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**Sources of Restrictions on Use of PEG Fees Under Federal and California Law**

**Federal Law**

- Franchise fees for *cable operators* are capped at 5% of gross revenues derived from the operation of the cable system to provide *cable services*.
- *Capital costs* which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities do not count against that cap (can be collected *in addition to* franchise fees).
- “Capital Costs” is not defined in federal law.
- The FCC has offered some guidance on the outer edges of what qualifies as within the capital costs exception -- salaries and training obviously do not qualify, and expenses for studio construction clearly do -- but ambiguities remain. Legal and accounting aspects need to be considered.
- The FCC has also offered some guidance as to *other circumstances* in which support for PEG would not count against the cap.
  - Where the cable operator permits use of PEG fees for operating support voluntarily.
  - Where the use for operating support is part of a settlement.
- In *Montgomery Cty. v. FCC*, 863 F.3d 485 (6th Cir. 2017), the 6th Circuit determined that FCC franchising orders interpreting the above, do not apply where a state (like California) has adopted a state law to govern franchising.

**State Law/DIVCA**

- DIVCA imposes PEG requirements on “video service” providers which is a broader term that includes but is not limited to cable service/cable operators.
- DIVCA allows localities to require a fee “to support PEG channel facilities consistent with federal law” of up to 1% of gross revenues, or in some limited cases to establish a fee “to support PEG activities” of up to 3%.
- *DIVCA does not expressly limit PEG fee expenditures to capital costs*. Amendments to the bill in its final stages explicitly removed references to the term “capital” from its text and summary.
- There is little California jurisprudence to inform interpretations of DIVCA’s PEG fee provisions.
  - *City of Glendale v. Marcus Cable Associates, LLC*, 231 Cal. App. 4th 1359 (Cal. App. 2d Dist. 2014) suggested that PEG fees must be applied exclusively to capital costs, or should be treated as franchise fees under federal law. However, that case’s holding is potentially inconsistent with FCC statements and DIVCA’s legislative history discussed above.

**PEG Funding Agreements**

PEG funding agreements may contain different or additional constraints on PEG operator uses of PEG fees.

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