

Risks (and Opportunities) for Franchising and Control of Public Assets

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Streaming Services

- At risk: franchise fees, PEG
 - Operators *with* franchises may exclude revenues from streaming services; may seek “favored nations” treatment; entities who stream may claim exemption from requirements to pay fees
 - Cable Act does not distinguish between video based on whether it is “streamed” or not
- Treatment may depend on whether service delivered via public Internet; or whether services is “real time” or not



Treatment of Mixed Use Systems

- Risk: entities with franchise to provide one type of service may provide others; and compensation for authorized services/benefits obtainable may *decline*
- Example: does cable franchise permit operator to provide non-cable services without paying fees?
- Can localities protect consumers from abuses on a mixed use system?



Control Over Government Assets

- Right of way
 - Compensation
 - Ability to control placement of facilities in RoW
 - Ability to maintain RoW in safe, accessible condition
- Other government property
 - Right to reserve property for public uses
 - Right to leverage assets/charge for use



Treatment of Wireless Services

- Federal law limits/protects local authority over placement of wireless common carrier services via Section 332(c)(7)
- What rights do companies have to place facilities in rights of way for non-common carrier services, like video services?
- What agreements/compensation will be/can be required for use of public property in connection with those services
- Is there a viable path for protecting against redlining/underserved neighborhoods?



Where Are These Issues Playing Out?

- State legislatures
 - “Small cell” legislation
 - Automated vehicle legislation
- State courts
 - Challenges to small cell legislation (including changes based on anti-gift provisions)
 - Good news: *City of Eugene v. Comcast of Oregon II*, 375 P.3d 446 (Or. Sup. Ct. 2016)
 - Cable Act does not prevent Eugene from imposing fee on Internet service for use of rights of way



Where Are These Issues Playing Out?

- Federal courts
 - *Montgomery Cty. v. FCC*, 863 F.3d 485 (6th Cir. 2017)
 - In-kind cable related not franchise fees
 - I-NET may be required
 - Localities may regulate non-cable, non-common carrier aspects of system (mixed use)
 - FCC determinations (including determinations with respect to use of PEG fees) do not apply where state law governs franchising
 - *Comcast of Sacramento I, LLC v. Sacramento Metro. Cable Television Comm'n*, U.S. Dist. LEXIS 128195, (U.S.D.C. E.D. Cal. 2017)
 - Comcast cannot deduct fee paid to CPUC from franchise fees owed to locality
 - State video service fee reaches variety of entities, not just cable systems



Proceedings at the FCC

- Wireline and Wireless Proceedings
 - *Accelerating Wireless Broadband Deployment By Removing Barriers To Infrastructure Investment*, WT Docket No. 17-79
 - *Accelerating Wireline Broadband Deployment By Removing Barriers To Infrastructure Investment*, WC Docket No. 17-84
 - *Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition for Declaratory Ruling*, WT Docket No. 16-421



Proceedings at the FCC

- *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion GN Docket No. 17-199 Thirteenth Section 706 Report Notice Of Inquiry* (Comments/Replies = 9/21, 10/5)
- *In the Matter of Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services MB Docket No. 14-261 (MVPD/OTT docket)*
- BDAC “models”
- Preemption Petition Targeting San Francisco MDU Ordinance
- Multiple Tenants Environment Proceeding



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