

July 25, 2019

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, District of Columbia 20554

Re: Notice of Ex Parte: *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, Draft Third Report and Order - MB Docket No. 05-311*

Dear Ms. Dortch,

The NYC Department of Information Technology and Telecommunications (“DoITT”), on behalf of the City of New York, is writing to express serious concerns about the recently released *Draft Third Report and Order* in the above captioned docket.¹ The City of New York has previously submitted comments² in response to the *Second Further Notice of Proposed Rulemaking*³ that preceded the *Draft Third Report and Order* at issue. We write today to specifically address the adverse and significant impact the FCC’s requirement that Local Franchising Authorities treat cable-related, in-kind contributions as franchise fees subject to the statutory five percent franchise fee cap has on the Institutional Network (“I-Net”).

This change would be devastating to the I-Net facility that the City of New York has put into place and come to successfully rely for close to fifty years.

- *Every City agency is in some fashion using the City’s I-Net.* As an example, we have looked at the Fire Department of the City of New York (“FDNY”). Every fire house in all five boroughs is receiving free service from their respective cable television provider. This includes television as well as internet service. The FDNY is also using the system for critical public safety communications and to support all firehouses’ connectivity. This is just one such example.
- *Presently, there are no viable alternative services available to the City.* The only potential long-term solution would be to build a parallel network which will take years and cost a massive amount of money for which the City has no funding available. The stark reality is that the cities will be

¹ *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, Third Report and Order, FCC-CIRC1908-08 (rel. Jul. 11, 2019) (“Draft Third Report and Order”).*

² *See, Comments of the City of New York in MB Docket No. 05-311 (filed Nov. 14, 2018) and Reply Comments of the City of New York in MB Docket No. 05-311 (filed Dec. 14, 2018).*

³ *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, Second Further Notice of Proposed Rulemaking, 33 FCC Rcd. 8952 (2018) (“Second Further Notice of Proposed Rulemaking”).*

forced to pay extortionate fees because we will not be able to negotiate a bulk rate or conduct a competitive bid process without completely disrupting municipal services.

- *Had we had known, decades ago, that the FCC would go against federal law provisions for the I-Net, we would have been able to conduct a competition.* In some cases, we would have left old systems in place. And we would have made sure that we were not reliant on these I-Net systems. The entire scope of City operations would have been approached differently. We would not have purchased, as we have done over the past couple of years (and as the cable companies in New York City have profited from), ancillary fiber, or other products and services from these very same companies to bundle back into the I-Net.
- *City services, including public safety services, will be at risk.* If we are forced to purchase I-Net, even though it has cost the cable companies next to nothing *and* even though they leveraged the I-Net as a sales opportunity by piggybacking purchased services onto it, *and* even though federal law has provided it for us, City services, including public safety services, will be at risk.

The City strongly opposes this *Draft Third Report and Order* and requests you withdraw the order from the upcoming vote, to safeguard the public interest by maintaining the current franchise fee structure.

This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules.⁴ If you have additional questions or need further information on this matter, please do not hesitate to have your office contact me.

Sincerely,



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Cc: Honorable Ajit Pai, Chairman
Honorable Michael O'Rielly, Commissioner
Honorable Brendan Carr, Commissioner
Honorable Jessica Rosenworcel, Commissioner
Honorable Geoffrey Starks, Commissioner

⁴ 47 C.F.R. § 1.1206.