

than institutional networks, as a condition of the initial grant of a franchise, a franchise renewal, or a transfer of a franchise.

(c) Status of cable system as common carrier or utility

Any cable system shall not be subject to regulation as a common carrier or utility by reason of providing any cable service.

(d) Informational tariffs; regulation by States; "State" defined

(1) A State or the Commission may require the filing of informational tariffs for any intrastate communications service provided by a cable system, other than cable service, that would be subject to regulation by the Commission or any State if offered by a common carrier subject, in whole or in part, to subchapter II of this chapter. Such informational tariffs shall specify the rates, terms, and conditions for the provision of such service, including whether it is made available to all subscribers generally, and shall take effect on the date specified therein.

(2) Nothing in this subchapter shall be construed to affect the authority of any State to regulate any cable operator to the extent that such operator provides any communication service other than cable service, whether offered on a common carrier or private contract basis.

(3) For purposes of this subsection, the term "State" has the meaning given it in section 153 of this title.

(e) State regulation of facilities serving subscribers in multiple dwelling units

Nothing in this subchapter shall be construed to affect the authority of any State to license or otherwise regulate any facility or combination of facilities which serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management and which does not use any public right-of-way.

(f) Local or municipal authority as multichannel video programming distributor

No provision of this chapter shall be construed to—

(1) prohibit a local or municipal authority that is also, or is affiliated with, a franchising authority from operating as a multichannel video programming distributor in the franchise area, notwithstanding the granting of one or more franchises by such franchising authority; or

(2) require such local or municipal authority to secure a franchise to operate as a multichannel video programming distributor.

(June 19, 1934, ch. 652, title VI, §621, as added Pub. L. 98-549, §2, Oct. 30, 1984, 98 Stat. 2786; amended Pub. L. 102-385, §§7(a)(1), (b), (c), Oct. 5, 1992, 106 Stat. 1483; Pub. L. 104-104, §3(d)(3), title III, §303(a), Feb. 8, 1996, 110 Stat. 61, 124.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (f), was in the original "this Act", meaning act June 19, 1934, ch. 652, 48 Stat. 1064, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

AMENDMENTS

1996—Subsec. (b)(3). Pub. L. 104-104, §303(a), added par. (3).

Subsec. (d)(3). Pub. L. 104-104, §3(d)(3), substituted "section 153" for "section 153(v)".

1992—Subsec. (a)(1). Pub. L. 102-385, §7(a)(1), inserted before period at end "; except that a franchising authority may not grant an exclusive franchise and may not unreasonably refuse to award an additional competitive franchise. Any applicant whose application for a second franchise has been denied by a final decision of the franchising authority may appeal such final decision pursuant to the provisions of section 555 of this title for failure to comply with this subsection".

Subsec. (a)(4). Pub. L. 102-385, §7(b), added par. (4).

Subsec. (b)(1). Pub. L. 102-385, §7(c)(1), inserted "and subsection (f) of this section" after "paragraph (2)".

Subsec. (f). Pub. L. 102-385, §7(c)(2), added subsec. (f).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-385 effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as a note under section 325 of this title.

EFFECTIVE DATE

Section effective 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub. L. 98-549, set out as a note under section 521 of this title.

§ 542. Franchise fees

(a) Payment under terms of franchise

Subject to the limitation of subsection (b) of this section, any cable operator may be required under the terms of any franchise to pay a franchise fee.

(b) Amount of fees per annum

For any twelve-month period, the franchise fees paid by a cable operator with respect to any cable system shall not exceed 5 percent of such cable operator's gross revenues derived in such period from the operation of the cable system to provide cable services. For purposes of this section, the 12-month period shall be the 12-month period applicable under the franchise for accounting purposes. Nothing in this subsection shall prohibit a franchising authority and a cable operator from agreeing that franchise fees which lawfully could be collected for any such 12-month period shall be paid on a prepaid or deferred basis; except that the sum of the fees paid during the term of the franchise may not exceed the amount, including the time value of money, which would have lawfully been collected if such fees had been paid per annum.

(c) Itemization of subscriber bills

Each cable operator may identify, consistent with the regulations prescribed by the Commission pursuant to section 543 of this title, as a separate line item on each regular bill of each subscriber, each of the following:

(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.

(d) Court actions; reflection of costs in rate structures

In any court action under subsection (c) of this section, the franchising authority shall demonstrate that the rate structure reflects all costs of the franchise fees.

(e) Decreases passed through to subscribers

Any cable operator shall pass through to subscribers the amount of any decrease in a franchise fee.

(f) Itemization of franchise fee in bill

A cable operator may designate that portion of a subscriber's bill attributable to the franchise fee as a separate item on the bill.

(g) "Franchise fee" defined

For the purposes of this section—

(1) the term "franchise fee" 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;

(2) the term "franchise fee" does not include—

(A) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers);

(B) in the case of any franchise in effect on October 30, 1984, payments which are required by the franchise to be made by the cable operator during the term of such franchise for, or in support of the use of, public, educational, or governmental access facilities;

(C) 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;

(D) requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or

(E) any fee imposed under title 17.

(h) Uncompensated services; taxes, fees and other assessments; limitation on fees

(1) Nothing in this chapter shall be construed to limit any authority of a franchising authority to impose a tax, fee, or other assessment of any kind on any person (other than a cable operator) with respect to cable service or other communications service provided by such person over a cable system for which charges are assessed to subscribers but not received by the cable operator.

(2) For any 12-month period, the fees paid by such person with respect to any such cable service or other communications service shall not exceed 5 percent of such person's gross revenues derived in such period from the provision of such service over the cable system.

(i) Regulatory authority of Federal agencies

Any Federal agency may not regulate the amount of the franchise fees paid by a cable op-

erator, or regulate the use of funds derived from such fees, except as provided in this section.

(June 19, 1934, ch. 652, title VI, §622, as added Pub. L. 98-549, §2, Oct. 30, 1984, 98 Stat. 2787; amended Pub. L. 102-385, §14, Oct. 5, 1992, 106 Stat. 1489; Pub. L. 104-104, title III, §303(b), Feb. 8, 1996, 110 Stat. 125.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (h)(1), was in the original "this Act", meaning act June 19, 1934, ch. 652, 48 Stat. 1064, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-104 inserted "to provide cable services" before period at end of first sentence.

1992—Subsec. (c). Pub. L. 102-385 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "A cable operator may pass through to subscribers the amount of any increase in a franchise fee, unless the franchising authority demonstrates that the rate structure specified in the franchise reflects all costs of franchise fees and so notifies the cable operator in writing."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-385 effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as a note under section 325 of this title.

EFFECTIVE DATE

Section effective 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub. L. 98-549, set out as a note under section 521 of this title.

§ 543. Regulation of rates**(a) Competition preference; local and Federal regulation****(1) In general**

No Federal agency or State may regulate the rates for the provision of cable service except to the extent provided under this section and section 532 of this title. Any franchising authority may regulate the rates for the provision of cable service, or any other communications service provided over a cable system to cable subscribers, but only to the extent provided under this section. No Federal agency, State, or franchising authority may regulate the rates for cable service of a cable system that is owned or operated by a local government or franchising authority within whose jurisdiction that cable system is located and that is the only cable system located within such jurisdiction.

(2) Preference for competition

If the Commission finds that a cable system is subject to effective competition, the rates for the provision of cable service by such system shall not be subject to regulation by the Commission or by a State or franchising authority under this section. If the Commission finds that a cable system is not subject to effective competition—

(A) the rates for the provision of basic cable service shall be subject to regulation by a franchising authority, or by the Com-