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# Franchising: It's Not Your Father's Clicker Anymore

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1

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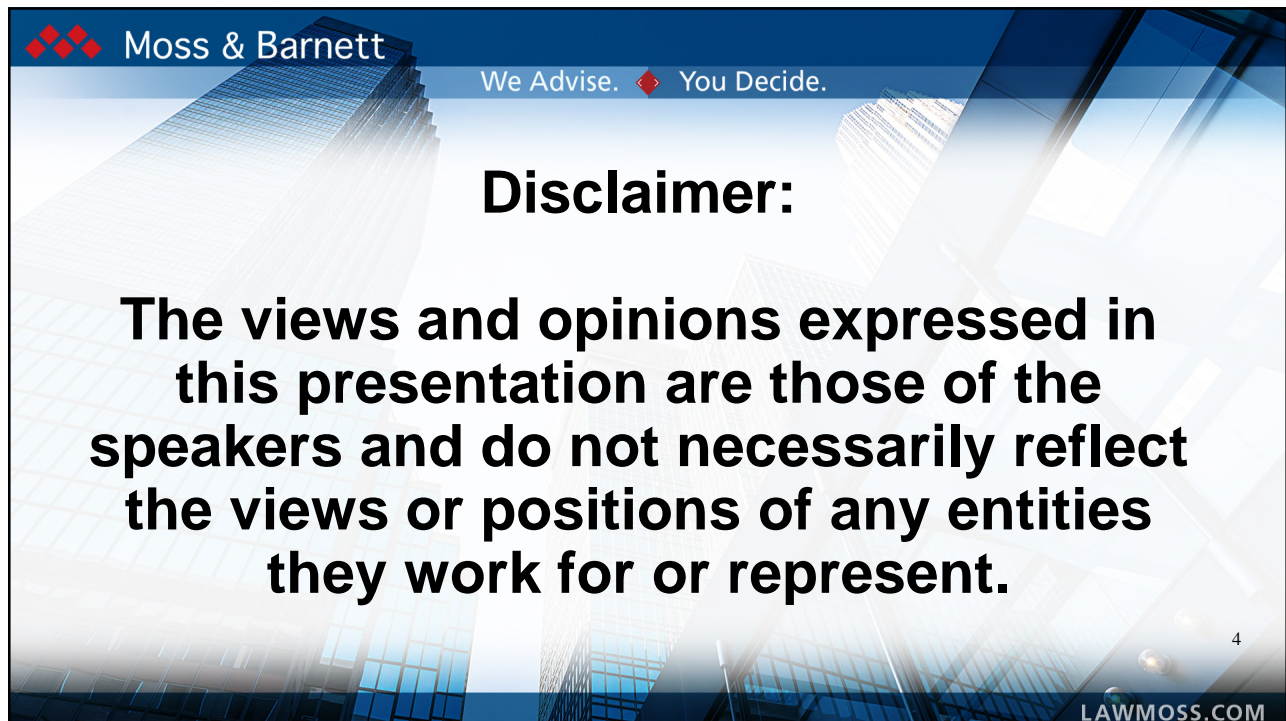
1

**Rondella Hawkins**  
City of Austin, TX

2

**Stu Chapman**  
Municipal Services Associates, Inc.  
Hoffman Estates, IL

3



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4

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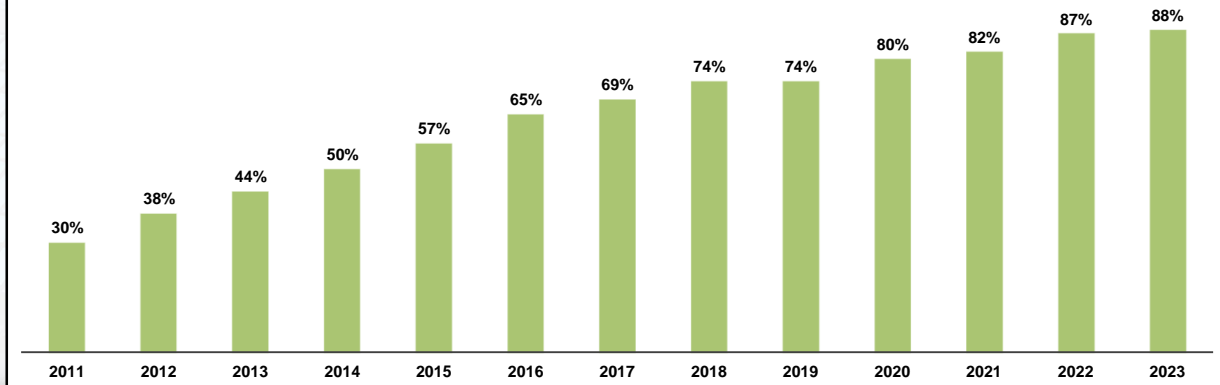
4



# Internet-Connected TV Devices

Connected Smart TV, Roku, Amazon Fire TV sticks, Chromecast, Apple TV, video game system

% of U.S. TV households that have at least one internet-connected TV device



Source: June 3, 2023 - Leichtman Research Group, Inc. (LRG)



# Cable Subscriber Counts

Cable Company	2023 Subs	2022 Subs	2021 Subs	2020 Subs	2019 Subs	2018 Subs
Charter	14,706,000*	15,147,000	15,833,000	16,200,000	16,144,000	16,606,000
Comcast	14,985,000*	16,142,000	18,176,000	19,846,000	21,254,000	21,986,000
Cox	3,340,000**/**	3,050,000	3,390,000	3,650,000	3,865,000	4,015,000

Source: August 15, 2023 Leichtman Research Group, Inc.

\*Estimates through 2Q of 2023

\*\* LRG estimates for Cox and Mediacom



# Subscriber/Franchise Fee Trend

Sample Data from an LFA with a population base of about 225,000

Year	Avg # of Subs/Mo	Avg Franchise Fee/Mo
2023 <sup>(1<sup>st</sup> 6 months)</sup>	35,577	\$228,806
2022	37,826	\$233,897
2021	41,433	\$240,854
2020	44,385	\$235,768
2019	47,260	\$241,720
2018	49,983	\$251,010

7

7



# Top Cable Companies

Pay-TV Providers	Subs at end of 2Q 2023	Net Adds in 2Q 2023
<b>Cable Companies</b>		
Comcast	14,985,000	(543,000)
Charter	14,706,000	(200,000)
Cox and Mediacom*	3,340,000	(100,000)
Altice	2,405,900	(69,900)
Breezeline	296,952	(3,732)
Cable One	158,100	(8,900)
<b>Total Top Cable</b>	<b>35,891,952</b>	<b>925,532</b>

Source: August 15, 2023 - Leichtman Research Group, Inc.

8

8





## Other Video Service Providers

Other Traditional Services	Subs at end of 2Q 2023	Net Adds in 2Q 2023
DIRECTV**	12,350,000	(400,000)
DISH TV (DBS)	6,901,000	(197,000)
Verizon FiOS (Telco)	3,155,000	(70,000)
Frontier (Telco)^	267,000	(21,000)
<b>Total Top Other Traditional</b>	<b>22,673,000</b>	<b>(688,000)</b>

Source: August 15, 2023 - Leichtman Research Group, Inc.

9



## Top Internet-Delivered Services

Internet-Delivered (vMVPD)	Subs at end of 2Q 2023	Net Adds in 2Q 2023
You-Tube TV^	5,900,000	200,000
Hulu + Live TV	4,300,000	(100,000)
Sling TV	2,003,000	(97,000)
fuboTV	1,167,000	(118,000)
<b>Total Top vMVPD</b>	<b>13,370,000</b>	<b>(115,000)</b>

Sources: The Companies and Leichtman Research Group, Inc.

\* Includes LRG estimates for Cox and Mediacom

\*\* LRG estimate, includes DIRECTV, U-verse, and DIRECTV Stream

^ LRG estimate

^^ Includes LRG estimate for non-residential subscribers

Company subscriber counts may not solely represent residential households



## Top Pay-TV Providers = 72 million Subs

**Top 7 Cable Companies = 35.9 million subs**

- **net loss of 925,000 subs in 2Q 2023**
- compared to a loss of 950,000 subs 2Q 2022

**Top Other Traditional Services = 22.7 million subs**

- **net loss 690,000 subs in 2Q 2023**
- compared to a loss of 710,000 subs 2Q 2022

**Top Internet-delivered vMVPD = 13.4 million subs**

- **net loss 115,000 subs in 2Q 2023**
- compared to a loss of about 65,000 subs in 2Q 2022

Source: August 15, 2023 - Leichtman Research Group, Inc.

11

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11



## Cable TV - Broadband

**Largest Pay-TV Providers – 92% of market**

- **net loss of about 5,880,000 video subs in 2022**
- net loss of about 4,700,000 video subs in 2021

**Fixed Wireless Services – 90% of broadband**

- 3,500,000 net *adds* in 2022
- 3,725,000 net *adds* in 2021

Source: March 2, 2023 and August 14, 2023 - Leichtman Research Group, Inc.

12

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12



# Top Broadband Internet Providers

Broadband Providers	Subs at end of 2Q 2023	Net Adds in 2Q 2023
<b>Cable Companies</b>		
Comcast	32,305,000	(19,000)
Charter	30,586,000	77,000
Cox and Mediacom*	7,035,000	0
Altice	4,576,000	(36,600)
Cable One	1,057,900	(5,100)
Breezeline	680,785	(6,734)
<b>Total Top Cable</b>	<b>76,240,785</b>	<b>9,566</b>

Source: August 15, 2023 - Leichtman Research Group, Inc. (LRG)

13

13



# Top Broadband Internet Providers

Wireline Phone Companies	Subs at end of 2Q 2023	Net Adds in 2Q 2023
AT&T	15,304,000	(41,000)
Verizon	7,562,000	34,000
Lumen	2,909,000	(72,000)
Frontier	2,865,000	2,000
Windstream	1,175,000	0
TDS	523,000	8,200
Consolidated	376,829	6,967
<b>Total Top Wireline Phone Cos.</b>	<b>30,715,429</b>	<b>(61,833)</b>

Source: August 15, 2023 - Leichtman Research Group, Inc.

14

14



**Rondella Hawkins**  
City of Austin, TX

15

**RIGHT OF WAY (ROW) AUTHORITY IN TEXAS**

Texas Constitution requires municipalities to be compensated for allowing use of public property

- State Regulatory Framework for Telecommunications Providers:
- As of September 1, 1999, all telecommunications (Incumbent Local Exchange Carriers and Competitive Local Exchange Carriers) ROW authorization issued by the Public Utilities Commission of Texas (PUC) as Certificated Telecommunications Providers (CTPs)
- Compensation methodology: Access lines fees to the City of Austin on a quarterly basis based on rates established by the PUC.
- 2023 Access lines fees:      Residential      \$ 1.58  
   Commercial - \$ 5.96  
   Point-to-point \$14.70
- Municipalities limited to 4-year fee review at expense of city

16



## STATE REGULATORY FRAMEWORK FOR CABLE/VIDEO SERVICE PROVIDERS

- As of September 1, 2005, all cable/video service franchises are granted by the Public Utility Commission
- Compensation methodology: 5% of their gross revenues on a quarterly basis paid to the City of Austin and 1% of their gross revenues earned in support of Public, Education and Governmental (PEG) Access Channel programming, restricted for capital purchases only
- Municipalities limited to 4-year fee review at expense of city

17

## BROADBAND FIBER

- No state regulatory framework for broadband fiber
- Article XI of the City Charter of the City of Austin requires the issuance of a franchise for any private use of the public rights-of-way
- The City of Austin maintains its police powers over the use of the public rights-of-way
- Most franchise fees (natural gas, cable/video) = 5% of gross revenues
- COA has no established franchise fee solely for broadband fiber

18

## FRANCHISE AGREEMENT FOR BROADBAND NETWORK SERVICES

- City's first Right of Way Franchise Agreement for construction, operation and maintenance of fiber optic facilities to deliver broadband services granted to Google Fiber
- In 2014, Google Fiber obtained a state-issued certificate of franchise authority (SICFA) from the Public Utilities Commission of Texas in order to allow it to use the City's public rights-of-way for a network providing video services
- In the Fall of 2021, Google Fiber discontinued offering video services under its SICFA (and in all of their markets in the US), focusing its service offering to broadband internet
- Without a state franchise under the SICFA, Google Fiber requested a municipal franchise from the City in order to continue to use of the public right-of-way for its fiber optic facilities delivering broadband services

19

## FRANCHISE AGREEMENT FOR BROADBAND NETWORK SERVICES

- 3% of gross revenues (Council approval for assignment/transfer, and City's option to purchase (transfer approval and purchase right are Charter requirements)
- City's right to audit (City Charter requirement)
- Company will pay the City compensation for use of City right-of-way for the holdover period between the lapsed SICFA the effective date of this franchise
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- City Charter requires 3 separate readings: Final reading was 9/14/23 with effective date 60 days from final reading

20

**Stu Chapman**  
Municipal Services Associates, Inc.  
Hoffman Estates, IL

21

***IN ILLINOIS, THERE ARE MANY WAYS TO BE PAID  
FOR USING THE RIGHT-OF-WAY. . .  
BUT IT DEPENDS ON THE SERVICE THAT THE  
PROVIDER IS DELIVERING***

- **TELEPHONE**

***Simplified Municipal Telephone Tax (SMTT)  
1/4 increments up to 6%***

***Applies to landlines and wireless, but not prepaid  
wireless, data plans, and e-mail services***

22

- **DATA**

***Permit Fee and Renewal Fee proportional to the amount of Telecommunications Facilities as measured by linear feet or by a fee levied by specific location***

***Per State law by way of Ill. Supreme Court ruling, (AT&T v. Arlington Heights (1995)) and 47 CFR §253, fees must be cost-based and justified***

23

- **POWER**

***\$.0033 on the first 2000 Kilowatt hours (Excise Tax)***

***5% of supply and delivery charges (Municipal Tax)***

- **GAS**

***Similar to power - 5% Municipal Utility Tax***

***Municipal Gas Use Tax of 5% on the cost of therms***

***2.4% State Tax on the cost of therms***

24



- **CABLE TV**

*Franchise Fees – 5% of gross revenues+*

- **VIDEO SERVICE PROVIDER**

*Fee in-lieu of Franchise Fee (Video Service Provider Fee) – 5% of gross revenues+*

*Must be equivalent to the franchise fee paid by a cable provider in a competitive environment*

25

***BUT, WHAT IF THE COMMUNITY DOESN'T HAVE  
FRANCHISE FEES? THEN WHAT?  
AMUSEMENT OR ENTERTAINMENT TAX?***

***Amusement Tax or Entertainment Tax – How Did They  
Do It?***

- **Example 1:** East Dundee, IL (pop. 3115 - Home Rule Community) - 40 miles west of Chicago
- Their Entertainment Tax defined Video and Audio Streaming as an amusement that is rented or subscribed to that is subject to tax except where a resident paid for permanent rights of access.

26

- They relied on State law (35 ILCS §638/1 *et seq.* and Federal law (47 CFR §20.3) to determine which customers are subject (State law) and what a mobile telecommunications service is (State law relied on the definition in Federal law of a Commercial Mobile Telecommunications Service).
- Since the streaming is coming over the Internet, those entities providing Internet service are, as defined by 47 CFR §20.3, for-profit interconnected, publicly available services, or their functional equivalents. This definition justifies how the Village could apply streaming to the Amusement Tax.
- Tax is 5% for admission or “Right to access” an amusement located within the Village.

27

- **Example 2:** Chicago, IL (pop. 2,608,425 - Home Rule Community)
- Chicago Entertainment Tax:
  - Code Section 4-156-010 states, in pertinent part:
    - "Amusement" means:
      - 1) any exhibition, performance, presentation or show for entertainment purposes. . .
      - 2) any entertainment or recreational activity affecting public participation or on a membership or other basis. . .
      - 3) **any paid television programming, whether transmitted by wire, cable, fiber optics, laser, microwave, radio, satellite or similar means**

28

- **It doesn't matter what you stream:**
  - The amusement tax applies to charges paid for the privilege to witness, view or participate in an amusement, either in person or delivered electronically.
  - Charges paid for the privilege of watching electronically delivered television shows, movies or videos are subject to the amusement tax, if the shows, movies or videos are delivered to a patron (i.e., customer) in the City.

29

- The City utilizes the rules set forth in the Mobile Telecommunications Sourcing Conformity Act, 35 ILCS 638, to determine sourcing for the amusement tax. The amusement tax will apply to customers whose residential street address or primary business street address is in Chicago, as reflected by their credit card billing address, zip code or other reliable information.
- Charges paid for the privilege of listening to **electronically delivered music** are subject to the amusement tax, if the music is delivered to a customer in the City; and
- Charges paid for the privilege of participating in **games, on-line or otherwise**, are subject to the amusement tax if the games are delivered to a customer in the City.

30

**AND JUST LIKE THAT, STREAMING REVENUES ARE  
NOT PART OF GROSS REVENUES**

- HB 3808 passed both houses of the IL General Assembly and was signed into law on July 28 and will be effective on January 1
- Although this new law does not appear to affect amusement taxes, it prohibits video service providers (in IL, U-Verse, WOW, Astound/RCN, and Mediacom) from including streaming services as a component of gross revenues
- **When cable companies start to resell streaming services, will revenues from these be on the chopping block next?**

31

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## Fees on Streaming Providers

- **City of Chicago**
  - Amusement tax = 9%
  - City allowed to tax streaming services
- **Florida**
  - Communications Service tax = 2.52%
  - Proceeds are distributed to cities/counties
- **North Carolina**
  - Tax on “certain digital property” = 4.75%
  - It does not appear that proceeds are distributed to cities/counties

32  
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32





## Fees on Streaming Providers

- **Pennsylvania**
  - State sales and use tax = 6%
  - Applied to purchases of tangible personal property delivered to a customer electronically, digitally or by streaming
- **Washington**
  - Business and occupation tax = 1.5% - 1.75%
  - Funds are contributed to the states' general fund
  - Utility tax on cable and telephone providers

33

33



## Fees on Streaming Providers

- **New York**
  - 2023-24 assembly budget proposal = 4% state and 4% local sales tax
  - Revenues raised from this proposal would be directed to transit systems across the state
- **Massachusetts**
  - Proposed bill = 5%
  - Proposal ties compensation to use of right-of-way

34

34



## Status of Streaming Wars

- **Disney is:**
  - Raising prices
  - Slashing production budgets
  - Expanding ad-supported offerings
- **Netflix is:**
  - Cracking down on password sharing
  - Planning to offer lower-priced ad-supported option
- **Discovery is:**
  - Dropping films and series
  - Cancelling multiple big budget projects
  - Expanding ad-supported offerings

35

35



## Charter/Disney-ESPN

- **Dispute lasted about two weeks**
- **Two dozen Disney channels went dark on Charter's systems**
- **On 9/11/2023 Charter and Walt Disney reach deal**
- **Charter's Disney channels were restored**
- **Multi-year agreement**
- **Charter's Spectrum TV Select pkg will offer:**
  - Disney+
  - EPSN+

36

36





37