

It May Be Time to Review Your City's Cable Franchise and Pole Attachment Agreement

By **Greg Fender**, Local Government Services, LLC

Since 2004, Local Government Services, LLC (LGS), a TML Business Service Partner, has assisted more than 80 League member cities recover underpaid cable television franchise fees; negotiate new pole attachment rental rates; and launch public, educational, and governmental (PEG) access channels.

Franchise Fee Payment Compliance Review

State legislation passed in 2005 set up a state-issued franchise for cable providers operating in Texas. The state franchise requires cable or video service providers to pay cities on a quarterly basis a franchise fee of five percent of its gross revenue. In most cases, cities are eligible to receive an additional fee of one percent of gross revenues to support PEG or I-Net capital equipment purchases.

If your city hasn't done so, it should first determine if it is operating under an existing, locally negotiated franchise and when that franchise expires. If the franchise has expired, the city should determine if its current cable television provider has taken the necessary steps to comply with state law and obtain a state-issued franchise from the Texas Public Utility Commission. Some cities have experienced delays in their cable providers applying for state-issued franchises after their local franchises expired. In certain instances, this delay has resulted in cities receiving less franchise fee revenue than they could otherwise receive.

In addition to determining if a cable operator should be operating under a state-issued franchise, cities need to periodically verify franchise fee payments made by their cable operator. Over the course of a long-term franchise, failure to verify franchise fee payments can result in significant lost revenue to local governments. Generally, franchise fee compliance reviews should be done every three years to determine if a city is being paid correctly.

Franchise fee provisions in state law and in most city cable television franchises base the applicable franchise fee rate on the definition of gross revenues, which is a very broad term. It is not uncommon for franchise fee compliance reviews to recover payments that were not received on late fees, advertising revenue, installations, or home shopping commissions. Recently, the City of Windcrest recovered more than \$60,000 in underpaid franchise fees from a franchise fee review conducted by LGS.

Jurisdictional Coding

Another component in any franchise fee compliance review should be to determine if the cable or video service provider is correctly coding all city streets and annexations in its customer billing records and not erroneously paying franchise fees to other government jurisdictions. Cities need to closely monitor this area due to changing boundary lines resulting from annexations and possible miscoding of streets in companies' billing databases. Recently, the City of Orange recovered more than \$25,000 due to an annexed area not being correctly coded in a cable company's customer billing records.

PEG Programming

The Federal Cable Act authorizes cities to receive public, educational, and governmental (PEG) channels, which are typically used to cablecast city council meetings and to provide information regarding local government services and other subjects of interest. Under state law, a city of more than 50,000 in population may obtain up to three PEG channels, and a city of less than 50,000 in population may obtain up to two channels. Cable or video service providers that are holders of a state-issued franchise and with capacity in their networks must provide, no later than 120 days after a request by a city, PEG access channels for noncommercial programming.

The City of Fort Stockton recently launched a government access channel to cablecast its city council meetings and to provide additional information, including live programming. Remember that cities can use an additional one-percent franchise fee for capital equipment purchases needed to operate PEG channels, as provided by state law.

Pole Attachment Agreements

Cities should review their current pole attachment rental rates and verify if they have been paid for the use of their poles. It is not unusual for municipally owned electric systems to go for many years, sometimes decades, without adjusting their pole attachment rental rates for companies that attach wires or cables to city-owned poles. Over the same period, many cable and telephone companies have significantly increased their rates for services and have expanded the services offered.

Some cities are charging rates as little as \$1.00 to \$2.00 per pole, while the market rate has been continuing to trend much higher than \$12.00 per pole. The cities of Brady, Castroville, Coleman, Granbury, Hearne, Hondo, Llano, Mason, and San Saba have increased their pole attachment rental rates as participants in LGS's pole attachment program. The cities of Hemphill and Jasper are currently renegotiating their rates under the program.

Electric cities should also periodically perform pole counts. Several cities have learned they have not charged for the use of their poles or have not received payment for several years. If a city hasn't performed a pole count for several years, the city is most likely significantly undercharging for the use of the poles, regardless of their current rental rate.

Performing a pole count can also result in the recovery of lost revenue from telephone companies. Many cities erroneously assume there is no need to charge a telephone company for the use of their poles since they are usually participating in a joint use agreement with the city and are netting the difference in rental costs. The pole count inventories that LGS has been involved with usually report that telephone companies are attached to far more city-owned poles than a city is attached to a telephone company's poles. Cities should also make sure that any power supplies that are used by cable companies on city poles are either metered or charged a flat monthly rate for their use.

Vacancies on the Texas Municipal League (TML) Small Cities Advisory Council

TML has always realized that, while all Texas cities share many common interests and concerns, small cities have special needs. Nearly 20 years ago, TML began to focus special attention on small cities and their unique needs and problems. The TML Small Cities Advisory Council (SCAC) was formed and charged with advising the TML Board of Directors and staff on ways the League's services to small cities can be expanded or modified, consistent with TML's resources and the needs of the organization as a whole.

The SCAC is made up of a dedicated and diverse group of elected and appointed officials in cities with populations less than 15,000 from each of TML's 15 regions. They meet three times a year and contribute to the development of many popular TML programs and services, including TML Small Cities' Problem-Solving Clinics, the Small Cities' Corner in the *Texas Town & City* magazine, the Newly Elected Officials Training Video, and small cities sessions offered at the TML Annual Conference and various workshops. Presently, the group is led by Chair Leonard Reed, mayor of Willis, and Vice Chair Kim Dobbs, assistant city manager of Heath.

There are currently vacancies on the council that need to be filled by city officials in TML regions 4, 5, 10, and 12. To determine which TML region your city is in, visit the TML Web site, www.tml.org, or refer to the *Texas City Officials Directory*.

Contact Rachael Pitts with the League staff at rpitts@tml.org or 512-231-7472 if you would like to be considered for a position on the SCAC. For more information about the SCAC, including a list of current members, visit the TML Web site.

For more information on the services provided by Local Government Services, LLC, please contact Greg Fender at 800-978-0071 or Rachael Pitts on the TML staff at 512-231-7472. ★

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