

Protecting PEG for the Next 15 Years



Moss & Barnett
A Professional Association

Brian T. Grogan, Esq.
150 South Fifth Street, Suite 1200
Minneapolis, MN 55402
Phone: (612) 877-5340
E-mail: Brian.Grogan@lawmoss.com
Web site: www.lawmoss.com

LFA Rights

- **The law has not changed**
 - Operators position/strategy has
 - LFAs have authority to pursue PEG
- **Cable Act provides clear authority for**
 - PEG channels
 - PEG capital funding
- **FCC Orders and 6th Circuit support PEG capital**
 - Over and above 5% franchise fee cap

Authority to Require PEG

- **Authority to require PEG**

- *Cable Act §611(b) [531(b)]*

- A franchising authority may in its request for proposals require as part of a franchise, and may require as part of a cable operator's proposal for a franchise renewal, subject to §626 of this title, that channel capacity be designated for public, educational, or governmental use, and channel capacity on institutional networks be designated for educational or governmental use, and may require rules and procedures for the use of the channel capacity designated pursuant to this section.

Authority for PEG Support

- “Franchise fee” –
 - *Cable Act §622(g) [542(g)]*
- Includes any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such.
- **The term "franchise fee" does not include--**
- in the case of any franchise granted after October 30, 1984, capital costs which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities.

Subscriber Bill Itemization

- **Subscriber bill itemization**
 - *Cable Act §622(c) [542(c)]*
 - Each cable operator may identify
 - As a separate line item on each regular bill of each subscriber:
 - (1) The amount of the total bill assessed as a franchise fee and the identity of the franchising authority to which the fee is paid.
 - (2) The amount of the total bill assessed to satisfy any requirements imposed on the cable operator by the franchise agreement to support public, educational, or governmental channels or the use of such channels.
 - (3) The amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber.

Recent FCC Orders

- **FCC First Order on local franchising**

- Paragraph 109: Contributions in support of PEG services and equipment.
- As further discussed in the Section below, we also consider the question of the proper treatment of LFA-mandated contributions in support of PEG services and equipment. The record reflects that disputes regarding such contributions are impeding video deployment and may be leading to unreasonable refusals to award competitive franchises. Section 622(g)(2)(C) excludes from the term “franchise fee” any “capital costs which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities.” Accordingly, payments of this type, if collected only for the cost of building PEG facilities, are not subject to the 5 percent limit.
- Capital costs refer to those costs incurred in or associated with the construction of PEG access facilities. These costs are distinct from payments in support of the use of PEG access facilities. PEG support payments may include, but are not limited to, salaries and training. Payments made in support of PEG access facilities are considered franchise fees and are subject to the 5 percent cap.



FCC Recent Orders

- **FCC Second Order on local franchising**

- Paragraph 11:
- The relevant findings from the *First Report and Order* that apply to incumbent providers include the following:
- (1) our clarification that a cable operator is not required to pay cable franchise fees on revenues from non-cable services;
- (2) our finding that the term “incidental” in Section 622(g)(2)(D) should be limited to the list of incidentals in the statutory provision, as well as other minor expenses, and that certain fees are not to be regarded as “incidental” and therefore must count toward the 5 percent franchise fee cap;
- (3) our clarification that any municipal projects requested by LFAs unrelated to the provision of cable services that do not fall within the exempted categories in Section 622(g)(2) are subject to the statutory 5 percent franchise fee cap; and
- (4) our finding that payments made to support the operation of PEG access facilities are considered franchise fees and are subject to the 5 percent cap, unless they are capital costs, which are excluded from franchise fees under Section 622(g)(2)(C).

6th Circuit Decision

- **6th Circuit decision regarding First Order:**
 - The next question that arises is whether the FCC intended to limit its definition of capital costs only to facilities and not to equipment and, if so, whether this is a permissible construction of section 622(g)(2)(C).
 - In clarifying the precise scope of the term “PEG access facilities,” Congress explained that it refers to “channel capacity (including any channel or portion of any channel) designated for public, educational, or governmental use, as well as facilities *and equipment* for the use of such channel capacity.” H. R. Rep. No. 98-934, at 45.
 - In further detail, Congress specified that “[t]his may include vans, studios, cameras, or other equipment relating to the use of public, educational, or governmental channel capacity.” *Id.*
 - Thus, the unambiguous expression of Congress confirms that “PEG access capacity” extends not only to facilities but to related equipment as well. Considering both this clear Congressional statement, coupled with the fact that the agency concedes that its definition of “capital costs” covers the expense of equipment as long as it is “incurred in or associated with the construction of PEG access facilities,” we reject Fairfax County’s attempt to create an arbitrary distinction between facilities and equipment as baseless. (See *Alliance for Community Media*, 529 F.3d at 785).



Thank You!

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