



November 7, 2018

VIA ELECTRONIC FILING

1100 K Street  
Suite 101  
Sacramento  
California  
95814  
Telephone  
916.327.7500  
Facsimile  
916.441.5507

Chairman Ajit Pai  
Commissioner Michael O’Rielly  
Commissioner Brendan Carr  
Commissioner Jessica Rosenworcel  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

**RE: MB Docket No. 05-311. Second Further Notice of Proposed Rulemaking. 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*.**

Dear Chairman Pai and Commissioners O’Rielly, Carr, and Rosenworcel:

On behalf of the California State Association of Counties (CSAC), I’m writing to express our strong opposition to the Federal Communication Commission’s (FCC) proposal to allow cable companies to deduct the “fair market value” of public, educational, and government (PEG) channel capacity and transmission from their franchise fee obligations. If adopted by the FCC, this proposed rule would significantly reduce franchise fee revenues to local governments and severely limit or even eliminate local PEG access channels in some jurisdictions.

In 2006, the California Legislature passed the *Digital Infrastructure and Video Competition Act*, which streamlined the deployment of cable services by making the California Public Utilities Commission (CPUC) the sole franchising authority in the state. The Act also preserved many of the provisions that are commonly found in local franchise ordinances. The intent of this carefully crafted State law was to streamline video franchises and broadband infrastructure deployment while protecting local government revenues and their control of public rights-of-way. Regrettably, the FCC’s proposed rule would serve to erode local control and would negatively impact the provision of important local services.

Pursuant to the FCC’s proposal, cable companies – which are currently paying the typical five-percent franchise fee permitted under federal law – would be able to reduce their franchise payments to local governments by the fair market value of all in-kind contributions, with the exception of PEG capital costs and build-out requirements. While it remains to be seen how the value for in-kind contributions (namely PEG capacity and transmission) would be calculated within any given jurisdiction, we anticipate that most localities would see a significant reduction in their cable franchise fee revenues. As a result, counties and cities would have to decide between supporting local PEG channels and supporting other critical institutions that serve the public good.

As you are well aware, PEG programming offers a host of important community benefits. For example, public access channels are available for use by the general public and are usually created by a diverse group of individuals, groups, and organizations within a community that is non-

commercial in nature and generally free from editorial oversight. Educational channels, on the other hand, are utilized by local schools, colleges, and universities for various school-related activities, such as fully televised courses of instruction and other purposes. Finally, government access programming – including town hall meetings, public debates, government meetings, and live local election returns – represents the easiest and best way for local governments to inform and empower the public.

CSAC is equally concerned that the Commission's proposed rule, as drafted, could prohibit local governments from regulating the facilities and equipment used by cable operators in the provision of various *non*-cable services. For example, as written, cable companies could potentially install small wireless/5G facilities with little or no public input and without having to meet any aesthetic or equipment-size requirements aimed to mitigate blight and preserve community character. This apparent carve out for cable operators would present safety and liability challenges for counties and cities and would allow cable operators to avoid having to pay fair compensation to local governments for the use of publicly funded assets in the rights of way.

Moreover, by allowing cable operators to deploy non-cable facilities without being subject to any local oversight, the proposed rule would establish a regulatory scheme whereby cable companies are held to a different standard than telecommunications providers, which remain subject to some degree of local discretion and public review. Ironically, the FCC's recent Order (*WC Docket No. 17-84 and WT Docket No. 17-79*) preempting state and local governance of small cell wireless infrastructure lowers deployment standards for telecommunications companies. Taken together, these FCC actions will likely result in a race-to-the-bottom deployment strategy for cable and telecommunications providers.

Again, our association strongly opposes the FCC's proposed rule and respectfully urges the Commission to reject the deterioration of PEG services and fair use of the public right-of-way. Thank you for considering CSAC's views. If you have any questions or if you need any additional information, please contact Joe Krahn, CSAC Federal Representative, Paragon Government Relations at (202) 898-1444.

Sincerely,



Graham Knaus  
CSAC Executive Director

cc: Senator Dianne Feinstein  
Senator Kamala Harris  
California Congressional Delegation