Franchise fees are governed by Section 622 of the Federal Cable Act. Under Section 622, municipalities are entitled to a maximum of 5% of gross revenues derived from the operation of the cable system for the provision of cable services.

The 5% limitation pertains to any twelve month period applicable under the franchise agreement for accounting purposes. Prepayments and deferred payments are permitted, as long as such payments do not exceed the amount which would have lawfully been collected if such fees had been paid on an annualized basis. The time value of money may be taken into account in these situations.

While these provisions may appear to be rather unambiguous and straightforward, a number of issues and misunderstandings can arise when they are put into practice.

1. The Fee Can Be Non-Negotiable.

In general, municipalities are entitled to the maximum franchise fee permitted under Federal law and can make payment of such a fee a condition of agreeing to renew a company’s franchise. There are a number of reasons why this doesn’t always happen. These reasons are described in the text that follows.

2. How “Gross Revenues” is Defined is Important.

If the percentage were applied to the plain meaning of the term “gross revenues”, all revenue sources of the franchisee derived from the operation of the cable system for the provision of cable services would be included in the fee basis. In most cases, however, municipalities and their franchisees have agreed to definitions that exclude, either explicitly or implicitly, certain revenue sources. Some common examples noted include the use of terms like “subscriber revenues”, “gross receipts”, “video programming services”, and “revenues paid by subscribers for service”. Some franchise definitions, in attempting to list contemplated sources of revenue, purposely or inadvertently exclude one or more permitted sources. Still others specifically exclude one or more sources in the mistaken belief that they are not entitled to fees based on revenues from such sources. An example of the latter is the amount collected by the company from subscribers for franchise fees. Unless specifically excluded from the definition of gross revenues in the franchise, companies are required to include such collections in the franchise fee basis.

The point here is not to imply that municipalities should or must collect the highest possible franchise fee. However, municipalities do need to be aware of the true upper limits of their rights in this regard because other policy decisions they make in the course of the franchise renewal process can be affected by how they approach this issue.

3. The PSC’s Assessment on Companies and Its Effect on Municipal Revenues.

Many franchises have provisions which reduce the fee payable to the franchising municipality by the amount of the regulatory assessment (currently about two-tenths of 1%) payable annually to the Public Service Commission under Article 11 of the Public Service Law. In nearly all cases, this reduction is not required as a matter of law.

The legal reason necessitating such a reduction applies only to situations where a company is required to pay 5% and on a fee basis that includes every allowable source of revenue under the law. In these rather rare cases, the 5% statutory federal limit on franchise fees would be exceeded without such a reduction.
However, the fact that the vast majority of franchises have provisions for fees that are paid on some basis or some percentage (or both) that is less than the maximum permitted by law, means that the statutory limit will not be exceeded by payment of the PSC assessment. Therefore, such an offset—though certainly permitted—is not necessary.

4. The Franchise Fee Pass-Through.

Under federal law, the company has the right to pass through the amount of the franchise fee directly to subscribers. The pass-through is not limited to subscriber-based revenues. If the franchise requires payment on non-subscriber-based revenue sources, such as advertising and home shopping, the company may also pass through these amounts to subscribers as well. While federal law does not require companies to utilize these pass-throughs—meaning that it is at least theoretically possible to negotiate them away—companies have been generally consistent in insisting on their right to do so.

5. The Franchise Fee as a Line Item on the Subscriber Bill.

Under federal law, the company also has a right to include both the amount of the franchise fee and the name of the franchising authority to which the fee is being paid as a separate line item on each subscriber’s bill. Again, this is not a requirement under federal law; but companies have been generally consistent in insisting on their right to do so.


Under federal law, the company may deduct the amount it pays to provide operational support for PEG access from its franchise fee payment to the municipality, if such operational support is required by the terms of the franchise agreement. Support in the form of underwriting capital costs may not be deducted from the franchise fee, but may be included in the calculation of the basic monthly subscriber rate.

7. The Section 626 Real Property Tax Law Offset.

Cable companies also are assessed a special franchise tax on the value of their physical plant (cables, poles, etc.) in the municipal right-of-way. Section 626 gives companies the right to offset the amount payable under this special franchise tax against the amount of their franchise fee. Not all companies utilize this offset.

8. Cable Modem Service.

The FCC has issued a declaratory ruling that cable modem service is an interstate information service that is not subject to a franchise fee derived from the operation of a cable system for the provision of cable services. As a result of this ruling, companies which have heretofore paid a fee based on cable modem service revenues have notified franchising authorities that they will no longer be doing so. At present, several municipal franchising authorities are considering mounting a legal challenge to the FCC ruling.


Since telephone service is regulated under federal and state laws and regulations wholly different and apart from cable television, cable franchises may not be used to regulate telephone service. Telephone service, therefore, is not subject to cable franchise fees.