



**TOWN OF WESTWOOD**  
COMMONWEALTH OF MASSACHUSETTS  
**TOWN ADMINISTRATOR**

Michael A. Jaillet, Town Administrator  
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Received & Inspected

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July 22, 2019

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Federal Communications Commission **FILE COPY ORIGINAL FCC Mailroom**  
445 12th Street, SW  
Washington, District of Columbia 20554

*RE: 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 - MB Docket No. 05-311*

Dear Ms. Dortch,

On behalf of the Town of Westwood, I am writing to formally express our sincere belief that the cable providers who are licensed to serve our communities are the best conduit for providing revenue for PEG programming. In that regard Westwood has grave concerns and disagreement with the Federal Communications Commission's ("FCC") proposed Third Report and Order ("Order") requiring Local Franchising Authorities ("LFA") to treat cable-related, in-kind contributions as franchise fees subject to the statutory five percent franchise fee cap, and regarding the LFA's ability to use its cable franchising authority to regulate the mixed-use network of an incumbent cable operator that is not a common carrier.

In this Order, the FCC would allow cable operators to deduct the fair market value of the non-capital obligations associated with public, educational and governmental ("PEG") channels from the five percent franchise fee cap. This is a radical change, undermining decades of common interpretation and implementation of federal law. While this Order is considered to be prospective, meaning that cable operators cannot recoup past franchise fee payments, the FCC makes clear that the Order would apply to existing franchise agreements. This Order thus unduly interferes with long-term contracts freely and consensually negotiated between two parties.

These negotiated contracts are results of hours of work between cable operators and local officials acting on behalf of their residents. Like all freely negotiated contracts, various concessions are made to result in a document mutually agreeable and in the best interest of both parties. This Order puts regulatory weight on certain terms in an existing agreement, tipping the balance in favor of the cable providers and offsetting the entire negotiation process. Compounding the effect of opening up existing long-term contracts, disagreements about how to determine the fair market value of these invaluable services are inevitable, and will lead to further legal challenges and disputes.

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None of these FCC-driven options is in the public interest. The loss of revenue caused by the Order will force municipalities to either divert resources away from core municipal and school services in order to maintain existing PEG programming, or suffer a dramatic reduction in the scope of PEG channels, or lose them altogether. On the other hand, private sector cable operators in Massachusetts are set up for an FCC-granted windfall. Because cable operators pass through the costs they incur by paying franchise fees, they recoup the costs from cable subscribers. This Order would also allow them to subtract the "fair market value" from the franchise fee, but does not require any change in what is charged to subscribers, essentially allowing cable operators to double recover. When Comcast refused to consider to provide PEG programming on its own, it included the costs it had been paying in the prices it charged its customers and then added the additional PEG charge, thereby profiting from this change. Comcast has no interest in serving the public good. Making a change like this would simply benefit Comcast and provide no benefit to the public.

Adding insult to injury, this Order further preempts LFAs from regulating non-cable services and equipment of franchised cable operators, including the imposition of any fees on non-cable services. This regulation effectively impacts the exercise of municipal authority to regulate placement of facilities in their own rights-of-way. This Order combined with the FCC's Declaratory Ruling and Third Report and Order creates a federally-set race to the bottom between telecommunications providers and cable companies providing non-cable services, further and further limiting what municipalities will be able to charge for the use of the public rights-of-way. The FCC's position would effectively mandate an unjustified public subsidy of private commercial interests. Since these companies are business enterprises, they should not receive this subsidy that relies on the public to deliver something to a for-profit corporation without the corporation paying for this use of municipal property.

The Town asks you to safeguard the public interest by maintaining the current franchise fee structure and honoring the authority of cities and towns to control their public rights-of-way.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Michael Jaillet". The signature is fluid and cursive, with the first name "Michael" being more prominent than the last name "Jaillet".

Michael Jaillet  
Town Administrator