

DIVCA vs. Federal Communication Policy Act of 1984 as Amended (Cable Act)

Relationship of PEG Funding to Franchise Fees

| <u>DIVCA</u> | <u>Federal Cable Act</u> | <u>Notes</u> |
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| <p>Franchise Fees: A state franchise fee shall be the amount paid by the incumbent cable operator. If there is no incumbent operator or after such time that the local franchise expires, the franchise fee shall be 5% of gross revenues (as defined in Section 5860), unless the local government adopts an ordinance setting the amount of the franchise fee at less than 5.</p> <p>PEG Fees: A local government may, by ordinance, establish a fee to support PEG channel facilities <u>consistent with federal law</u>. If no such fee exists, the local government may establish the fee at any time. The fee shall not exceed 1 percent of the holder's gross revenues. Notwithstanding this limitation, if, on December 31, 2006, a local government is imposing a separate fee to support PEG channel facilities that is in excess of 1 percent, the local government may, by ordinance, establish a fee no greater than that separate fee, and in no event greater than 3 percent, <u>to support PEG activities</u>.</p> | <p>Franchise Fees: Section 622(g)(2)(C) of the Cable Communication Policy Act states that funding for PEG access that was in franchises granted and in effect BEFORE October 30, 1984 shall be provided in <u>addition</u> to any franchise fees. PEG access funding in franchises granted AFTER October 30, 1984 that is over and above the 5% franchise fee ceiling may <u>only</u> be used for capital purposes.</p> | <p>The relationship of franchise fees to PEG fees becomes clear when one looks at this language side-by-side. Under DIVCA, PEG fees must be used in a manner “consistent with federal law”. The federal Cable Act places a limitation on how PEG fees can be used if they are to be considered fees that are <i>over and above</i> the 5% franchise fee ceiling.</p> <p>The Cable Act does not define capital costs or services costs. This has left a large degree of uncertainty about what assessments franchising authorities may impose on cable franchises over and above the franchise fee.</p> <p>In states where local governments have retained the authority to grant franchises, there continue to be local negotiated franchises agreements where a cable operator agrees that PEG funds can be used for operating purposes and is excluded from the 5% franchise fee ceiling. This has most commonly happened as part of a settlement for certain franchise noncompliance issues. (This is why in DIVCA we see the “notwithstanding” clause in the PEG fee section (5870(n)). This clause relates to California cities which had local franchises that were in effect prior to the passage of DIVCA that had PEG funding in excess of 1% of gross revenues and who were using that funding for PEG support activities.)</p> <p>Since local governments no longer grant franchises in California, this opportunity is no longer available in California.</p> |