By Mark Flynn

New cable competition bill changes regulatory landscape

THE 2006 GENERAL Assembly rewrote the rules for cable TV operators in two pieces of legislation – HB 1404 (Griffith) and SB 706 (Stolle). Legislation was pushed by Verizon to facilitate its entry into the cable business; the end product represents significant compromise among Verizon, the cable industry and local governments.

Local governments will be faced with decisions under the new law when Verizon or another telephone company decides to move into a town or city to provide cable TV. The legislation, however, also applies when an incumbent cable provider's franchise is coming to an end.

How the process works

A telephone company, new cable company or incumbent cable company files an application to negotiate a traditional franchise. That starts a 45-day negotiating session. (There is no 45-day requirement if the applicant already has a cable franchise with a locality.) If Verizon, for example, is the applicant, the terms of the franchise may not "be more onerous than" the franchise for an incumbent and may not "unreasonably prejudice or disadvantage any cable operator." As a result, the incumbent's franchise can be seen as setting a ceiling on the requirements of the new franchise, as well as a floor, because if Verizon's deal is sweeter than the incumbent's deal, the incumbent could sue over the imbalance.

If the negotiations are fruitless after 45 days, the company may file notice that it will operate under an ordinance cable franchise (OCF). Thirty days after giving notice, the applicant may throw the switch to provide cable TV. The locality then has 120 days to adopt an OCF that sets out the rules for the applicant to provide cable TV services. The ordinance applies back to the date the company began offering cable.

The incumbent cable company may use this same process, but only in two cases:

• When its franchise agreement is coming to an end.

• When Verizon or another company has obtained a franchise. The incumbent files a notice that it wants to amend its franchise to take on the deal the competitor has obtained. The cable company, however, may not reduce the geographical area where it currently provides cable TV services.

Terms of an ordinance cable franchise

The terms of an ordinance cable franchise are as follows:

• Fifteen-year term.

• The competitor must provide the same number of public access, educational and governmental channels (PEG) as the lowest number offered by an incumbent. In addition, if the incumbent provides fewer than three PEG channels, the locality may require all operators to offer three. If the PEG channels become "substantially utilized," the locality may require each operator to increase the number of PEG channels, up to a maximum of seven.

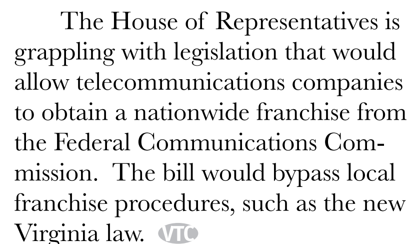
• Five percent cable franchise fee. The existing fee of 5 percent of gross revenues was retained, but with a limiting definition that reduces the income for some localities. The new telecommunications tax-restructuring bill – HB 568 (Nixon) – provides that for a new or renewed franchise, the traditional franchise fee will not be paid. Instead, the cable operator will pay to the state a cable franchise of 5 percent of the consumers' charges that is in turn sent to the localities. Under HB 568, the fees for existing franchises will continue to be paid, but to the state, which then sends the fee to the locality.

• PEG capital fees. The new operator must pay a fee equal to any amount charged the incumbent for the capital costs of PEG studios and institutional networks (INET – cable to schools and other public buildings). In addition, if the incumbent provides in-kind services for PEG studios or INET, Verizon may be charged an amount equal to the value of the in-kind services, but capped at 1.5 percent of its gross receipts in the locality.

• Build-out. The new operator identifies the area it intends to serve in its application and must serve that area within three years. It must build-out to 65 percent of the residences in the locality within seven years and the locality may require build-out to 80 percent of the residences by the 10th year. The build-out provisions only apply to the areas of the locality where Verizon provides phone service.

The legislation also has customer service standards, rights-of-way management and enforcement procedures. Telephone companies only have to comply with the customer service and rights-of-way management provisions they already are subject to as a telephone company.

Federal legislation



The House of Representatives is grappling with legislation that would allow telecommunications companies to obtain a nationwide franchise from the Federal Communications Commission. The bill would bypass local franchise procedures, such as the new Virginia law. VTC

About the author
Mark Flynn is director of legal services for VML.