

**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 VILLAGE OF HOFFMAN ESTATES, ILLINOIS

The Village of Hoffman Estates appreciates the opportunity to file comments on the Second Further Notice of Proposed Rulemaking ("FNPRM") in the above-referenced docket. The Village of Hoffman Estates, IL is a Chicago suburb with a population of 52,271 and is served by Comcast Cable and AT&T U-Verse Service. We operate a governmental access channel, HETV, with a staff of 1.75 FTE. Our budget of \$173,000 per year, not including capital expenses, goes mostly to salaries. Our capital improvement budget for the next four years averages \$66,250. Franchise fees received beyond departmental expenses go to the Village's general fund to pay other operating expenses such as other salaries and equipment.

We strongly oppose the tentative conclusions in the FNPRM that cable-related in-kind contributions are franchise fees. Cable-related in-kind contributions are contractual matters that are negotiated as part of the franchise renewal process, and are therefore contractual matters and not items that are unilaterally imposed on providers by municipalities. Franchise fees are rental for the use of the public rights-of-way (ROW) without which cable providers could not operate. All utilities and telecom providers in the ROW pay similar fees for the use of the public's property.

Likewise we disagree that that local governments have no authority regarding cable operators' use of the ROW to provide non-cable services. Just as a landlord has the ability to regulate what a renter does with their property, municipalities should have control over how the ROW is used. Non-cable services take up additional space in the ROW and so should incur additional charges, or rent, for taking up this

additional space. For example, if a cable provider is installing fiber optic backhaul for a wireless service, such as 5G, they should pay additional rent for the use of the ROW that has nothing to do with their core video business.

As to in-kind contributions, Hoffman Estates has had its cable channel since the time cable service started to be provided in the Village. Having to pay for PEG channel capacity and the transmission medium for said channel could eat up much of the franchise fees we collect. These are services that have traditionally been provided across the country free of charge. HETV provides local programming that people cannot get anywhere else. We televise our Board and Committee meetings, provide coverage of our special events, such as Fourth of July festivities and concerts and also provide news programs about the activities of the Village and its departments. We also produce program about our high schools activities, such as sporting events and concerts. HETV produces over 70 programs per year for our residents. We consider this as much a benefit to our residential viewers as to the Village. There are many events that residents might not be able to attend that they can view on our channel. They can also relive a family member's participation in said events. The provision of PEG channels was initially the cable provider's idea to increase the value of their service to municipal residents. It has only been recently, when so much system capacity has been directed to non-cable services, such as broadband, telephone, backhaul and home security, that providing PEG channels has become an issue for cable providers.

The capacity to provide PEG services is a very small part of the system capacity that has already been built in to the system. The continued provision of these channels is renegotiated every ten years when the franchise is renewed. It is a negotiated contractual obligation, one that Comcast, with its army of attorneys, is very capable of dealing with on its own. As stated earlier, franchise fees are rental for use of public property, held in trust by municipalities, and that rent keeps going down as additional services that do not contribute to franchise fees increases.

If the FCC is going to mandate that the cost of providing these channels come out of municipal franchise fees, which we believe is both unnecessary and undesirable, then it should be done on an actual cost basis. So many services that municipalities are mandated to provide the telecom industry must be done on an actual cost basis so it would only be fair that the industry provide services to the municipalities at actual cost as well. Allowing them to determine and charge "fair market value" would be unfair since the provider gets to determine what the "fair market value" is, and can thus inflate them to many times actual cost.

We have seen a reduction in our franchise fees over the last few years as cable subscribers are opting for alternate video services, such as over the top providers. This leads to people getting their video channels over the Internet on a service that does not contribute to franchise fee revenues but still utilizes

system capacity that takes up space in the ROW. With the pending deployment of 5G wireless services cable providers will be contracted to provide backhaul service for these “wireless” services. The resultant fiber runs will take up ROW space without contributing to the rent for use of that property. This results in the Village subsidizing profit generating telecom services, which is not right.

We support the tentative conclusion that build-out requirements are not franchise fees because they are not contributions to the franchising authority. The same reasoning should be applied to other cable-related contributions the Commission tentatively concludes are franchise fees. Franchise obligations such as PEG channels and local customer service obligations are more appropriately considered community benefits, not contributions to LFAs, and, like build-out obligations, should not be considered franchise fees.

The cable providers profit from a lot of services provided over their cable system that does not contribute to the franchise fee generating cable services that municipalities collect fees on, yet still require space in our ROW that we cannot collect rent for. The small amount of channel space negotiated for PEG channel programming provides a unique benefit for the community as a whole rather than the municipality in particular. The provision of these channels is a contractual issue, negotiated during franchise renewal. The highly profitable cable providers are more than capable of taking care of their own interests during these negotiations and does not need the help of the federal government. We ask that you leave the franchising process the way it has been over the years and do not enact rules that benefit highly profitable cable providers to the detriment of nonprofit municipalities.

Respectfully submitted,

A handwritten signature in dark ink, reading "William D. McLeod". The signature is fluid and cursive, with the first name "William" and last name "McLeod" clearly legible. The middle initial "D." is smaller and less distinct.

William D. McLeod / Village President
Village of Hoffman Estates
1900 Hassell Road
Hoffman Estates, IL 60169

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