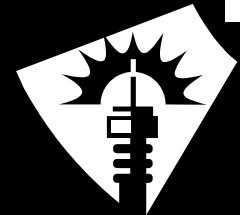


---

# Cable Franchise Reform

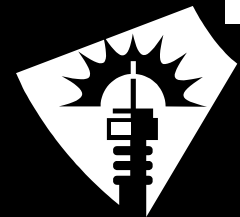
July 11 & 12, 2007



# Presentation Objectives:

---

- Overview of New Law (House Bill 227)
- New Customer Service Regulations
- Overview of Federal Regulations for Cable Franchises
- County Preparation Prior to New Law Implementation on January 1, 2008



---

# Overview of the New Law (HB 227)



# Who is Covered Under the New Law?

---

- Traditional Cable
- Video Service Providers
  - Which includes Internet Protocol Television
- Satellite and Other Wireless Video Services are NOT Included

# Three Franchise Options for Providers

---

1. Negotiate a new local franchise agreement.
2. Adopt an existing local franchise agreement.
3. Apply for a state franchise with the Secretary of State



# To Receive a State Franchise

---

- Cable provider must file an application with the Secretary of State 45 days prior to offering cable or video service to subscribers.
  - Must simultaneously provide a copy to local governing authority.
  - Application Fees
    - Requires a provider to pay a \$500 fee to the SOS to recover cost associated with the processing of the application
    - \$250 fee for the cost associated with any amendments to the application
  - Protects the rights of local governments to object granting of an application to a new provider that is not financially or technically qualified to provide service.

# A County May Object

---

- When the county reasonably believes the applicant has:
  - Not yet accessed right-of-ways in the municipality or unincorporated area of a county and;
  - Does not possess satisfactory financial and technical capability to provide service or;
  - Is not duly authorized to conduct business in Georgia.



# Terminating Existing County Franchise Agreements

---

- Existing providers may
  - Elect to terminate an existing franchise
    - Must continue to provide PEG Channels and PEG support payments as they existed on January 1, 2007 under the terms of the local franchise had it not been terminated until the local franchise would have expired under its own terms.
    - If a local agreement would have expired before July 1, 2012, the provider must continue to provide PEG Channel(s) as such existed on January 1, 2007 until July 1, 2012. This includes:
      - The number of PEG channels and;
      - Usage criteria for such channels
    - Must continue to provide a public safety training channel that existed January 1, 2007.
    - Must continue to provide any contractual rights duties or obligations to any private person including a subscriber.



---

# Making Changes to an Existing State Franchise



# If a Provider is Purchased or Merges with Another Provider

---

- The original provider may transfer the state franchise to the new company provided they:
  - Notify the impacted local government.
- Requires that any liability owed by the original provider is transferred to the new company.



# A Provider May Modify Its Service Area

---

- Must provide notice to the Secretary of State and each affected local governing authority at least 20 days prior to the effective date of the change.
- Must include a geographic description of the new service area.



# Expiration of State Franchise

---

- Expires 10 years from the date of issuance.
- Provider may terminate at anytime and must notify each affected local governing authority.
- No provision for the State or authorizing local government to terminate franchise.



# Gross Revenues

---

- Includes:
  - Franchise fees
  - Advertising
  - Home shopping services revenue
- Does Not Include:
  - taxes, surcharges or governmental fees other than ad valorem taxes, net income taxes, and business or occupation taxes not measured exclusively as a percentage of the charges for services
  - Outstanding bad debt
  - Refunds, rebates or discounts
  - Revenues from other non-cable or video services
  - Late fees not initially booked as revenues, returned check fees or interest
  - Inside wiring maintenance contracts



# Franchise Fees

---

- Shall be paid directly to each affected local government up to the federal maximum franchise rate of 5% of gross revenues.
  - Local governments must set a rate and provide written notice to the Secretary of State and each provider before the fee will be collected.
  - Local Governments may change the rate up to the federal maximum every 2 years.
- Fees must be paid to the local government within 30 days after the last day of each calendar quarter.
- Late penalty and interest equal to 1% a month.

# Audits

---

- May audit no more than once annually
- In the event of a dispute:
  - An action may be brought in a court of competent jurisdiction.
  - Any action shall be brought within 3 years following the end of the quarter to which the disputed amount relates.
  - If the court finds the franchise fees due within any 12 month period were underpaid by 10% or more the service provider may be required to pay reasonable costs associated with the audit.

# Customer Service

---

- Each local government shall receive and handle complaints from subscribers except:
  - After such time as 50% of the potential subscribers within an affected local governing area are being offered service by two or more wireline service providers holding a state or local franchisee.
    - After that time local governments may elect to discontinue receiving complaints by passing an ordinance to have their phone number removed from customer bills.
- Customer Service standards cannot exceed those established by the FCC in 47 C.F.R. 76.309(c).
- The Governor's Office of Consumer Affairs will establish the procedure for resolving consumer complaints.





# PEG Channels

---

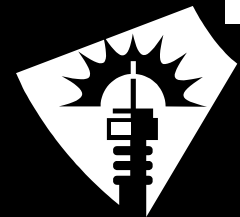
- Up to 3 PEG Channels for counties with an unincorporated population of 50,000 or more.
- Up to 2 PEG Channels for counties with a unincorporated population of 50,000 or less.



# To Qualify for the First Exclusive PEG Channel

---

- Certification by the authorizing local government that it has produced at least 15 hours of non-duplicative original programming in the first month of operation and each additional month or;
- Two or more municipalities or counties may collectively include a certification of at least 15 hours of non-duplicative original programming.



# Original Programming

---

- Programming produced specifically for or about a municipality or county or citizens thereof and shall include public government meetings.
- It does not include character generated messages, video bulletin board message, traffic cameras, or other passively produced content.



# To Qualify for a 2<sup>nd</sup> Exclusive PEG Channel

---

- Certify the first channel is being substantially utilized and;
- Upon activation the second channel will be substantially utilized.
  - Substantially utilized means:
    - 12 continuous hours of programming each business day and;
    - At least 75% of the 12 hours of programming shall be non-duplicative programming.
      - Non-duplicative programming shall not include the first three broadcasts in a day of a meeting of an elected government body.



## To Qualify for a 3<sup>rd</sup> PEG Channel or a 2<sup>nd</sup> Channel on a Non-Basic Digital Tier

---

- The channel shall be programmed for at least 8 continuous hours of non-duplicative content per day.
- The third channel will only be available on the non-basic digital tier.



# Programming Space Available to Any County

---

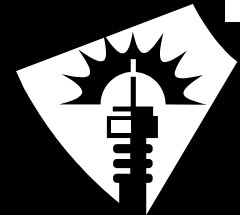
- At the discretion of the franchise holder
- On a nonexclusive channel



# Free Basic Service

---

- Provider to provide at no charge to local governments at least one service outlet at all local government buildings.
- Provide free basic service to public schools and libraries.
- Provide free basic service to those that were receiving it on January 1, 2007 until the terms of the local agreement would have expired.
- Provide free service at the option of the provider.



# Build Out

---

- No Build-out Requirements





# Rights of Way

---

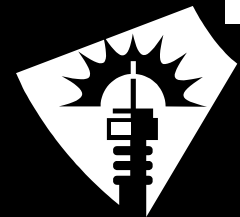
- Retains the powers of local governments to manage their rights-of-ways.
- Providers must comply with the Georgia Utility Facility Protection Act.



# Prohibit Discrimination

---

- Prohibits providers from discriminating against potential customers based on income.
- Allows customers to file complaints with the local governing authority if they believe discrimination has occurred with the local government.
- Local governing authority can require the provider to enter into nonbinding mediation and if still unresolved file a complaint against the provider in court.



# Effective Date

---

- Law has an effective date of July 1, 2007.
- Does not allow applications to be filed prior to January 1, 2008.



# Cable Franchise Customer Service Rules



# O.C.G.A. § 36-76-7

---

- Charges the Governor's Office of Consumer Affairs with the task of establishing a uniform set of rules on how a local governing authority can resolve subscriber complaints.
  - ACCG is assisting Consumer Affairs with drafting these rules.



# Federal Customer Service Standards

---

- The cable service or video service provider is required to abide by the customer service standards set forth in 47 C.F.R. 76.309(c).



# Penalties and Fees

---

- The bill allows the rules promulgated by the Governor's Office of Consumer Affairs to allow for penalties and fees against the cable service provider or video service provider by subscribers and the affected local government for noncompliance of the customer service standards.



# Mediation

---

- The affected local government and the cable service provider or video service provider are required to participate in mandatory nonbinding mediation if the issue cannot be resolved.





# Rules Apply

---

- The customer service standards rules only apply until 50% of the potential subscribers within an affected local government are offered service by 2 or more cable service providers or video service providers holding a state franchise or local franchise.



# Over the 50% Threshold

---

- Once the 50% threshold is met, the affected local government can choose to discontinue receiving and handling all subscriber inquiries, billing issues, and other complaints for state franchise holders through the adoption of a local ordinance or resolution.



# Discontinue Subscriber Complaints

---

- If the local government chooses to discontinue subscriber complaints, bills by the cable service provider or video service provider will no longer include contact information for that local government relating to subscriber complaints.



---

# Current Federal Regulations and Status in Other States



# Federal Legislation

---

- Last year the FCC instituted a 90 day shot clock for counties to negotiate a franchise.
- The FCC rules apply in Georgia if the operator files for a local franchise only.
- During June, the NLC and NACO filed for an injunction to delay the implementation of these new rules.



# State Legislation

---

- North Carolina
  - Passed similar legislation with a 7% telecom tax, including a tax on satellite television.
- South Carolina
  - Passed similar legislation to Georgia's but a county can deny the application.
- Virginia
  - Passed a 90-day shot clock like the FCC.
- Louisiana
  - Passed similar legislation but the governor did not sign it into law.
- Tennessee
  - Defeated the AT&T sponsored bill in June 2007, but AT&T will be back in 2008.



---

# County Preparation Prior to New Law Implementation on January 1, 2008



# Prepare for the Future

---

- Conduct a franchise fee audit.
- Document all current non-compliance issues.
- Raise your franchise fee to 5% if possible.
- Expand your definition of gross revenues if possible.
- Begin expanding your PEG programming hours to be in compliance with new rules.





# Audit Today

---

- The new legislation limits audits to only (3) three years.
- The Georgia Statute of Limitations is 6 years, so ACCG currently audits 6 years.
- During the last 3 years we have recovered over \$2,000,000 for member counties using our franchise fee audits.



# Raise your Franchise Fee

---

- You may have an ordinance or franchise provision that allows you to unilaterally raise your franchise fee to the federal maximum of 5%.
- An ACCG Cable Project will determine if you can and we will draft all resolutions and letters to cable companies for you to do so.



# Franchise Fees Under New Law

---

- If the operator elects a local franchise you must charge the same fee as the dominant provider pays now.
- The County must inform the SOS what rate you intend to charge under a state issued franchise...choose 5%!
- If you choose less than 5%, you will have to wait 2 years to raise the fee.



# Definition of Gross Revenues

---

- Again, your Ordinance or Franchise Agreement may allow you to expand the definition of Gross Revenues.
- An ACCG Cable Project will determine if you can and we will draft all resolutions and letters to cable companies for you to do so.



# Expand PEG Programming

---

- The new rules require 15 hours per month of non-repetitive programming.
- After your franchise expires you will need to meet this criteria.
- ACCG Cable Projects can help you expand your current programming to “future-proof” your PEG channel.



# Future PEG Channels

---

- If you don't have a PEG channel and were waiting for the franchise renewal to get one, what do you do?
- The new legislation allows you to have at least one PEG channel.
- Be ready to file with the SOS and the cable operator as soon as they file for a state-issued franchise agreement.



# PEG Programming

---

- An ACCG Cable Project will help you identify many resources for PEG programming.
  - Public Safety
  - Fire Prevention
  - County Government
  - Public Education, including extracurricular activities such as sports, concerts and drama.



# What is an ACCG Cable Project?

---

- 6-year franchise fee audit, including settlement of outstanding fees due.
- Document all other non-compliance issues.
- Assess any applicable fines.
- Raise franchise fees, if possible.
- Identify, recommend and purchase PEG needs including programming and capital equipment.
- Draft all correspondence for the County.





# ACCG Project Cost

---

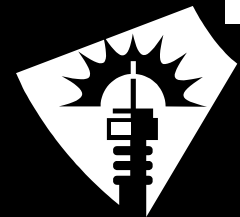
- \$3000 for first cable company.
- \$750 for each additional cable company in the County.
- All work is on a not-to-exceed fee or actual hours worked whichever is less.
- Additional services available at an hourly rate plus travel.



# ACCG Cable Project Clients

---

- Baldwin
- Barrow
- Bulloch
- Columbia
- Cherokee
- Crisp
- Dade
- Dougherty
- Floyd
- Habersham
- Haralson
- Jackson
- Jefferson
- Jenkins
- Lee
- Lowndes
- Murray
- Oconee
- Rabun
- Sumter
- Troup
- Union
- Upson
- Wilkinson
- Others:
  - Fayette
  - Catoosa
  - Whitfield
  - Dalton
  - Ringgold
  - Woodstock
  - Peachtree City



# For Additional Information

## **CABLE AUDIT**

Mike Stewart

ACCG

404-522-5022

[mstewart@accg.org](mailto:mstewart@accg.org)

John C. Howell

Telecommunications

Consulting Associates

101 Flat Rock Gap Road

Waynesville, NC 28785

828-627-8415

[munihelp@bellsouth.net](mailto:munihelp@bellsouth.net)

## **REGARDING THE NEW LAW**

Clint Mueller

ACCG

404-522-5022 ext. 162

[cmueller@accg.org](mailto:cmueller@accg.org)

## **CUSTOMER SERVICE REGULATIONS**

Michele NeSmith

ACCG

404-522-5022 ext. 195

[mnesmith@accg.org](mailto:mnesmith@accg.org)

---

Thank You!

