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November 7, 2018

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 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, MB
Docket No. 05-311*

Dear Secretary Dortch:

The Illinois Municipal League (IML) appreciates the opportunity to file comments on the Federal Communications Commission's (FCC) Second Further Notice of Proposed Rulemaking (FNPRM) in the above-referenced docket. IML is a not-for-profit, non-political association representing 1,298 municipalities in the state of Illinois. State statute designates IML as an instrumentality of its members. (65 ILCS 5/1-8-1). IML's mission is to articulate, defend, maintain and promote the interests and concerns of Illinois communities.

We strongly oppose the tentative conclusions in the FNPRM that state: (1) the FCC should treat cable-related in-kind contributions as franchise fees subject to the statutory 5% cap set forth in Section 622 of the Communications Act of 1934; and (2) the FCC should prohibit local governments from using their video franchising authority to regulate most non-cable services, such as broadband Internet access service.

Rather, we concur with the United States Court of Appeals for the Sixth Circuit's ruling in Montgomery County, Maryland, et al. v. Federal Communications Commission, et al., as it more accurately interprets the relevant statutory provisions. The term "franchise fee" as defined by 47 U.S.C. § 562(g)(1) can include noncash exactions, but that does not mean that it necessarily does include every noncash exaction. "Franchise fee" does not include "in-kind" cable-related exactions. The FCC's interpretation of franchise fee would undermine various provisions of the Communications Act that allow or even require local governments to impose cable-related obligations as part of their cable franchises. The FCC's interpretation of "franchise fee" is erroneous.



Franchise obligations such as public, educational or governmental (PEG) channels and local customer service obligations are more appropriately considered community benefits, not contributions to local franchising agreements, and should not be considered franchise fees.

The Sixth Circuit held that the FCC's orders offer no valid basis – statutory or otherwise – for its application of the mixed-use rule to bar local franchising authorities from regulating the provision of non-telecommunications services by incumbent cable providers. The FCC's application of the mixed-use rule to incumbent cable operators is erroneous. Section 522(7)(C) by its terms applies only to Title II carriers (providers of phone services), and many incumbent cable operators are not Title II carriers.

Further, the tentative conclusions discussed in the FNPRM, as well as prior FCC decisions in this proceeding addressing local franchising authority regulation of cable operators, should not be applied to state-level franchising actions and state regulations that impose requirements on local franchising.

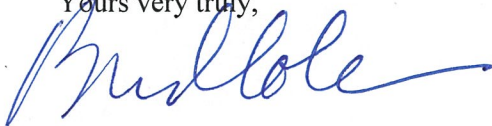
In 2007, Illinois passed the Cable and Video Competition Law of 2007, which created a statewide cable licensing protocol while providing municipalities the ability to regulate their rights-of-way. This law also supported the PEG fee, assessed to each cable subscriber, with the funds to be used for the production of PEG access programming. While the FCC would normally exempt from their orders states with a centralized franchising authority that have preserved priorities such as PEG, the FNPRM unfortunately provides no such exception.

The FNPRM puts at risk critical funding for PEG channels as well as broadband connections to schools and other public buildings. Our constituents watch PEG channels to monitor local government proceedings, hear the latest news from nearby college campuses and consume other locally-produced programming, emergency alerts and other related directives.

The Illinois Municipal League thanks the Federal Communications Commission for its efforts to better understand the perspectives of our members. IML strongly opposes the tentative conclusions in the Second Further Notice of Proposed Rulemaking.

Please feel welcome to contact me at (217) 525-1220 or via email at bcole@iml.org, if I may answer any questions or provide additional information. Thanks.

Yours very truly,



BRAD COLE
Executive Director

c: IML Board of Directors
Illinois Congressional Delegation
National League of Cities