

## Cable TV/Telecommunications and Utility Franchises

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Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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## Cable TV/Telecommunications and Utility Franchises

**Reference Number:** MTAS-83

Municipal governments may grant franchises to privately owned utilities that use public rights of way. The majority of city charters contain procedures for granting franchises. Most franchises require the utility to pay a fee to reimburse the community for using its streets and rights of way. Municipalities may, upon request by a cable company, grant a cable franchise. T.C.A. §§ 7-59-101, *et seq.*

Cities under the general law modified city manager-council charter have authority to acquire, own, and operate cable TV systems. T.C.A. § 6-33-101. Under the 1992 Cable Television Consumer Protection Act, all cities may build and operate a cable system in competition with their existing franchise without granting themselves a franchise.

Municipally owned electric utility systems may construct and operate cable TV systems in their service areas. However, the cable operation may not be subsidized by the municipality or by the electric system, and it must pay tax equivalents using the same method prescribed for the electric system. T.C.A. §§ 7-52-401–407.

In addition to cable TV companies, cities have issued franchises to private companies providing gas, electric, water, steam, and public transportation. State law prohibits a company from acquiring the franchise or property of another company operating under a city franchise without the city's permission. T.C.A. § 6-54-109.

Municipalities probably do not have the authority to franchise a telephone/ telecommunications company or to collect a franchise fee based on the company's income. But, cities may require the firm to pay "police power" rent, i.e., a fee that covers the municipality's direct costs of the telephone/ telecommunications company's use of rights of way. T.C.A. § 65-21-103, T.C.A. § 65-21-203. (Also see *City of Chattanooga v. BellSouth Telecommunications*, (unreported) 2000 W.L. 122199 (Tenn. Ct. App. 2000).)

### **Statewide Cable and Video Service Franchising**

Notwithstanding the above discussion about local cable franchising authority, cable and video service companies have the authority to bypass a local franchise and obtain a state franchise under the Competitive Cable and Video Services Act. T.C.A. §§ 7-59-301, *et seq.*

The act preserves local franchising but creates a new statewide franchise with immediate opt-in provision for incumbent franchise holders. An incumbent with an expired franchise can apply for a statewide franchise within 180 days of July 1, 2008. The award of a statewide franchise terminates any unexpired local franchise. Franchise fees, however, remain the same until the local franchise agreement would have expired, and the provider cannot reduce or terminate any services until another provider is providing services.

Statewide franchise applications are filed with Tennessee Regulatory Authority and forwarded to the affected local government. Providers then have 24 months to begin offering services. Statewide franchise fees are set at 5 percent of gross revenues. The application fee is \$15,000. The state franchise has a 10- year term and is transferable. Local governments cannot request anything else of value from statewide franchise holders.

State franchises do not alter state law regarding local control of rights of way, local police power, or right to impose generally applicable taxes.

State franchise holders are subject to FCC customer service standards and are obligated to keep current PEG channels at no additional cost. New PEG channels are based on population levels.

## Siting Telecommunications Towers

**Reference Number:** MTAS-752

With the widespread use of cellular telephones and similar wireless electronics, cities are receiving an increasing number of requests from telecommunications companies to place antennas and towers in their communities. Many of these towers are quite large and can pose safety risks for neighboring

residents and businesses. Communications towers may conflict with the aesthetics of the neighborhood and generate concerns from residents when applications are received at city hall. A modern city should have a strategy in place before it considers a request from a telecommunications service to erect a tower. The strategy should recognize the important role that telecommunications services play in the community and not unduly prohibit tower construction. At the same time, however, the policy should assure that citizens will be protected against shoddy construction and ensure against an unreasonable proliferation of such antennas in the community.

## Federal Laws Affecting Tower Placement

**Reference Number:** MTAS-1452

Section 704 of the 1996 Telecommunications Act contains several key provisions affecting the authority of municipalities to regulate the placement of towers for cellular telephones, personal communications services, and other similar transmitters. Generally, the act preserves municipal zoning authority as it relates to radio towers and their siting, but it also creates three key protections for firms seeking to erect a tower:

- Local ordinances may not “unreasonably” discriminate among providers of functionally equivalent services. Tower siting policies must not favor one company, or one technology, over another;
- Local government may not impose a blanket prohibition against the placement of telecommunications towers; and
- Local ordinances may not impose more stringent “environmental effects” limits on radio frequency emissions than those adopted by the Federal Communications Commission (FCC).

A municipality would do well to encourage colocation of telecommunications facilities — essentially the sharing of a single tower by multiple telecommunications services. Such practices have the potential to reduce the proliferation of towers. Federal law encourages this practice and gives cities some leverage to assure that legitimate efforts are made to effect colocation. 47 U.S.C. 251(c)(1) and 47 U.S.C. 251(c)(6) discuss the “duty” of telecommunications service to negotiate in good faith for colocation opportunities. Municipal ordinances should reflect this obligation, and final tower approval should depend on an applicant’s demonstration of these efforts.

Federal law allows cities to deny construction permit applications for telecommunications towers. The denial, however, must be based on a reasoned approach, otherwise the FCC is authorized to pre-empt the local decision and grant the construction permit.

Without adopting a telecommunications tower policy, it is doubtful that a municipality’s denial of a construction permit will be seen as resulting from a reasoned approach.

## State Laws Affecting Tower Placement

**Reference Number:** MTAS-1453

T.C.A. § 13-24-304 specifically authorizes municipalities that have adopted planning and zoning regulations to regulate the siting of telecommunications towers. However, T.C.A. § 13-24-305 places limits on a city’s power to regulate minor alterations to pre-existing antennas.

T.C.A. § 65-21-116 requires owners of telecommunications towers to submit information concerning tower location and ownership, a copy of the deed or lease for the property, and related information to the Tennessee comptroller of the treasury. The comptroller’s Web site provides forms that can be downloaded for this reporting.

Otherwise, there are no state laws concerning placement of telecommunications towers.

## Laws of Nature Affecting Tower Placement

**Reference Number:**

MTAS-1454

The physics of radio signal transmission cannot be altered by the mere adoption of man-made laws and ordinances. Radio signals obey the physical laws of the universe, and government can no more repeal or amend these laws than it can the law of gravity.

One of the physical laws governing the placement of telecommunications towers is that antennas that are placed high in the sky tend to transmit and receive much better than those placed low to the ground. Cities that (inadvertently or otherwise) limit the placement of antennas to low-lying areas may effectively be prohibiting telecommunications towers in their community and inviting legal challenge.

From the perspective of the telecommunications provider, the ideal locations for telecommunications towers include:

- The tops of hills and mountains;
- Atop high-rise office buildings, apartments, water towers, etc.; and
- On existing telecommunications towers, if space is available.

Placement in the downtown area of a community has unique advantages and disadvantages that the tower owner must consider. The obvious advantage is that the central business district is where the city's tallest buildings are likely to be located. They can be used to achieve the altitude needed for radio signal transmission and reception. On the downside, buildings in a downtown area can cause wave reflection that results in poor signal quality. Additionally, certain commercial and industrial activity in a downtown area can contribute to electromagnetic interference of radio signals.

When determining which areas of towns are suitable for the placement of telecommunications facilities, city planners would do well to include locations where the physical environment favors the transmission and reception of radio signals. Conversely, limiting telecommunications towers to areas where radio signal transmissions or reception is weak may invite legal challenge.

## Laws of Economics Affecting Tower Placement

**Reference Number:** MTAS-1455

Tower construction may be divided into two general types:

- Guyed towers: Towers that depend on the attachment of guy wires to hold them in place and to protect against the forces of wind and ice.
- Self-supporting towers: Towers that are rigidly constructed and, once attached to a base anchored in the ground, need no additional support to withstand the forces of nature.

Guyed towers tend to use a latticework construction. Self-supporting towers can use latticework construction, but the more modern approach is the monopole — a tapered, rigidly built spike or pipe placed perpendicular to the ground.

Inch for inch, self-supporting tower structures generally are more expensive to construct than guyed towers.

Despite their relative lower cost of construction, guyed antennas may ultimately be more expensive for the telecommunications provider due to the amount of real estate needed for this type of construction. For example, a 200-foot tower, 80 percent of which is to be guyed, will require nearly two full acres of real estate to achieve the necessary rigidity. <sup>[1]</sup> In a community having high real estate values, installing a guyed tower may not be a viable option.

As a city plans for the placement of telecommunications towers, it must understand these economic realities.

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[1] Roger L. Freeman, *Telecommunication Transmission Handbook*, Second edition. John Wiley & Sons, New York, 1981, page 242.

## Goals for a Municipal Tower Policy

Reference Number: MTAS-753

### ***Seven Factors to be Addressed by a Tower Siting Ordinance***

A well-written tower ordinance will:

- Encourage a modern, nondiscriminatory and competitive telecommunications system within the community;
- Protect the health, safety and welfare of the citizens in the community;
- Discourage antenna or tower proliferation and protect against visual blight and damage to community aesthetics;
- Avoid interfering with other types of telecommunications (fire, police, and other emergency communications);
- Create a reasonable and efficient permit application and review process;
- Assure that the tower will be maintained throughout its lifespan; and
- Comply with the permit requirements of the Federal Communications Commission (FCC) and the Federal Aviation Administration (FAA).

### ***General Siting Strategy***

An antenna facilities ordinance should identify areas of the community where the placement of towers will be encouraged. Generally, these will be:

- Areas where local zoning favors the placement of antenna towers. Usually, these will include industrially zoned properties, agricultural land and other sparsely populated sections of town.
- Areas where antenna towers may be permitted by issuing a special use or conditional use permit. Issuing the special use permit is subject to geographic and topographic conditions, population density and the physical properties of the proposed tower. In these areas, towers might be permitted if it can be demonstrated that they will not pose a safety risk or damage neighborhood aesthetics. Commercial areas, public rights-of-way and similar areas are included in this group.
- Areas where antenna towers are forbidden. Low density residential neighborhoods and areas near airports, helipads and other highrisk facilities that could be threatened by placement of an antenna tower. The FCC is required to evaluate the impact of a proposed tower on historic sites, wilderness areas, wildlife preserves, Indian religious sites, flood plains and wet lands, and the city might consider linking its permit approval to the FCC's review.

Within zoning districts where tower placement might be acceptable, cities should establish priorities that favor tower construction techniques that minimize environmental and aesthetic concerns. A city's telecommunications ordinance may, for example, encourage antenna placement on existing radio towers or other tall structures or buildings and require applicants who propose to construct new towers to inventory such available sites in the community and to explain why they were not proposed for site approval.

### ***Compliance with FCC and FAA Regulations***

A proposed telecommunications tower with a height of 200 feet or more above grade at the site must be cleared by the FAA and registered with the FCC. Towers proposed for construction within 20,000 feet of an airport runway may be required to be similarly registered with the FCC, depending on topography and the length of the airport runway. The FCC maintains an interactive website that allows users to submit key information about antenna proposals to determine whether FCC registration is necessary. The website provides automatic and immediate notice to the user about the need to register the proposed tower. <sup>[2]</sup>

Exceptions are granted for proposed towers that will be "shielded" by existing, permanent structures or natural terrain of equal or greater height, in congested municipal areas where there is "no reasonable doubt" that the structure so shielded will not affect air navigation. The phrase "no reasonable doubt" is open to fairly broad interpretation. Any misjudgment in this area could have tragic consequences, and cities would do well to leave such decisions to the FCC and the FAA. Cities should also be aware that if

such shielding is ever removed (i.e., building demolition), a previously unregistered tower must be registered with the FCC.

The Antenna Facilities Ordinance should stipulate that the city will not consider any tower construction permit unless and until the applicant has completed the FCC and FAA registration process, if required.

[2] [http://wireless2.fcc.gov/UlsApp/AsrSearch/towairSearch.jsp;JSESSIONID\\_ASRSEARCH=VdNnNnpdgcg1J4y8k33dsfmCPLBGIXfy683wJxTC6nK2HFCPjGkdF!1089871594](http://wireless2.fcc.gov/UlsApp/AsrSearch/towairSearch.jsp;JSESSIONID_ASRSEARCH=VdNnNnpdgcg1J4y8k33dsfmCPLBGIXfy683wJxTC6nK2HFCPjGkdF!1089871594)

[1]

## Design Criteria

**Reference Number:** MTAS-756

Specific standards will vary from one city to the next, as geologic, topographic and other environmental factors change. The basic guideline is to adopt construction standards that address the following:

- **Unit strength:** The tower design, the materials with which it is constructed and the methods used in construction must be sufficient for the tower to support its own weight plus the weight of any antennas it may support. Care should be taken to assure that unit strength is adequate to support antennas that may be added to the structure after the initial construction is completed.
- **Foundation strength:** The engineering of the foundation must take into account geologic and seismic factors that may affect the stability of the structure.
- **Wind loads:** The structure should be of sufficient rigidity to withstand the highest wind velocities prevalent in the area. Standards may be more stringent in heavily populated areas than in rural setting, for taller structures than for shorter towers, etc.
- **Ice loads:** Telecommunications towers must be designed to withstand ice storms typical for the environment in which they are located.

The American National Standards Institute (ANSI) and the Telecommunications Industry Association (TIA) have jointly developed nationally recognized design standards for telecommunications towers, published as “ANSI/TIA Standard 222 — Structural Standards for Antenna Supporting Structures and Antennas, Revision G.” Tennessee cities should procure a copy of these standards and include them by reference in their telecommunications ordinances.

The ANSI/TIA tower design standard contains a complicated mixture of engineering formulas and statistical analyses. For this reason, any review of a proposed tower construction is best left to a qualified and experienced structural engineer, one who can subject the proposed design to sophisticated computer analysis. Tennessee cities should require all tower plans to bear the stamp of a professional engineer registered in the state of Tennessee.

## Telecommunications: Model Ordinances

**Reference Number:** MTAS-757

Cities needing to update their telecommunications ordinance should avoid the urge to simply adopt a model telecommunications ordinance or the ordinance and specifications currently in place in a neighboring community. While many of these ordinances are quite good, there are unique geographic, environmental, and political factors in every community that should be carefully considered before adopting an ordinance. Model ordinances should be used as a starting place for cities wanting to adopt a modern telecommunications ordinance, but such ordinances should be modified to reflect the local situation.

An example of telecommunications facilities ordinance: Model Wireless Telecommunications Facility Siting Ordinance; PCIA The Wireless Infrastructure Association, 2012 [2].

## Issues Regarding Siting of Telecommunication Towers

**Reference Number:**

MTAS-758

**Specifics to be Decided by the City**

In modifying any particular model ordinance, your city should make amendments that will answer the following questions, based on your community’s needs and preferences:

**1. What types of antennas will be affected by the ordinance?**

Cities usually exempt certain types of antennas from their zoning regulations. These include television satellite (dish) antennas and “receiveonly” antennas, which can be as simple as a piece of wire stretched between trees to receive shortwave radio broadcasts.

Counties often exempt amateur (or “ham”) radio towers from compliance with their antenna facilities ordinance, presumably on the grounds that such facilities are built in sparsely populated areas and will not affect neighboring properties. Cities, however, should carefully consider regulating amateur radio towers that are excessively high.

Some city ordinances require construction permits for amateur radio towers that exceed specific heights (for example, 45 feet for a ground-mounted antenna and 30 feet for one mounted on a building).

**2. How shall we encourage colocation?**

Out of a concern that their communities may one day be overrun with antenna towers, some cities require tower applicants to conduct studies to determine if other facilities in the area would be suitable for antenna placement. These might include space on an existing tower that could be leased by the applicant to place an antenna or space on buildings, water towers, bridges or other tall structures that might be leased for antenna placement.

If the applicant’s tower proposal is otherwise acceptable, some cities require that the tower be built in such a way that it can accommodate other antennas in the future, thus reducing the need for more antennas in the area. In cases where a new tower is proposed, some cities require applicants to thoroughly inventory all colocation opportunities in the community and explain why such opportunities have been rejected by the applicant.

Colocation studies are expensive (the costs should be paid by the applicant) and may be controversial. Still, such investigations can prevent the creation of “antenna farms” in certain areas of town.

**3. How do we protect the community if the tower is eventually abandoned?**

A city may opt to require tower applicants to post a performance bond guaranteeing the safe demolition of a tower in the event it is ever abandoned. This can be valuable to the city in the aftermath of a tornado or an occurrence where the tower owner may not have the resources to repair or demolish the tower.

**4. How can we protect the community against poor maintenance of the tower?**

The city might consider a requirement that telecommunications towers are inspected periodically by a qualified professional engineer registered in the state of Tennessee, and that a copy of such inspection report be filed with the municipality’s building inspector.

**5. How do we recover the cost of evaluating the permit application?**

Properly evaluating a permit application requires consulting with a variety of professionals whom the city may not regularly employ (i.e., structural engineers, telecommunications engineers, telecommunications lawyers, etc.). In developing its tower ordinance, the city should take care to see that the cost of hiring such consultants is recovered in the applicant’s permit fee. Due to the expertise required, it is doubtful that a city’s normal building inspection fees will be sufficient; a separate fee schedule should be considered with all such fees paid by the applicant prior to permit review.

**6. Should the city permit the tower owner to add facilities or change the design?**

The city should require the tower owner to secure an additional permit for each antenna proposed for placement on the tower. This will assure that (a) wind loading standards are not exceeded, and (b) police, fire and emergency radio communications are not degraded or disrupted. The original construction permit likely will not take these factors into account.

**7. For how long should a tower construction permit be valid?**

The city should set reasonable deadlines for a permitted tower construction to be completed. The permit should not be open ended. The ordinance should encourage prompt completion and allow the city to revoke permits that fail to meet deadlines.

**8. How can the city minimize the confrontational aspects of the permit process?**

The city can encourage the development of modern, state-of-the-art telecommunications by adopting



and uniformly enforcing a clearly written tower construction ordinance. Additionally, the city might consider a two-stage application process. In the preliminary stage, the applicant is made aware of the city's construction standards before incurring the costs of developing final construction plans. This may help the applicant avoid expensive, "back-to-the-drawing-board" costs after presenting final plans to the city.

#### **9. How can the community's aesthetics be protected?**

To most people, a telecommunications tower will be seen as having a negative impact on the landscape of the community. There are a few ways such an impact can be mitigated. The city should consider adopting an ordinance that:

- Limits the number of towers in the line of sight of historic neighborhoods and other scenic resources;
- Encourages the planting of vegetative screening or construction of screening fences;
- Requires setbacks that minimize interference with scenic resources; and
- Requires the telecommunications facility to be painted colors that blend with the surrounding natural or architectural environment. Muted colors, earth tones and subdued hues should be encouraged.

#### **10. How can we encourage the owner to keep the tower secure?**

The city should consider a requirement that all telecommunications towers are fenced to discourage intruders. Additionally, cities can require the owner to include telemetry and alarms to alert when illegal entry occurs or when tower lights are not functioning.

## Siting Telecommunication Tower Resources

**Reference Number:** MTAS-759

A good information source for siting telecommunications towers can be found at the website of the Federal Communications Commission [3].

The FCC's preliminary application to construct or alter a telecommunications tower (FCC Form 854 [4]).

Forms for notifying the FAA of a proposed tower construction or alteration (FAA Form 7460-1) are difficult to access via the Internet. Instead, prospective applicants should contact the FAA's regional office at 1701 Columbia Avenue, College Park, GA 30337 or call (404) 305-5685.

Forms [5] for registering telecommunications towers with the Tennessee comptroller of the treasury

## Competitive Cable & Video Services Act

**Reference Number:** MTAS-1395

One of the most expensive lobbying efforts in Tennessee history resulted in passage of the Competitive Cable and Video Services Act, T.C.A. § 7-59-301 which took effect on July 1, 2008. Following is a brief summary of the salient points of the legislation with which city officials and employees should be familiar.

**Current franchise holders** — The current holder of a city franchise may apply for a state franchise, whether or not the local franchise agreement has expired.

**Current franchise agreements** — The terms of a current local franchise agreement may be adopted by any other cable company that wants to provide services in the city.

**Notice** — The applicant for a state franchise is required to provide notice of filing an application to the mayor of each city in the proposed service area.

**City action required to preserve PEG channels** — After receiving notice that an application has been filed, a city must notify the state of any public, educational, and government access channels provided by the incumbent cable company.

**City action required to preserve free cable service** — If an incumbent cable provider offers free cable service to schools or government offices, the city must provide a list of locations at which free

service is provided to the incumbent cable company. If the cable company applies for a state franchise, any cable service provided free must continue until the termination date of the local agreement.

This legislation is part of the national trend to diminish or eliminate the franchising authority of cities by granting cable companies the right to provide services without negotiating agreements with local governments. In recent years, several cable companies operating in Tennessee permitted local franchise agreements to expire and refused to negotiate contracts with cities in anticipation that legislation would be adopted that would give cable companies great advantages in negotiating new agreements. This tactic has paid off, as this law essentially grants a statewide franchise to these companies. Current franchise holders may now terminate their local agreements and seek a state franchise. A city that has previously negotiated a franchise agreement with one cable provider may be forced to permit other cable companies to serve its area under the same terms and conditions of the existing agreement.

The Tennessee law is actually more favorable to cities than competitive cable laws passed in other states, thanks in large part to the efforts of the Tennessee Municipal League. Tennessee cities may receive public access channels through the state franchise, and may receive financial support for public access channels. Unlike similar legislation in other states, the Tennessee law requires that franchise fees be paid directly to cities rather than routing such funds through a state department. The 5 percent franchise fee cities will receive is much higher than fees set by legislation in other states, and it is higher than the fees most cities received under negotiated franchise agreements. Considering the numerous laws passed as a result of the nationwide effort by the telecommunication industry to eliminate local control over cable services, Tennessee cities actually fared better than their counterparts in other states.

## State Franchise Authority: Application

**Reference Number:** MTAS-1396

### ***Application Process***

The Competitive Cable and Video Services Act permits cable companies and video service providers to apply for a state-issued certificate of franchise authority, issued by the Tennessee Public Utility Commission. Large companies need file only one application to obtain authority to operate in any area of the state. The application consists of an affidavit signed by an officer or partner of the company which, among other requirements, describes the area to be served and affirms that services will be provided within 24 months of the issuance of the state certificate. If the company fails to provide the services within 24 months of receiving a certificate, the certificate becomes null and void, although the company is permitted to provide an explanation of the reason for the delay. In addition, the application/affidavit must describe the applicant's customer service complaint process and contact information for customers, but the Public Utility Commission will not review or evaluate the complaint process. Notice is required of the filing of the application for all local governments included in the proposed service area. The application must also include a minority-owned business participation plan.

After an application is filed, the Public Utility Commission will determine if the applicant has the management, financial, and technical qualifications to provide the cable or video services to the areas proposed. The Commission may require the applicant to file a plan for compliance, explaining how the company will meet the 24-month deadline for providing services. These service plans or plans for compliance are confidential and may not be obtained by the local governments included in the proposed service area.

Large telecommunications companies have a distinct advantage in the application process. Applications filed by large telecommunication providers, defined as companies with more than 1 million telecommunication access lines in the state, are not reviewed by the Public Utility Commission to determine whether they can provide services to the proposed areas. Rather, these companies are presumed to have the required capabilities. Large companies also have a shorter review period after an application is filed. The Public Utility Commission must act on an application filed by a large telecommunication provider within 45 days of filing, or the certificate will be granted automatically. For smaller companies, the time for the Commission to act on their applications is 180 days after receipt. The certificate issued when the time expires without action is temporary, pending final approval or rejection by the Public Utility Commission.

## State Franchise Authority: Rights Granted

**Reference Number:** MTAS-1397

### ***Rights Granted***

The state-issued certificate of franchise authority provides authority to construct, maintain, and operate facilities within the public rights of way, subject to the police powers of local governments. No city can require a cable or video services provider to obtain a local franchise agreement, and no additional taxes or franchise fees may be levied by cities on the operations of these providers. The state-issued certificate is valid for 10 years, after which the provider must reapply.

Local ordinances governing utility pole attachment and construction activities in public rights of way remain effective, but not to the extent that permission to attach to utility poles or to use the rights of way may be denied to a company holding a state franchise. The holder of a state franchise must still provide required notice to a city before installing lines in its rights of way or attaching to poles and, further, must repair any pavement or property disturbed during installation. Permit fees also may still be collected by cities.

## State Franchise Authority: Franchise Fees

**Reference Number:** MTAS-1398

### ***Franchise Fees***

The law requires the statewide certificate holder to pay a franchise fee equal to 5 percent of the holder's gross revenues derived from subscribers located within cities and counties, advertising services, and commissions for cable and video home shopping services. (This requirement may differ for incumbent providers. See discussion of incumbent providers.) Revenues received from nonsubscriber services, such as advertising and home shopping commissions, are computed by multiplying the ratio of subscribers located within a municipality to the total number of the company's subscribers.

Franchise fees must be paid to the municipality within 45 days of the end of the quarter to which the payment applies. A city may audit the business records of the holder of the state certificate, but only for time periods within the previous three years. These audits may occur only once annually. All records reviewed by agents or employees of a municipality during the audit are confidential and not open to the public under the open records law. Each party must bear its own costs incurred in connection with these audits, although some relief is provided to local governments that must send agents or employees out of state to review records when the out-of-state audit results in a final determination that the holder underpaid the franchise fee by more than 10 percent. In these cases, the holder of the certificate must reimburse the city for travel costs incurred by the auditors or reviewers.

The law provides that complaints relating to the payment of franchise fees may be filed with the Tennessee Public Utility Commission by local governments or by certificate holders seeking refunds. The holder of a state-issued certificate may request a refund of fees paid to a city within five years of the end of the latest quarter. Either party may file an action in court to determine the correct amount of franchise fees due to a city within six months after a final determination by the Public Utility Commission or within one year after the complaint is filed with the Commission. A city may contract with the comptroller of the treasury or a third party to audit or review records. The law forbids compensating either the comptroller or third party on a contingency fee basis.

### ***Incumbent or Current Franchise Holders***

Companies currently providing cable or video services under a local franchise agreement that has expired may either negotiate a new franchise agreement with the city or apply for a state-issued certificate of franchise authority. By applying for a state-issued certificate, the provider receives interim authority to continue to provide services in the area.

An incumbent cable service provider operating under a franchise agreement on July 1, 2008, may terminate the local franchise agreement by filing an application for a state-issued certificate for that service area. The local agreement will be terminated on the date the certificate is issued to the applicant. Large companies operating under franchise agreements in numerous jurisdictions may operate under a state-issued certificate in some markets while continuing to operate under local

franchise agreements in other areas. The law permits cable or video services providers to terminate specific franchise agreements without canceling all local agreements.

In an effort to “level the playing field,” the law provides that cable or video services providers seeking permission to provide services to an area in which an incumbent provider operates may simply adopt the terms of a negotiated franchise agreement between the incumbent and local government. The city is required to enter into agreements having the same terms and conditions with any service provider making such a request. These agreements entered into after July 1, 2008, remain effective through the expiration date without the option to terminate that the law provides to incumbent service providers.

## Customer Service Complaints

**Reference Number:** MTAS-1399

Customer complaints against holders of state-issued certificates of franchise authority may be filed with the Tennessee Public Utility Commission. The law states that the customer should first follow the procedures in the service agreement before bringing a complaint to the state. The Public Utility Commission will apply the service agreement standards to determine if the provider has violated the agreement. There is no authority for the Commission to award judgments or levy penalties for violations of customer service agreements, but the Commission may order the provider to cure the violation or to provide a service credit for the time the customer’s service was affected. The maximum service credit that may be ordered is three months. The Tennessee Public Utility Commission may address only individual customer complaints and may not launch investigations into a provider’s service standards or regulate how the provider generally complies with customer service standards.

The statute contains anti-discrimination sections prohibiting the holders of state-issued certificates of franchise authority from discriminating against residential subscribers because of race, income, gender, or ethnicity. Twenty-five percent of households with access to services by a state franchise holder must be low income households within 42 months of the provider receiving the state franchise. Satisfying this requirement will provide the holder of a state-issued certificate with an affirmative defense against allegations of discrimination. The statute establishes a process for claims of discrimination against holders of state-issued certificates of franchise authority. Complaints may be received and investigated by the Tennessee Public Utility Commission. If a determination is made that the holder violated the anti-discrimination portion of the statute, the Commission has the power to levy fines against the state-issued certificate holder.

## PEG Channels

**Reference Number:** MTAS-1400

When a cable service provider applies for a state-issued certificate to serve a city, the city must notify the state of the number of any public, educational, and government access channels (PEG channels) that are in use or have yet to be activated under any existing franchise agreement. In addition, the city’s notice must include the terms under which such PEG channels are provided under the existing agreement. This information is required to be filed with the Tennessee Public Utility Commission by the city, even if the application is not filed by the incumbent provider. Within 90 days of providing cable services, the holder of a state-issued certificate must provide the same number of PEG channels, under the same terms, as the number the city has activated with the incumbent provider.

The number of PEG channels a city is entitled to receive is the number provided under the existing franchise agreement on January 1, 2008, even if the agreement expires or is terminated for a state-issued certificate. Cities receiving no PEG channels under an existing franchise agreement may make a written request that PEG channel access be provided by the cable company serving the area, and the company must provide access based on population of the area served. Up to three PEG channels must be provided to a city with 50,000 or more households; up to two PEG channels for a city having fewer than 50,000 but more than 25,000 households; and, one PEG channel for a city with fewer than 25,000 households. The cities and counties served in the area shall determine how the PEG channels will be shared by the local governments.

The operation and content of programming for PEG channels is the responsibility of the local governments. Holders of state-issued certificates of franchise authority must transmit PEG channels by either interconnection or transmission of the signal from each PEG channel programmer's origination point. State-authorized PEG access support fees are available to cities in amounts not to exceed 1 percent of gross revenues. Incumbent agreements requiring PEG support fees will remain in effect. Local governments not receiving PEG access support fees under existing franchise agreements may adopt an ordinance or resolution requiring the holder of a state-issued certificate to make PEG support payments to the county or city. However, the PEG access support fees, combined with the franchise fees, may not exceed 5 percent of gross revenues.

Incumbent cable service providers that provide free cable service to schools or government offices in a city or county must continue to provide free service to those areas until the termination date of the existing agreement. The city or county must provide a listing to the cable company of locations at which free service is provided. Any other cable or video service provider or holder of a state-issued certificate that serves the same area must provide free service to the same locations.

## Underground Utilities

**Reference Number:** MTAS-1509

In construction or redevelopment projects in which utility lines are to be placed underground, local governments must require developers or property owners, as a condition of receiving permits, to give at least 60 days notice to the cable or video services provider of dates on which the service providers may install their conduits or other equipment in the open trenches. Failure to serve this notice will result in the developer or property owner bearing the cost of new trenching for the installation of the cable or video services providers' equipment.

## Broadband Joint Venture Authority

**Reference Number:** MTAS-1510

The law creates the "Tennessee broadband deployment fund" to be used to promote the deployment of broadband service to rural areas. Guidelines will be developed to govern use of the funds, and grants will be available to local governments, cable companies, and telecommunications companies.

Cities now have the authority to enter into joint ventures with one or more third parties to provide broadband services. Joint ventures will be authorized only in areas that are historically unserved. City electric companies and electric cooperatives that participate in these joint ventures must still comply with other applicable statutes, and no revenues from utility operations may be used to subsidize the joint venture.

Cities and utilities are required to provide access to poles and conduit located in public rights-of-way to any entity seeking to provide broadband service in historically unserved areas. Cities having ordinances levying pole attachment fees must modify those charges for broadband deployment in those areas. Cities cannot charge utility pole attachment rates that are higher than 50 percent of the rates charged as of January 1, 2008, to a cable or video service provider or to telecommunications joint ventures seeking to provide broadband services to historically unserved areas. This requirement for discounted pole attachment rates will be in effect until at least July 1, 2018, unless the date is extended by the legislature.

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### Links:

- [1] [http://wireless2.fcc.gov/UlsApp/AsrSearch/towairSearch.jsp;JSESSIONID\\_ASRSEARCH=VdNnNnpdgcg1J4y8k33dsfmCPLBGIXfy683wJxTC6nK2HFCPjGKdF](http://wireless2.fcc.gov/UlsApp/AsrSearch/towairSearch.jsp;JSESSIONID_ASRSEARCH=VdNnNnpdgcg1J4y8k33dsfmCPLBGIXfy683wJxTC6nK2HFCPjGKdF)
- [2] [https://wia.org/wp-content/uploads/Advocacy\\_Docs/PCIA\\_Model\\_Zoning\\_Ordinance\\_June\\_2012.pdf](https://wia.org/wp-content/uploads/Advocacy_Docs/PCIA_Model_Zoning_Ordinance_June_2012.pdf)
- [3] <http://wireless.fcc.gov/siting/>
- [4] <http://www.fcc.gov/Forms/Form854/854.pdf>
- [5] <http://www.comptroller.tn.gov/OSAP/sapform.asp>

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