

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.**

In the Matter of	)	
	)	
Implementation of Section 621(a) of the Cable	)	MB Docket No. 05-311
Communications Policy Act of 1984 as Amended	)	
By the Cable Television Consumer Protection and	)	
Competition Act of 1992	)	

**Re: MOTION FOR STAY OF THE NATIONAL LEAGUE OF CITIES; THE UNITED STATES  
CONFERENCE OF MAYORS; THE NATIONAL ASSOCIATION OF REGIONAL COUNCILS; THE  
NATIONAL ASSOCIATION OF TOWNS AND TOWNSHIPS; THE NATIONAL ASSOCIATION OF  
TELECOMMUNICATIONS OFFICERS AND ADVISORS**

Matthew Chase  
Executive Director  
National Association of Counties

October 22

The National Association of Counties (NACo)<sup>1</sup> represents nearly 40,000 county elected officials and the 3.6 million county employees serving our nation's 3,069 counties. Founded in 1935, NACo advocates for key county priorities in federal policymaking while promoting exemplary county policies and practices and enriching the public's understanding of county government.

As a representative of our nation's local intergovernmental partners, NACo wishes to affirm our support for the intent of the **"MOTION FOR STAY OF THE NATIONAL LEAGUE OF CITIES; THE UNITED STATES CONFERENCE OF MAYORS; THE NATIONAL ASSOCIATION OF REGIONAL COUNCILS; THE NATIONAL ASSOCIATION OF TOWNS AND TOWNSHIPS; THE NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS"** and respectfully request the Commission grant a stay of the Order pending judicial review.

County governments serve as a foundation for the infrastructure systems that allow our communities to thrive. Through these systems, we are responsible for community and economic development, education and workforce development and public health and safety. As an elected member of the federal, state and local intergovernmental partnership, we are tasked by the public with ensuring proper stewardship of local resources while protecting the health and well-being of our residents.

The Order – which subjects cable-related, in-kind contributions to the statutory five percent franchise fee cap established under the Communications Act – will impose irreparable harm on local governments and the local franchising authorities (LFAs) ability to provide critical programs and services while protecting public property safety and welfare. The motion to Stay the effective Order is imperative until the courts can provide an unambiguous interpretation of the Commission's Order against the intent of the Cable Act.

The in-kind contributions in question, including PEG channels, provide significant public benefits to communities, such as transparency and accountability through access to local and regional government meetings; educational programming including for-credit courses; coverage of local events; local election coverage; candidate forums; and public safety programming. The order, which is strongly opposed by county governments, could contribute to a reduction of 30 to 40 percent in franchise fees resulting in the diminishment or elimination of critical resources.

Furthermore, the Commission exceeds the bounds of the Cable Act under the assumption that any franchise requirement is a "tax, fee or assessment" and fails to identify any differentiating factors between what does and does not constitute a "tax, fee or assessment" under franchising obligations. As such, this assumption inherently undermines the responsibilities and authority reserved for LFAs in Sections 611, 622 and 626 of the Cable Act.

The Cable Act clearly defined a "franchise fee" as "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."<sup>2</sup> The Cable Act also explicitly differentiates between basic franchise fees and the costs associated with franchising requirements.<sup>3</sup>

For these reasons, NACo respectfully requests that the Commission stay the effective date of the Order until after the decision on appeal of the Order. In the interim, existing laws and standards, as defined by the courts and the Commission, would remain in place.

Sincerely,

The National Association of Counties

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<sup>1</sup> NACo represents county governments and provides essential services to the nation's 3,069 counties.

<sup>2</sup> 47 U.S.C. § 542(g)(1)

<sup>3</sup> Compare 47 U.S.C. § 542(c)(1) with 47 U.S.C. § 542(c)(2); 47 U.S.C. § 543(b)(2)(C)(v) with 47 U.S.C. § 543(b)(2)(C)(vi).