

Cities Benefit From Cable Franchise Management Service

The City of Fort Stockton recently recovered over \$55,000 following completion of a franchise fee payment compliance review. That equates to nearly four cents on the city's 2005 property tax rate.

"We were pleased with how the recovery of these revenues was accomplished in an amicable manner, with our cable company's complete cooperation," said City Manager Danny Valenzuela. Going forward, the city will realize an additional \$15,000 or more in revenue each year from cable television franchise fees.

Since the inception of the TML Cable Franchise Management Program in early 2004, more than 50 cities have taken advantage of the service. The participating municipalities are receiving numerous benefits: recouping past franchise fees, developing new sources of revenue, negotiating for new services, and acquiring legal documents that will assist in enforcing favorable terms and conditions.

Franchise Fee Payment Compliance Review

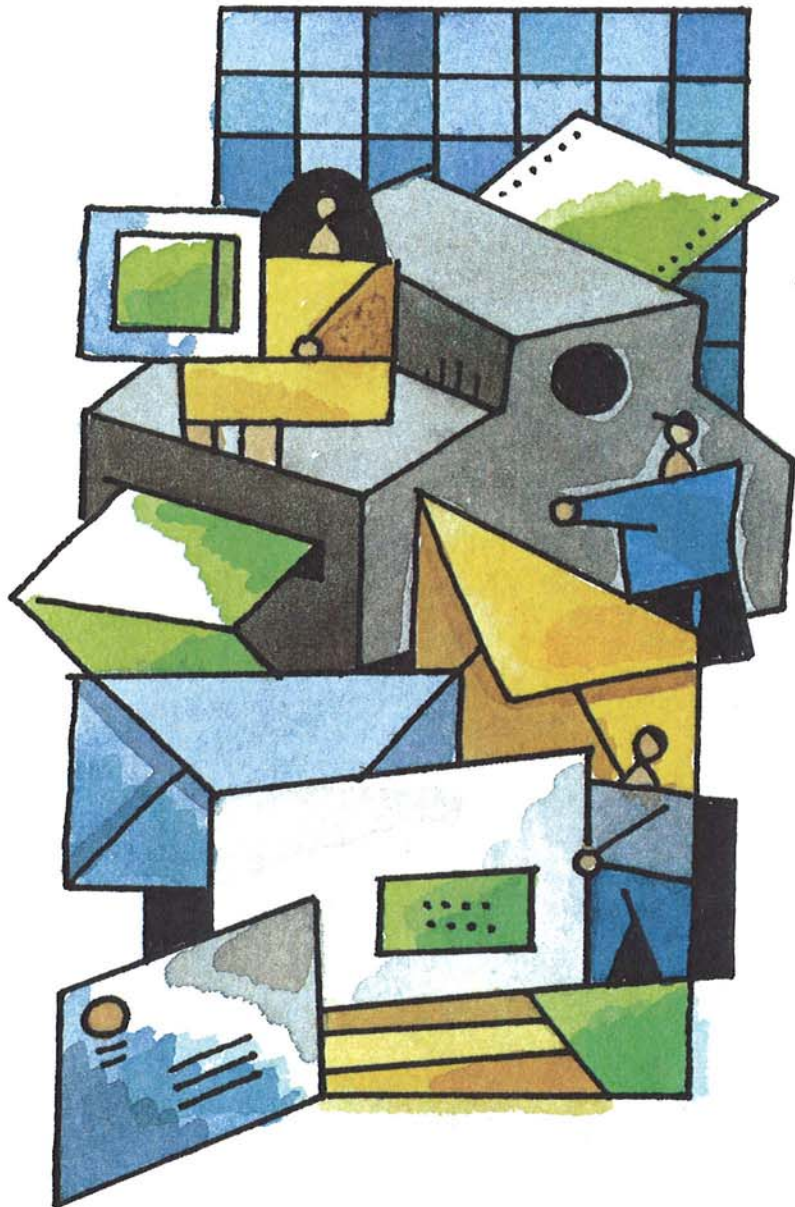
One of the first steps in reviewing a cable television franchise is to determine the cable company's compliance with existing franchise terms, including the payment of franchise fees.

"It is not uncommon to learn that mistakes may have been made in the payment of franchise fees when conducting a franchise fee payment compliance review," says Greg Fender, who serves as the program's principal consultant. "As a result of numerous transfers of franchises from company to company, usually resulting in different accounting systems, new personnel, and sometimes simple human error, cities

normally discover some payment errors. To date, most of the errors have occurred when payments were not received on late fees, advertising revenue, installations, or home shopping commissions, and when franchise fees have not been included as part of gross revenue," according to Fender.

The Cities of Yoakum and Granbury each recovered approximate-

ly \$11,000 from a franchise fee payment compliance review, because their respective cable companies did not include franchise fees in the calculation of gross revenues. (On July 31, 1997, the Fifth Circuit Court of Appeals held that "franchise fees are not a tax . . . but essentially a form of rent: the price paid to rent use of public right-of-ways." *City of Dallas, Tx et al. v. FCC*,



No. 96-60427 (5th Cir. July 31, 1997). The Court concluded that unless otherwise excluded under the terms of a local franchise, cable operators must include franchise fees in their calculation of total "gross revenues.")

Recently, the Cities of Harker Heights and Mineral Wells each recovered over \$40,000 in underpaid franchise fees. The City of Helotes received over \$15,000, because an incorrect franchise fee percentage had been applied. "A city that hasn't conducted a franchise fee compliance review in several years should strongly consider performing a review to determine compliance with the city's existing franchise ordinance," says City Manager Lance Howerton of Mineral Wells. With the adoption of state and federal legislation changing the regulatory landscape for cable communications, it is particularly important to review past franchise fee payments. If local franchising is superseded by federal or state law, a franchising authority's ability to enforce the payment of past due franchise fees may be jeopardized.

Jurisdictional Coding

The City of Buda recovered over \$16,000 in franchise fees that were erroneously paid to other government jurisdictions, because the cable company had not coded city streets correctly in the customer-billing database. "Cities need to closely monitor this area, due to changing boundary lines resulting from annexations and possible miscoding of streets in companies' billing databases," said Fender.

Land Lease or Tower Lease Agreements

Another area where cities can increase revenues is the lease of public lands for cable television equipment sites or the use of city water towers for placement of telecommunication antennas. For example, the City of Coleman renegotiated a land lease agreement for the use of public land for cable equipment. The expiring document required \$800 in annual rent, which is not uncommon for leases negotiated many years

ago when cities offered low rents to attract cable television services. Now, with the growth of the industry and the provision of new services ranging from high-speed Internet services to telephone services, it is entirely appropriate for cities to closely review the value of those leases. The City of Coleman will receive \$12,000 a year in rent beginning in 2008. Over a ten-year period, the new agreement will produce \$120,000, compared to \$8,000 if the lease had continued at the old rate. It is also not uncommon for cities to lease water towers for placement of antennas with rentals exceeding \$2,000 per month.

Renegotiating Pole Attachment Agreements (Electric Cities)

According to a survey conducted by TML when the Cable Franchise Management Service was initiated, numerous cities with their own electric utilities have not renegotiated their pole attachment agreements for many years. The City of Granbury renegotiated a

new agreement with its cable television provider and increased its pole attachment fee from \$3.50 per pole to \$15.00 per pole, resulting in an increase of \$10,500 per year in pole attachment fees. The Cities of Castroville, Coleman, and Hearne have also successfully increased their pole attachment rates. Electric cities should also consider conducting a pole count to determine the number of attachments to their poles. It is not unusual for cities that have not done a pole count for many years to be dramatically underpaid for the actual number of poles that may be currently used. Electric cities also need to re-examine and possibly renegotiate the terms and conditions of how their poles are used.★

For more information on the Cable Franchise Management Services Program, contact Greg Fender at 800-978-0071 or John Philpott at 512-231-7440.



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