



County Technical Assistance Service

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Cable TV Regulation

Dear Reader:

The following document was created from the CTAS electronic library known as e-Li. This online library is maintained daily by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county 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 county 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 e-Li material.

Sincerely,

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Cable TV Regulation

Reference Number: CTAS-570

With the passage of the "Competitive Cable and Video Services Act" of 2008, codified at Title 7, Chapter 59, cable providers now have the option of obtaining either a statewide cable franchise or a local cable franchise from a county or municipality. While the cable act does make major changes to state cable franchise law, many areas of the prior law have been expressly preserved. For example, the act does not alter existing state law relating to local control of the public right-of-way nor does it alter existing law relating to the police powers of local governments. Furthermore, the new act does not alter or restrict the right of counties or municipalities to impose ad valorem taxes, sales taxes, or other taxes of general applicability. One important change that was made, however, was to the customer service provisions. Under the new act, FCC customer service standards will apply to statewide franchise holders, while local franchise requirements will continue to be applicable to local franchise holders. For statewide franchise holders, customer complaints will be handled by the Tennessee Regulatory Authority. Local governments will continue to handle complaints under local franchise agreements.

Before taking any action regarding cable television or other telecommunications services, counties must consult three major pieces of federal legislation: the Cable Communications Policy Act of 1984 (47 U.S.C. § 521 *et seq.*), the Cable Television Consumer Protection Act of 1992, and the Telecommunications Act of 1996. This last act, effective as of February 8, 1996, is the first major overhaul of federal telecommunications law since 1934. The intent of the 1996 act is to reduce regulation of these services on all levels and promote competition within and between the different industries that are beginning to overlap due to new technology. Basically, this means that the distinction between cable, telephone, video and other communications industries is becoming blurred as companies begin offering multiple services and many new companies enter this field.

Local and state regulations that prohibit or have the effect of prohibiting any entity from providing telecommunications services are pre-empted by this federal statute (Section 253, Telecommunications Act of 1996). However, this limitation is not intended to prevent local governments from managing public rights of way and receiving fair and reasonable compensation for the use of the right of way, as long as it is done in a competitively neutral and nondiscriminatory manner. Counties should prepare for the expansion of these fields and begin developing a comprehensive plan for the management of public rights of way.

Federal law provides that a state or other franchising authority (including counties) may also hold an ownership interest in a cable service. 47 U.S.C.A. § 533. However, until recently, counties in Tennessee lacked the authority to operate a cable television franchise. Op. Tenn. Att'y Gen. 88-170 (Sept. 20, 1988).

In recent years, the General Assembly has amended Title 7, Chapter 52, of the *Tennessee Code Annotated* to allow municipalities that operate an electric plant to enter into the telecommunications service field. "Municipality" is defined under that Chapter of the code to include both metropolitan governments and counties. Under T.C.A. § 7-52-401 *et seq.*, municipalities are authorized to provide telephone, telegraph or telecommunications services through the board or supervisory authority that operates the electric system. This industry is highly regulated by both the Tennessee Regulatory Authority and the Federal Communications Commission. Any telecommunications system operated by a county would have to conform to all such regulations and requirements. Also, under T.C.A. § 7-52-601 *et seq.*, the same municipalities are authorized to provide cable television services, two-way video transmission, video programming, Internet services or similar services. Title 7, Chapter 52, Parts 4 and 6, include extensive regulations regarding how such services may be provided and how the utility must be structured. These laws, as well as the federal laws discussed above, should be thoroughly consulted by any local government interested in entering these arenas.

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