jersey, California
- Effect on consumers uncertain

# Local Control Remaining

- New State franchising laws generally limit ability of local authorities to exercise unbridled authority over providers
  - PEG
  - Nondiscriminatory ROW regulation
  - Limits on fees and taxes
  - Limited review, if any, of transfer applications

# Severability

- May be one of the most important provisions of the new laws

# Litigation

- AT&T challenge to Walnut Creek, California's requirement it obtain a franchise to install video facilities
- Challenge to Connecticut DPUC determination that IPTV is not cable service

## What To Expect In 2007

- FCC action in 621 proceeding
- Court decision in Connecticut on classification of AT&T's service
- Much state activity
  - Net neutrality joins franchising debates
- Congressional activity???