

**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 MILWAUKIE, OREGON**

The City of Milwaukie, Oregon ("City") appreciates the opportunity to file comments on the Second Further Notice of Proposed Rulemaking ("FNPRM") in the above-referenced matter. The City strongly opposes the conclusions in the FNPRM that hold non-monetary franchise obligations are subject to the five-percent (5%) franchise fee and that local governments have no authority to regulate cable operators' use of their rights-of-way for non-cable related services.

Milwaukie is a small suburb of approximately 21,000 residents located just south of Portland, Oregon. The City is serviced by one cable operator that provides vital resources to our community. The City, in turn, provides the cable operator with access to its rights-of-way. The benefits provided to the City by the cable operator include financial resources through payment of applicable franchise fees and other contractual obligations including public, education, or government ("PEG") access channels that provide public information to our residents; discounted services for disadvantaged residents; emergency alert capabilities; and cable service to public facilities including our emergency operation centers and first responders.

If the FCC adopts the FNPRM, the residents of Milwaukie will see a significant reduction on services. . Milwaukie may also have to stop funding PEG channels, or at the very least,

reduce its support of this public service. Loss of this vital means of communication, which is relied upon by the City to alert and inform our residents, would be a significant detriment to our community.

PEG programming offers a wide variety of community benefits including public, education, and government access channels aimed at providing beneficial information to the community. Public access channels are available for use by the general public. Education access channels are dedicated for education-related uses by learning institutions such as local schools, colleges, and universities. Government access channels are the easiest and most effective way for local governments to be transparent through televised city, county, and other government meetings. Government access programs are often the only way disadvantaged and underserved members of the community have access to their local government.

The City has a long history of franchise agreement with its cable provider and both parties understand that these mutually agreed upon contractual obligations are not available as an offset against franchise fees. A change at the federal level regarding these obligations would be contrary to the City's existing franchise agreements. If the value of these obligations is ordered to be offset against franchise fees, the offset should be the incremental cost to the cable operator and not the fair market value. The fair market value of such obligations may be impossible to discern and would likely be a source of litigation if cable companies are allowed to arbitrarily determine fair market value. If these obligations are available for offset, the City anticipates the financial impact will be significant and small communities like Milwaukie will have little opportunity to challenge such changes.

The City also strongly disagrees that these contractual commitments are subject to franchise fee caps. These commitments are for the benefit of the community in which the cable

operator serves and are in exchange for access to the City's rights-of-way. Whether it be the capacity to broadcast PEG channels, complementary cable service to schools and public buildings, or discounted service for low income or disadvantaged residents, these services benefit the community at large and not the LFA. The contractual agreement between the City and the cable operator addresses this specifically and all parties have agreed that these additional commitments are not franchise fees.

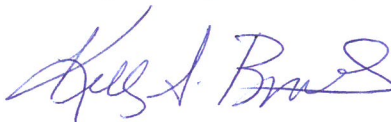
The City also opposes the prohibition on local government regulation of non-cable related services. If preempted from regulating these services outside the franchise, local governments may lose their authority to regulate a cable company's deployment of non-cable related facilities such as small cells. This preemption could threaten to extend to fees for use of the rights-of-way, which could result in the following:

- Cable company use of local rights-of-way for any purpose, regardless of the terms of the franchise, without compensating the local government.
- Cable company installation of small wireless facilities with little to no public input and without meeting aesthetic or size requirements designed to mitigate blight and preserve community character.
- Unfair advantage for existing cable companies over other telecommunications providers due to the existence of infrastructure already in the right-of-way.

Fair and appropriate use of the public right-of-way is the fundamental principle behind the imposition of cable franchise fees and other reasonable conditions required to preserve the unique character of each community. If this relationship is altered as proposed in the FNPRM, our community stands to lose vital public services and benefits they receive in exchange for use of its rights-of-way. For the reasons set forth above, the City opposes the FNPRM and

respectfully urges the FCC to reject its conclusions, which effectively deny local governments sovereign authority over their rights-of-way.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Kelly Brooks", with a stylized flourish at the end.

Kelly Brooks  
Assistant City Manager, City of Milwaukie  
Oregon

November 14, 2018