

8th Annual TATOA Conference



Hot Topics in
Telecommunications
August 14-15, 2003
Austin, Texas

Level Playing Field

*Insight Communications Company, L.P.
v. City of Louisville (2003)*

- ◆ Term: 15 years v. 12 years.
- ◆ Construction project time.
- ◆ Universal service requirement.
- ◆ Penalties.
- ◆ Apples to apples? Not possible.
- ◆ OK if substantially similar.



Level Playing Field

WH Link, LLC v. City of Otsego (2003)

- ◆ OVS v. Cable Franchise.
- ◆ State statute involved with broad definitions.
- ◆ OK to require cable franchise from OVS provider.
- ◆ No federal preemption of state statute.

Gross Revenues

Parish of Jefferson v. Cox Communications (2003)

- ◆ 5% on data and telecommunications services.
- ◆ “Telecommunications services” are not cable services - separately defined.
- ◆ “Cable Modem Service” is separate from cable and telecommunications services.
- ◆ Federal preemption of agreement.

Transfer of Ownership

City of Thousand Oaks v. Verizon Media Ventures, Inc. (2003)

- ◆ Franchise prohibited sale or transfer of franchise without consent of city.
- ◆ Franchise is a permit to operate, not an asset of the system.

Transfer of Ownership

Charter Communications v. County of Santa Cruz (2002)

- ◆ Form 394 + additional information.
- ◆ No information? No consent!
- ◆ Deference to legislative act of county.
- ◆ Concerns were reasonable.
- ◆ What will Supremes say?

Transfer of Ownership

*MediaOne Group, Inc. v.
County of Henrico, Virginia (2001)*

- ◆ Transfer conditioned on "open access."
- ◆ Violation of Sec. 541(b)(3)(D) - forced provision of telecommunications facilities (cable modem) to any ISP.
- ◆ Facilities were telecommunications facilities when providing transmission path to Internet.



Transfer of Ownership

Quest Broadband Services, Inc. v. City of Boulder (2001)

- ◆ Revocable permit - franchise.
- ◆ Charter election required for conversion.
- ◆ Federal preemption.
- ◆ Abdication of authority to voters.



Transfer of Ownership

Comcast v. City of San Jose (pending)

- ◆ Conditions of approval of transfer challenged.
- ◆ City procedures challenged.
- ◆ 1st Amendment implicated: “unlawful package of public benefits in exchange for the right to continue to speak in the City.”
- ◆ Claimed adverse effects on editorial decisions.

Private Right of Action

Leach v. Mediacom (2003)

- ◆ Cable operator exercised editorial control over non-commercial public access programming.
- ◆ No private right of action under 531(e).
- ◆ No implied intent to confer rights on particular classes of persons.
- ◆ Enforcement vested in franchising authorities.

Franchise Fee Pass-through

Texas Coalition of Cities For Utility Issues v. FCC (2003)

- ◆ Appeal of "Pasadena Order."
- ◆ Pass-through and bill line-itemization.
- ◆ "Gross revenue" includes "subscriber" and "non-subscriber" revenues.
- ◆ No provisions in Cable Act prohibit pass-through of non-subscriber generated revenues.

Access Support

City of Naperville v. Comcast of Illinois/West Virginia LLC (2003)

- ◆ Rent for Community TV office.
- ◆ Operator refused to continue support unless offset against franchise fees.
- ◆ Jurisdictional skirmishes to date.

Access Support

Rhames v. City of Biddeford (2002)

- ◆ Broadcasting moratorium to deal with litigation.
- ◆ Public forum not required to be provided.
- ◆ Once provided, public forum can be closed.
- ◆ Moratorium must be neutral as to speaker and viewpoint.

Access Support

Philadelphia Community Access Coalition v. Street (2002)

- ◆ Public access channels required in franchises, but never activated.
- ◆ You never had it, so you can't complain about having it taken away.
- ◆ No lost or denied opportunity merely by residence in city.
- ◆ Ordinance requirements did not establish a public forum.

Franchise Modifications

RCN Corporation v. Newton Township (2003)

- ◆ Requested modification to larger geographic area.
- ◆ Considered an anticipatory breach.
- ◆ Plausible argument about commercial impracticability of smaller franchise area.

Franchise Renewal

NEPSK, Inc. v. Town of Houlton (2002)

- ◆ Town was only granting one franchise.
- ◆ Competing application for the franchise was not a “second” franchise.
- ◆ Importance of being timely.
- ◆ Seconds are different from firsts!
- ◆ No appellate rights.

Franchise Renewal

*FrontierVision Operating Partners, L.P.
v. Town of Naples (2001)*

- ◆ Formal renewal deadlines are subject to being waived.
- ◆ Suspension of formal deadlines.
- ◆ Harmless error in not meeting 4 month deadline.

Franchise Renewal

U.S. v. Williams (2001)

- ◆ How NOT to conduct renewal negotiations.
- ◆ Cable companies want their franchises renewed,
- ◆ But they'll bring in the FBI if they have to.