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555 Northgate Drive, #102, San Rafael, CA 94903
415-446-4427 www.mtamarin.org

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September 6, 2019

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Commissioner Jessica Rosenworcel
Commissioner Geoffrey Starks

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City of Belvedere

Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

David Kunhardt
Town of Corte
Madera

**RE: MB Docket No. 05-311. Third Section 621 Report and Order.
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.**

Dennis Rodoni
County of Marin

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

Elizabeth Robbins
Town of Ross

Ford Greene
Town of San Anselmo

The Marin Telecommunications Agency (MTA), a Joint Powers Authority (JPA) comprised of the County of Marin and nine cities/towns, including San Rafael, Belvedere, Corte Madera, Fairfax, Mill Valley, Ross, San Anselmo, Sausalito and Tiburon, oversees the cable franchise agreements under DIVCA, California's state franchise, and the region's PEG channels.

Andrew McCullough
City of San Rafael

Joe Burns
City of Sausalito

David Kulik
Town of Tiburon

The MTA joins with the League of California Cities and other local and regional governments throughout the nation to continue to oppose the recent approval of the Third Section 621 Report and Order, MB Docket No. 05-311 which provides cable companies unprecedented special privilege over local control of public rights of way, community design and zoning regulations and delivers excessive financial benefits, including the supposedly "negotiable" ability 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.

Jean Bonander
Executive Officer

In 2006, California passed the Digital Infrastructure and Video Competition Act (DIVCA), 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

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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. The FCC's interpretive change to telecommunications law also supersedes many provisions of California's state franchise agreement, DIVCA.

Unfortunately, while the FCC would normally exempt from their Orders states with a centralized franchising authority that have preserved such policies, this Report and Order provides no such exemption, threatening to undermine such priorities. As we understand the FCC's conclusions, we note the following:

- "Market value" of the PEG channels is to be negotiated by both parties within 120 days, although local governments have yet to receive any information regarding a reasonable basis for "market value" and the inability to reach agreement could be subject to preemption.
- Implementation of the Order will open the door for significant reductions in cable franchise fees, depending on how the "fair market" value for PEG capacity and transmission is calculated within any given jurisdiction.
- The Order has introduced the concept of assigning a value to the transmission of PEG programming as an element of gross revenue, to potentially be deducted from franchise fees.
- Any other services that a cable operator may include over its cable system may not be regulated by local governments, such as wireless communications devices attached to cable infrastructure, which further erodes local control over both the right of way and community planning.

This Order will likely affect PEG programming, which 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, televising city, county, school district, and other government meetings or live local election returns, town hall meetings, public debates, and other public policy topics.

The "fair market value" of such services will likely be difficult to discern and a source of potential litigation between cable operators and local governments. Most regrettably, however, is that this Order 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 have concerned the FCC enough to reject this Order. Its adoption further threatens the use of local right of ways for non-cable related purposes.

The Order prohibits local governments from regulating the facilities and equipment used by cable operators in the provision of non-cable services, such as wireless communications services. 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 lose their authority to manage a cable company's deployment of non-cable facilities, such as "small cells." This preemption

threatens 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 continue to attack the responsibility of local governments to protect the public health and safety of their own communities, our residents, property owners and businesses 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 have instead considered ways that cable operators can improve their services, help close digital divides, and expand deployment to rural and lower income communities. Unfortunately, this Order continues a recent pattern of lowering standards and public responsibility for the communications industry as a whole.

For these reasons, the MTA continues to **oppose** implementation of the Order. The MTA delivered a letter of opposition to you on November 5, 2018, and this correspondence continues to describe the MTA's distain for the FCC's action. If you have any questions or need any additional information, please contact Jean Bonander, the MTA's Executive Officer at jbonander@marinjpas.org, by phone at (415) 446-4427, or me by email at bcoler@townoffairfax.org.

Sincerely,



Barbara Coler, Chair
Marin Telecommunications Agency

cc: MTA Board of Directors – BY EMAIL
League of California Cities – BY EMAIL
Senator Feinstein – BY EMAIL
Senator Harris – BY EMAIL
Representative Huffman – BY EMAIL
Community Media Center of Marin – BY EMAIL
California Public Utilities Commission – BY EMAIL