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# ALABAMA LEAGUE OF MUNICIPALITIES

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## VIA ELECTRONIC FILING

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

The Alabama League of Municipalities (ALM) appreciates the opportunity to file comments on the Second Further Notice of Proposed Rulemaking ("FNPRM") in the above-referenced docket.

The Alabama League of Municipalities (ALM) is a voluntary association of which approximately 450 cities and towns of the State of Alabama are currently members. Since 1935, the League has worked to strengthen municipal government through advocacy, training and the advancement of local leadership. In addition, the League advises and educates municipal officials across the State on all aspects of municipal law. On behalf of all of Alabama's municipalities, we strongly oppose the tentative conclusions in the FNPRM that cable-related in-kind contributions are franchise fees and that local governments have no authority regarding cable operators' use of the rights of way to provide non-cable services.

Section 220 of the Alabama Constitution, 1901, provides that "No person, firm, association, or corporation shall be authorized or permitted to use the streets, avenues, alleys, or public places of any city, town or village for the construction or operation of any public utility or private enterprise, without first obtaining the consent of the proper authorities of such city, town, or village." The Supreme Court of Alabama has labeled this grant of authority as "an essential and sovereign power in local authorities... in the nature of a bill of rights ... [that] recognize certain fixed, constitutional rights which shall not be invaded." *Birmingham Electric Co. v. Allen*, 177 So. 199, 202 (1928) (internal citations omitted).

ALABAMA ASSOCIATION OF  
MUNICIPAL ATTORNEYS



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ALABAMA MUNICIPAL  
JUDGES ASSOCIATION

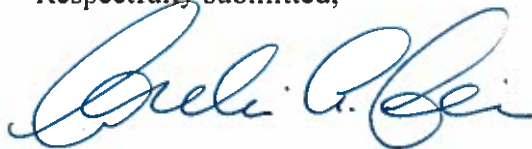


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The pending proposal before the Commission would potentially alter, at cable operators' discretion, the terms of franchise agreements between Alabama's municipalities and cable operators. In addition to interfering with local government constitutional authority and control over rights of ways, in its current form, the proposed rule puts critical funding at risk for public, educational, or governmental (PEG) stations as well as broadband connections to schools and other public facilities. Many Alabama municipalities support PEG stations and programming. Franchise obligations such as PEG channels and local customer service obligations are more appropriately considered community benefits, *not* contributions to local franchise authorities (LFA's), and, like build-out obligations, should not be considered franchise fees. These channels are vital to local communities to allow for citizens to monitor local government proceedings, get the latest news and education information from local universities and community colleges as well as provide access to other locally produced programming including emergency alerts and directives. This proposal could jeopardize these vital local functions.

As the Commission proceeds, ALM urges you to carefully consider the impact this proposal has on local franchise authority, protected by Alabama's Constitution, as well as the potentially devastating impact this could have on PEG access stations which provide local viewers critical information about their communities and offer an important platform for local voices. The proposed rule, in its current form, puts this at risk and may force many of Alabama's municipalities to decide between supporting local PEG channels and supporting other critical institutions serving the public good. We ask the Commission to not place them, and their citizens, in such a difficult position with the proceeding.

Respectfully submitted,



Lorelei Lein  
General Counsel  
Alabama League of Municipalities