



November 9, 2018

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, District of Columbia 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 Ms. Dortch,

The City of Gaithersburg is strongly opposed to the Further Notice of Proposed Rulemaking (FNPRM), which proposes to allow companies to deduct the fair market value of a wide range of public benefits from their franchise fee obligations, namely public, educational, and government (PEG) channel capacity and transmission and other in-kind courtesy service provisions found within the City's cable franchise agreements.

In the City of Gaithersburg, our PEG channel is used to offer live and repeat broadcasts of City Council and other quasi-judicial commission meetings. These broadcasts allow the City to conduct its business in the open and they offer an opportunity for our residents to observe government in action for those who may be unable to attend meetings in person or have access to watch the proceedings on the internet. Other programming on the channel informs our residents of important initiatives, programs and events, including notifications during times of emergency. These PEG channels offer an efficient way for local governments to ensure transparency.

The "fair market value" of such in-kind services will be extremely difficult to ascertain and the proposed Rulemaking leaves this determination solely within the cable provider's discretion. This ambiguity could potentially result in costly litigation between cable operators and local governments, with a detrimental impact on City taxpayers. Beyond the potential legal costs, the FNPRM threatens to grossly limit or entirely eliminate public, educational, and government access channels, all meant to better inform and empower the public.

City of Gaithersburg • 31 South Summit Avenue, Gaithersburg, Maryland 20877-2038
301-258-6300 • FAX 301-948-6149 • cityhall@gaitthersburgmd.gov • gaitthersburgmd.gov

MAYOR
Jud Ashman

COUNCIL MEMBERS
Neil Harris
Laurie-Anne Sayles
Michael A. Sesma
Ryan Spiegel
Robert T. Wu

CITY MANAGER
Tony Tomasello

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
November 9, 2018
Page 2

As proposed, the FNPRM's broad definition of all "cable-related, in-kind contributions" other than PEG capital costs and build-out requirements could be interpreted as "franchise fees," which could result in:

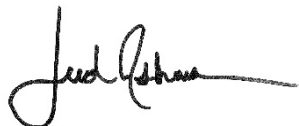
- Cable companies no longer paying the typical five percent franchise fees permitted by federal law.
- Cable companies using local rights-of-way for any purpose, regardless of the terms of the franchise agreement, and avoiding paying their fair compensation to the local government for the use of funded assets in the rights-of-way.
- Significant reductions in cable franchise fees, depending on how the "fair market" value for PEG capacity and transmission is calculated within a given jurisdiction. This proposed change would result in PEG programming being drastically reduced, if not eliminated altogether in most jurisdictions.

Fair and appropriate use of the public right-of-way is the fundamental purpose for the imposition of cable franchise fees and other reasonable conditions whose purpose is to preserve the unique character of each community. It is important to note that the franchise fee is a separate pass through fee that is paid solely by the cable customer, and allowing cable providers to retain all or a portion of this fee for services that they negotiated in good faith to provide as part of their cable franchise only hurts our residents. It is our residents that stand to lose the most in terms of the public benefits they receive.

We would encourage the FCC to focus its attention on opportunities for cable operators to improve their services, help close the digital divide, and expand deployment to rural and lower income communities.

The City of Gaithersburg strongly advocates for efforts that enhance local control of resources, programs and tools that allow the City to address the needs and concerns of its residents, and opposes any efforts that preempt local authority, such as the FNPRM. For these reasons, the City of Gaithersburg OPPOSES the FNPRM and respectfully requests that that the FCC reject the deterioration of PEG services and fair use of the public right-of-way.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jud Ashman", with a long horizontal flourish extending to the right.

Jud Ashman, Mayor
City of Gaithersburg