ACTION ALERT!!

MB Docket No. 05-311 – Cable Franchise Fee Deductions

"Limiting or Eliminating Fair and Appropriate Use of the Public Right-of-Way"

OPPOSE

Background:

The Federal Communications Commission (FCC) released a Second Further Notice of Proposed Rulemaking, MB Docket No. 05-31, that would allow cable companies to deduct the fair market value for a wide range of public benefits from their franchise fee obligations, namely public, educational, and government (PEG) channel capacity and transmission. Public comments are due Wednesday, November 14, 2018 by 9pm PST.

In 2006, California passed the Digital Infrastructure and Video Competition Act, which streamlined the deployment of cable services by making the California Public Utilities Commission (CPUC) the sole franchising authority in the state and preserved many of the provisions commonly found in local franchise ordinances. It was the intent of the state legislature to streamline deployment while keeping local government revenues intact, ensuring that local public rights-of-way remained under control of cities and counties, and that a sufficient amount of capacity on cable networks was preserved for public, educational, and government (PEG) access channels.

Unfortunately, while the FCC would normally exempt from their Orders states with a centralized franchising authority that have preserved such policies, this FNPRM provides no such exemption, threatening to undermine such priorities in your city.

ACTION:

Public Comments Due Wednesday, November 14 at 9pm PST.

Submit Your Comments with the FCC (see link below) and call your Senator and Representative to urge their OPPOSITION to the FCC's Cable Franchise Fee Proposal, which threatens local PEG services, franchise fee revenues, and local discretion over cable and non-cable facilities.

Submit your letter or comments directly with the FCC electronically, here:
https://www.fcc.gov/ecfs/filings

You can find your Representative's contact information here:
https://www.house.gov/representatives/find/

Talking Points:

- By allowing cable companies to deduct the "fair market value" of PEG channel capacity and transmission from their franchise fee obligations, the FCC's proposed rulemaking would:

- Threaten to limit or eliminate public, educational, and government access channels all meant to better help inform and empower the public;
- Severely reduce franchise fee revenues, revenues for cable companies to use the public right-of-way, for the City (Town) of _____.

- In fact, in the City (Town) of _____, franchise fees generate $_____ that help pay for (list of services or percentage of city budget).

- While the limitations or possible elimination of PEG services alone are problematic, this proposed rulemaking would also prohibit local governments from regulating the facilities and equipment used by cable operators in the provision of non-cable services, such as wireless communications services.

- In California, cities, including my City (Town) of _____, overwhelmingly opposed these sorts of efforts coming from both the cable and telecommunications industry that attack the responsibility of local governments to protect the public health and safety of their own communities.

- Under this proposal, cable companies could potentially install "small wireless facilities" with little to no public input, without having to meet any aesthetic or equipment size requirements aimed to mitigate blight and preserve community character.

- In the end, our residents stand to lose most in terms of the public benefits they receive and the input they can provide for facilities installed in their own backyards.

- The FCC should instead consider ways that cable operators can: improve their services, help close digital divides, and expand deployment to rural and lower income communities.

- Unfortunately, this FRNPRM continues a recent pattern of lowering standards and public responsibility for the communications industry as a whole.

- **We urge you to OPPOSE the FCC's proposed rulemaking, MB Docket No. 05-311, which would deteriorate PEG services and the fair use of the public right-of-way.**

CITY LETTERHEAD

DATE

VIA ELECTRONIC FILING

Submit your letter or comments directly with the FCC electronically, here:
https://www.fcc.gov/ecfs/filings

Chairman Ajit Pai
Commissioner Michael O'Rielly
Commissioner Brendan Carr
Commissioner Jessica Rosenworcel
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: MB Docket No. 05-311. Second Further Notice of Proposed Rulemaking. Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992.

Honorable Chairman Pai and Commissioners O'Rielly, Carr, and Rosenworcel:

The City (Town) of _____ is strongly opposed to the Further Notice of Proposed Rulemaking (FNPRM), which proposes to allow cable companies to deduct the fair market value for a wide range of public benefits from their franchise fee obligations, namely public, educational, and government (PEG) channel capacity and transmission.

In 2006, California passed the Digital Infrastructure and Video Competition Act, which streamlined the deployment of cable services by making the California Public Utilities Commission (CPUC) the sole franchising authority in the state and preserved many of the provisions commonly found in local franchise ordinances. It was the intent of the state legislature to streamline deployment while keeping local government revenues intact, ensuring that local public rights-of-way remained under control of cities and counties, and that a sufficient amount of capacity on cable networks was preserved for public, educational, and government (PEG) access channels.

Unfortunately, while the FCC would normally exempt from their Orders states with a centralized franchising authority that have preserved such policies, this FNPRM provides no such exemption, threatening to undermine such priorities. As proposed, the FNPRMs broad

definition of all "cable-related, in-kind contributions" other than PEG capital costs and build out requirements could be treated as "franchise fees," meaning:

- Cable operators currently paying the typical five percent franchise fee permitted by federal law will be able to reduce their current franchise fee payment by the fair market value of all in-kind contributions, with the exception of PEG capital costs required by the franchise associated with the construction of PEG access facilities and build out requirements.
- There will be significant reductions in cable franchise fees, depending on how the "fair market" value for PEG capacity and transmission is calculated within any given jurisdiction.
- PEG programming would be severely limited, if not altogether eliminated in some or most jurisdictions.

PEG programming offers a host of community benefits, including public access channels, educational access channels, and government access channels all aimed at providing locally beneficial information. Public access channels are available for use by the general public, usually created by a diverse variety of individuals, groups, and organizations within a community that is non-commercial in nature and generally free from editorial oversight. Educational channels are typically dedicated for learning institutions, such as local schools, colleges, and/or universities for school related activities, fully televised courses of instruction, and other educational purposes. Government access channels are often the easiest and best ways for the local governments to be transparent, often televising city, county, school district, and other government meetings or live local election returns, town hall meetings, public debates, and other public policy topics.

[EXAMPLE: In fact, in the City/Town of _____ PEG has been utilized to _____].

The "fair market value" of such services may be impossible to discern and would likely be a source of litigation between cable operators and local governments. Most regrettably, however, is that this FNPRM threatens to limit or eliminate public, educational, and government access channels all meant to better help inform and empower the public. The potential loss of this public benefit alone should be concerning enough for the FCC to reject this FNPRM. Unfortunately, the FNPRM further threatens the use of local right of ways for non-cable related purposes as well.

The FNPRM also proposes to prohibit local governments from regulating the facilities and equipment used by cable operators in the provision of non-cable services, such as wireless communications services. If preempted from regulating these installations outside the franchise (since these franchises do not generally address the use of rights of way for non-cable facilities), local governments may lose their authority to manage a cable company's deployment of non-

cable facilities, such as "small cells." This preemption would threaten to extend to fees for use of the rights of way, meaning:

- Cable companies can use local rights of way for any purpose, regardless of the terms of the franchise, and avoid having to pay fair compensation to the local government for the use of publicly funded assets in the rights of way.
- Cable companies could potentially install "small wireless facilities" with little to no public input, without having to meet any aesthetic or equipment size requirements aimed to mitigate blight and preserve community character.
- Cable companies would gain a significant advantage against their competitors, including telecommunications providers even though the FCC has just adopted an order lowering their deployment standards, resulting in a race-to-the-bottom deployment strategy for both cable and telecommunications companies.

Fair and appropriate use of the public right-of-way is the fundamental policy principle for the imposition of a cable franchise fee and any other reasonable conditions required to preserve the character of each community. While the cable and telecommunications industry continues to attack the responsibility of local governments to protect the public health and safety of their own communities, our residents stand to lose the most in terms of the public benefits they receive and the input they can provide for facilities installed in their own backyards. The FCC should instead consider ways that cable operators can: improve their services, help close digital divides, and expand deployment to rural and lower income communities. Unfortunately, this FRNPRM continues a recent pattern of lowering standards and public responsibility for the communications industry as a whole.

For these reasons, the City (Town) of _____ **opposes** the FNPRM and respectfully urges the FCC to reject the deterioration of PEG services and fair use of the public right-of-way.

Sincerely,

NAME
TITLE
CITY/TOWN of _____

cc: Your Congressional Representative
Stephen Qualls, Central Valley Division Regional Public Affairs Manager, squalls@cacities.org
Meg Desmond, League of California Cities, cityletters@cacities.org