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

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| In the Matter of | ) | |
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| 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 |

## COMMENTS OF THE CITY OF SPRINGFIELD

The City of Springfield appreciates the opportunity to file comments on the Second Further Notice of Proposed Rulemaking ("FNPRM") in the above-referenced docket. The City of Springfield has one cable franchise that is jointly negotiated with the City of Eugene and Lane County and covers the entire Eugene-Springfield metropolitan area, a population of over 350,000. For the following reasons, we strongly oppose the tentative conclusions in the FNPRM that that local governments have no authority to regulate cable operators' use of the public right-of-way to provide non-cable services and that cable-related "in-kind" contributions are franchise fees.

1. <u>The FNPRM's proposed "mixed-use" rule is bad for public safety and livability in Springfield and interferes with the City's ability to maintain a level playing field among communications providers in the city.</u>

The proposed mixed-use rule will have significant, negative consequences for the citizens of the City of Springfield, and for other communications businesses operating within the City who do not provide cable service. The City of Springfield's cable franchise does not include or regulate any non-cable services. The proposed mixed-use rule could wipe out any City oversight of safety or livability issues associated with a cable provider's non-cable services in the public right-of-way. For example, within Springfield, the current cable operator apparently plans to deploy fiber backhaul to support 5G wireless infrastructure in the public right-of-way, entirely unrelated to its provision of cable services. The mixed-use rule would remove the City's authority to require the fiber backhaul provider to meet the same neutral, objective standards as are applied to the 5G wireless provider for safety and livability – standards that the City applies to 5G wireless in compliance with the FCC's recent *Declaratory Ruling and Third Report and Order*. Furthermore, such a deployment of fiber not for cable services creates costs to the City to operate and maintain the public right-of-way that are not recovered through the 5% franchise fee on cable services. The mixed-use rule would result in the citizens of Springfield subsidizing these costs on behalf of a private, for-profit entity. The mixed-use rule also mandates that the City provide cable operators with a valuable competitive advantage over other communications businesses in Springfield who provide non-cable services. For example, the current cable operator in Springfield provides VOIP service. The cable operator and other communications businesses who provide VOIP in Springfield pay a business tax to the City for the privilege of providing service within the City. The mixed-use rule could result in a special tax break only for the cable operator, interfering with the City's efforts to maintain a level playing field among providers of similar services.

2. <u>The FNPRM's proposal to all cable operators to offset "in-kind" services would have a significant, negative impact on the citizens of the City of Springfield.</u>

The City of Springfield's current cable franchise operates under a long-standing agreement that "cable-related in-kind" obligations are not franchise fees. The FNPRM requests comment on "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."[1] 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

[1] FNPRM ¶ 21.

fees. Franchise obligations such as PEG channels and local customer service obligations are more appropriately considered community benefits, not contributions to local franchising authorities, and, like build-out obligations, should not be considered franchise fees. In contrast to community benefits, franchise fees compensate the public for the use of the property that they own – namely, the public rights-of-way – and allow the City to recoup a portion of their investment into acquiring, managing, and maintaining that property for the benefit of the for-profit cable operator.

Examples of community benefits that were negotiated in good faith in the City's current franchise include gratis service to public buildings such as schools and libraries, PEG channel capacity, and a scrambled public safety channel. These are public benefits that have been negotiated in good faith between the cable operator and the City, sometimes in lieu of other customer services or franchise obligations that the City could impose on the cable operator as a franchise requirement. For example, the City of Springfield has negotiated with the cable operator that it need not provide a physical customer-service center inside the City, and that the City would accept a payment in lieu of that service, which payment will benefit the City's library and other public services. As another example, the City and the cable operator have tentatively negotiated for the cable operator to provide PEG channel capacity in high-definition in an upcoming franchise renewal in exchange for the City's concession on including all late fees within the definition of "gross receipts." The citizens of the City have essentially already "paid" for these "in-kind" services through negotiations with the cable operator to not require a particular franchise benefit. The FNPRM's proposed rule would inhibit future franchise negotiations by limiting the City's ability to waive or not require certain franchise obligations in exchange for other public benefits.

Furthermore, the FNPRM's proposed deduction for "in-kind" services would have a significant detrimental impact to City services. Because the City jointly negotiates with the City of Eugene and Lane County for its cable franchise, the City could not unilaterally forgo the community benefits described above as an alternative to avoiding the loss of its franchise fees. If the cable operator is allowed to set the value of "in-kind" services unilaterally as the "fair market value," the City estimates that its franchise fees could be reduced by 20-30%, which is on the order of $150,000 to $200,000 per year for Springfield. This is a significant amount of income for the City. (Ironically, the Commission has recently required the City to only recover its cost to manage and maintain the public right-of-way in its regulation of 5G wireless services, but in the FNPRM proposes to allow for-profit cable operators to charge "fair market value" for the public's access to their facilities.)

The loss of $150,000 to $200,000 in income each year would mean that the City would have to cut services or lay off employees to balance the budget, as the City has already reduced public services and eliminated any and all unnecessary expenses to balance the budget in recent years. The loss of 20-30% of franchise fees could mean the loss of two police patrol officers or the loss of an engineer within public works, for example. Other impacts could include reductions to public library services, public facilities maintenance, or development review and building services. This could have significant, detrimental impact to public safety and other public services that the City provides.

For the above reasons, the City of Springfield opposes the proposed rules in the FNPRM.

Respectfully submitted,

Gino Grimaldi
City Manager

November 13, 2018