

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Section 621(a)(1) of the Cable)	MB Docket No. 05-311
Communications Policy Act of 1984 as Amended)	
by the Cable Television Consumer Protection and)	
Competition Act of 1992)	

**COMMENTS OF THE QUAD CITIES
CABLE COMMUNICATIONS COMMISSION**

The Quad Cities Cable Communications Commission (“QC4”) provides the following comments regarding the Second Further Notice of Proposed Rulemaking (“FNPRM”) in the above-referenced docket.

INTRODUCTION

QC4 is a municipal joint powers body under Minnesota Statutes, Section 471.59 comprised of the cities of Andover, Anoka, Champlin and Ramsey, Minnesota. QC4 is governed by a board comprised of two commissioners from each of the four (4) member cities. QC4 was formed in 1981 to address the cable franchising needs of its member cities and provide public, educational and governmental programming (“PEG programming”) to their communities. The member cities are located in the northern Minneapolis/St. Paul suburbs with a collective population of nearly 100,000 residents.

QCTV provides information on its PEG programming channels regarding city government, local sports, and community activities relevant to its member communities. The video programming is presented via local cable channels 15 (SD) 859 (HD), 16, 18, and 19 on Comcast’s local cable system. Channel 16 is an exclusive government programming channel

and provides cablecasts of local municipal meetings and QC4's signature program – News and Views, featuring city services and activities. In addition, these local channels display an electronic bulletin board containing information regarding council agendas and city events.

All member cities receive the same community channel 15 with local programs and channel 18 programmed by the Anoka-Hennepin School District. Informational channel 19 is a community bulletin board that displays upcoming community events.

A 2016 survey of Comcast customers revealed that residents highly value PEG programming produced by QC4's programming arm- QCTV. City Council meetings are the most-watched programming with 46% of cable subscribers watching their government channel either "frequently" or "occasionally." Council meetings from the member cities are viewed by 32%, followed by the monthly city news program News & Views at 26%. The Community Channel features local programs, and draws 47% share of cable viewers. Four programs possess above average audiences: "election coverage, including candidate forums," at 23%; "Live and Local," at 19%; "It's Your History" and "high school sports," both at 17%.

COMMENTS

QC4 opposes the FNPRM's tentative conclusion that the value of a cable operator's "in-kind" cable franchise commitments, including those that facilitate PEG programming, can be deducted from the operator's franchise fee commitments. Such conclusion is contrary to applicable law and the understanding of QC4, the incumbent cable operator, Comcast, and its recent competitor, CenturyLink. This understanding is reflected in the franchises the parties have negotiated. The FCC's proposed departure from settled law and the terms of negotiated franchise agreements would result in a federal overreach into matters resolved decades ago by local governments and the affected industry. The Commission should avoid such overreach.

Specifically, QC4 has obtained franchise fee commitments from the local cable operators calculated as 5% of their gross revenues. These fees fall within the applicable statutory definition of “franchise fee” under 47 U.S.C. § 542 (Section 622(a)(1)) (“any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such.”) The franchises also establish commitments related to the origination and delivery of PEG programming. Among other PEG commitments, the franchises provide for four (4) video channels for PEG programming purposes, financial support for ongoing capital and other needs, and an institutional network making video and data transmission capacity available at a several governmental facilities in the member cities.¹

Contrary to the FNPRM, the franchises reflect an understanding that the cable operators’ commitments to PEG programming, including both funding for PEG capital needs and in-kind PEG commitments, are in addition to franchise fees. Such commitments, and the cost of meeting these commitments, are not included in or an offset from franchise fees. The franchises issued to Comcast’s predecessor nearly 19 years ago (in 2000) reflect this understanding explicitly, stating that PEG programming obligations are “[i]n addition to the franchise fee required under this Franchise...” See e.g, City of Ramsey Cable Franchise Ordinance (“Ramsey Franchise”), Section 6.2.1. The franchises further state:

Costs and Payments not Franchise Fees.

The parties agree that any costs to the Grantee associated with the provision of support for PEG access or the Institutional network pursuant to Sections 6 and 7 of this Franchise do not constitute and are not part of a franchise fee and fall within one or more of the exceptions to 47 U.S.C. § 542.

¹ The franchises include other types of in-kind consideration such as: complementary cable service to governmental buildings, access to the company’s electronic programming guide service for PEG programming, customer service obligations, video return rights for origination of programming, ROW requirements, etc.

Ramsey Franchise, Section 6.6. The subsequently issued CenturyLink franchises contain equivalent language.

These arrangements were negotiated with both operators based on a mutual understanding of applicable law. Lest that be in doubt, the franchises provide that should either party determine that a franchise provision is inconsistent with applicable federal law or FCC regulation, such party may give notice and require immediate conformance with such applicable federal law. See, Ramsey Franchise, Section 13.4.1; See also, Minn. Stat. § 238.084, subd. 1(b) (a cable franchise must contain “a provision requiring the franchisee and the franchising authority... to conform to federal laws and regulations regarding cable as they become effective.”). At no time has either Comcast (or its predecessors) or CenturyLink claimed that the arrangement described above is contrary to federal law. Had Comcast determined that its PEG programming support obligations run afoul of federal law, it has had nearly two decades to raise that argument. To the contrary, Comcast triggered renewal of its franchise in 2017 and has subsequently engaged in negotiation with QC4. The negotiators have exchanged term sheets detailing the provisions or issues upon which each seeks to renegotiate or modify terms. But Comcast has not proposed renegotiation of the foregoing provisions. Comcast will apparently continue to treat PEG support as over and above franchise fees unless the FCC promulgates a contrary regulation.

Of course, this understanding that PEG programming support is in addition to franchise fees is at fundamental to the parties’ financial arrangement. The FNPRM would upend this shared understanding. Such a dramatic change will impact any then-pending renewal negotiations, may result in the need to renegotiate existing agreements, and may even require termination of current agreements entirely.

To add insult to injury, the FNPRM proposes that the cable operators be handed the whole deck of cards. As proposed, cable operators would be entitled to deduct their calculation of the value of in-kind PEG commitments -- commitments that have never previously been valued for purposes of determining franchise fee payments -- without any suggestion of the appropriate valuation methodology. There are no known appraisal methodologies to determine the fair market value of a cable operator's in-kind support for PEG programming. As a result, there will surely be disagreement regarding calculations made and offsets unilaterally taken by cable operators.

Finally, QC4 rejects the FNPRM's suggestion that PEG programming is for the benefit of local governmental bodies, not the public. As explained above, QC4 provides local programming that is not otherwise available on the local cable systems. This programming is very valuable to the public as demonstrated by high viewership. The tentative conclusion that PEG support must be considered franchise fees because such support is effectively a tax imposed for governmental benefit is simply wrong as a matter of fact and common sense.

The FNPRM's tentative conclusion that build-out requirements are not franchise fees because they are not contributions to the government is correct and perfectly analogous. QC4's PEG programming plainly constitutes "other requirements besides build-out obligations that are not specifically for the use or benefit of the LFA or an entity designated by the LFA and therefore should not be considered contributions to an LFA."² Franchise commitments to support PEG programming and channels, and similar commitments such as customer service obligations, are obviously for the benefit of subscribers and the community. Such commitments

² FNPRM ¶ 21.

cannot reasonably be characterized as contributions to local government. Like build-out obligations, these commitments cannot be characterized as franchise fees under applicable law.

QC4's PEG programming benefits the community. In 2017, QCTV created and aired more than 1,000 programs including 358 programs specifically for the four member cities, 481 community interest programs, and an additional 301 programs produced by community members. Residents not only watch the cable channels, they watch video-on-demand from www.qctv.org. In fact, web site archives yielded nearly 7,000 views of government programming alone in 2017.

If the value of QC4's PEG programming is actually in doubt, or it is unclear whether that programming is for the benefit of subscribers and residents of the affected communities, we invite the FCC to view such PEG programming at: <https://www.youtube.com/user/qctv> or: <http://bit.ly/CommunityMediaDay2018>. The latter link highlights local programming available only on QCTV local channels such as news, government meetings, sports, business, local election candidate forums, church services, district judicial programming, public safety, resident profiles, local history show, non-profit organizations, events and activities. It also features testimonials of resident support of this local programming including:

Resident Bart Ward-- "It's a connection to the community. Understanding what's going on in your community -- there's probably no better way to do it than to watch the different programs. It makes you feel part of the community plus it keeps you up to date on current events."

High School Coach Brian Woodley-- "The parents and community. Everybody loves the see you put here. It's hugely impactful."

Fire Chief Charlie Thompson-- "We've seen a multitude of benefits utilizing QCTV. I've had people tell me they watch that program (Public Safety Talk). When you are getting that feedback from the general public, I think that's valuable."

Resident David Riley-- "What I really like about QCTV is that I get to see the creativity of my neighbors. I get to see wat they are doing and keep abreast of what is going on in my community."

QC4 submits that its programming is nothing like Wayne's World public access of the 1980s.

We produce high quality, award winning programming as evidenced by six recent programming

awards: https://www.hometownsource.com/abc_newspapers/free/qctv-celebrates-awards

[in/article_459f6d22-ddf0-11e8-a866-4baa48dc4493.html](https://www.hometownsource.com/abc_newspapers/free/qctv-celebrates-awards) We submit that the facts speak for

themselves.

CONCLUSION

The FNPRM would re-interpret federal law in a manner that preempts Minnesota state law and existing QC4 franchises negotiated with two operators under such federal and state laws. As contemplated by federal law, negotiation of the QC4 franchises took significant time and imposed financial and other burdens on both parties. Eviscerating agreements negotiated by parties that had and continue to have a mutual understanding of applicable law is senseless.

QC4 urges the FCC to not overturn law that has been settled for decades and relied upon by parties in prior multi-year negotiations and current renegotiations.

Respectfully submitted,

Dated: November 8, 2018.

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