



July 25, 2019

**ELECTRONICALLY FILED**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW – Lobby Level  
Washington, DC 20554

*Re: In the Matter of 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 (MB Docket No. 05-311)*

Dear Secretary Dortch:

The City of Pasco, Washington (the “City”) files this letter in response to reply comments filed in the above-referenced docket on December 14, 2018, by NCTA–The Internet & Television Association (“NCTA”).<sup>1</sup> The reply comments include erroneous characterizations of the cable franchise process and requests made of Charter Communications (“Charter”) by the City.

**Background**

The City of Pasco is a local municipality in south-central Washington State with a 2019 population of 75,290. Charter is the only franchised cable TV provider in the City, and is operating under a 10-year franchise signed in 2016.<sup>2</sup> The franchise was negotiated in conjunction with the neighboring City of Richland, Washington, to maximize local resources.<sup>3</sup>

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<sup>1</sup> Comments accessed via <https://ecfsapi.fcc.gov/file/1215138280844/Reply%20Comments%20of%20NCTA%20--%20MB.%20Dkt.%20No.%2005-311%20--%2012.14.2018.pdf>

<sup>2</sup> 2016 Franchise accessed via <https://egov-pasco.com/weblink/DocView.aspx?dbid=0&id=659532&page=1&cr=1>

<sup>3</sup> Pasco-Richland “Cable Franchise Renewal Services” Interlocal Agreement accessed via <https://egov-pasco.com/weblink/DocView.aspx?id=250386&dbid=0>

## Comments Made by NCTA

NCTA's problematic references to the City in the reply comments occur in two locations: first, on page 5 in the attached "APPENDIX TO NCTA COMMENTS EXAMPLES OF FRANCHISING AUTHORITY OVERREACH", NCTA states:

"The cities of Pasco and Richland, Washington, requested free drops and equipment for every public building, school, library, and university in their area (existing or new), without regard to whether the building is located close enough to the cable operator's plant to be served without a costly plant extension. The cable operator ultimately agreed to provide basic service with one set top box to three government buildings in Richland and two in Pasco, and at each elementary and public school building and public library that received service on the effective date of the franchise. But to obtain this result, the cable operator had to pursue the formal franchise renewal process under the federal Cable Act to fight against these demands, costing hundreds of thousands of dollars in legal expenses."

## Response

The City, in its initial negotiations with Charter, was merely seeking continuation of terms and conditions that Charter (and its predecessors) *willingly agreed to* under the then-existing franchise.<sup>4</sup> Specifically, the City was seeking an extension of the cable drop provision that Charter had operated under without complaint in the old franchise:

Section 7.8 Public Drops. The Grantee shall provide without charge within the franchise area one drop activated for Basic Service to each fire station, public school, police station, public library, City Hall, and the City Public Works shop. (Page 32)

This, of course, was not a new "demand" by the City nor a request that was out of the ordinary in the industry; the final cable drop provision agreed to signify a substantial concession by the City in the interest of arriving at a mutually beneficial franchise.

Further, the assertion that Charter had to pursue the formal process because of the City's requests (which were that Charter continue already agreed to provisions in the community) mischaracterizes the process. The City (along with Richland) invoked the formal process after no substantial movement by Charter to even meet halfway between the City's model franchise and Charter's model franchise after many months of talks.

## Further Comments by NCTA

The next reference made by NCTA of the City was on page 8 and 9 of the appendix:

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<sup>4</sup> TCI and Pasco franchise adopted June 1998, accessed via <https://egov-pasco.com/weblink/DocView.aspx?id=248071&searchid=42722c8f-79eb-4f4d-8219-d6e590f899fb&dbid=0>

“The Cities of Pasco and Richland, Washington demanded that the cable operator provide and maintain return lines to 9 locations in a tri-city area (including at least one location outside the franchise area), PEG studios in neighboring cities, outside of the franchise area; simulcast 9 5 standard definition channels and up to 6 high definition PEG channels, despite not being able to fully program 3 PEG channels at the time of renewal; make 30 new hours of PEG programming available on demand, per month; and promote the cities’ PEG channels for free. These demands significantly impeded renewal negotiations, resulting in a formal proceeding in which the cable operator had to expend hundreds of thousands of dollars in legal fees. In the end, the franchise entered into in these cities was on terms that were substantially similar to the terms the cable operator was offering informally, prior to the initiation of the formal renewal process.”

## Response

Again, most of these “demands” were simply requests to keep conditions in the existing franchise in any renewal.<sup>5</sup> For example, Charter already had operated and staffed, for many years, a public access studio and equipment checkout in the neighboring city of Kennewick, Washington for the Tri-City region. In addition, the 1998 franchise had requirements for Charter staff to produce PEG programming for both public and government access, which the City did not pursue in a renewal.

Nonetheless, the argument could be made that Charter was in violation of many of the provisions in Section 6 (and elsewhere) of the 1998 franchise but the City chose not to pursue the issue(s) in the interest of comity. The additional PEG channels, as with many of the City’s requests, were in reflection and result of the City’s public needs analysis and surveys, as per the renewal process under Federal law, and reflected the past and future growth of the community. Pasco has more than doubled in population since 2000 and is expecting another 50,000 residents in the next twenty years.

Further, Charter’s initial informal offering for PEG was no capital support, no HD channel, no EPG (Electronic Programming Guide) support, and one PEG channel that had to be programmed to an “original” programming standard (as defined and judged by Charter) that Charter likely does not use with any other channel in their lineup. The adopted franchise does have PEG capital support, provision for HD PEG capacity, EPG support, additional PEG capacity, and no original programming standard on the City’s government access channel. These, and many more provisions, were only agreed to after the City’s invoking of the formal process; hardly terms “substantially similar to the terms the cable operator was offering informally”. The City would invite the Commission to compare the City’s franchise with neighboring cities that have renewed with Charter in the last few years to see these differences, especially in PEG.<sup>6</sup>

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<sup>5</sup> Section 6 of 1998 TCI franchise, pages 26-29

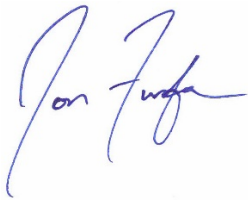
<sup>6</sup> See Pasco 2016 Franchise; See Benton City, Washington franchise, adopted 2013, accessed via <https://bentoncity.municipalcms.com/docview.aspx?docid=18120>; See Yakima, Washington franchise, adopted 2014, accessed via <https://www.yakimawa.gov/services/community-relations/files/2015/04/Yakima-Cable-Communications-System-Franchise-Charter-Communications.doc>

Finally, there was a substantial delay in franchise negotiations in the 2014-2015 period as Charter was seeking to transfer control of the system to Comcast as part of the failed Comcast-Time Warner merger. Both Charter and the City, at the time, agreed that it would be best for the City to negotiate directly with Comcast, assuming the transfer occurred.

## **Conclusion**

The City appreciates this opportunity to rebut the claims made by the NCTA. While the City's franchise negotiation was a long process, the ultimate agreement is one that benefits the Pasco community and Charter. The City has, and still does, value its relationship with Charter as a community partner but does not appreciate a trade group mischaracterizing facts to the ultimate detriment of the Pasco, and by extension, American, public.

Respectfully Submitted,



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