

**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)	

**SECOND FURTHER NOTICE OF PROPOSED RULEMAKING
COMMENTS OF KING COUNTY, WASHINGTON**

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I. INTRODUCTION

King County appreciates the opportunity to file comments on the Second Further Notice of Proposed Rulemaking (“Second FNPRM”) in the above-referenced docket. King County opposes the proposed rules in the FNPRM. It is inappropriate to require local governments to help fund the deployment of 5G under the 5th Amendment and 14th Amendment to the US Constitution; because cable subscribers, rather than cable operators, pay for some of these proposed franchise fee offsets, and for additional reasons explained in these comments.

II. KING COUNTY WASHINGTON

King County is located on Puget Sound in Washington State, and covers 2,132 square miles. The County contains an estimated 2.2 million people ranking it the 14th most populous county in the nation. King County is extremely diverse. The County includes the Seattle metropolitan area but 78% of the County consists of rural areas, forest lands, designated agricultural lands, and mineral sites under the definition of the State’s Growth Management Act. Ours is a diverse County. We are a relatively wealthy area with a median household income of \$73,000 in 2014, but with 11.8% of our population living below the poverty line. Thirty-five percent of County residents are persons of color.¹

The County provides regional services to all residents of the county, including courts and related legal services, public health services, the county jail, records and elections, property tax appraisals, and regional parks and facilities, including the King County International Airport (Boeing Field). The County also has the responsibility for public transit and sewage disposal. In

¹ Statistical Profile on King County. At: <https://kingcounty.gov/~media/depts/executive/performance-strategy-budget/regional-planning/Demographics/KC-profile2016.ashx?la=en> Last accessed on 10-29-18.

unincorporated communities, King County provides many local services, including land-use regulation, building and right-of-way permits, police protection, roads and local parks.

King County is one of the most dynamic regions in the country; we are home to the University of Washington, Microsoft, Starbucks, Amazon, The Fred Hutchinson Cancer Research Center, and many other cutting edge business and research facilities. Seattle is our largest city in the County with a population in excess of 730,000 residents. Redmond is also located in the County. Communication services are vital to this area.

The County is one of the fastest growing areas in the country. The County's population grew by 15% between 1990 and 2000, and an additional 11% between 2000 and 2010. We are still growing. There was a net gain of 13,500 new residential units in 2014. During this period the County has been actively building and widening roads. While the Washington State Constitution prohibits the County from purchasing additional property to accommodate utilities,² the County's Road Construction Standards developed for safety purposes almost always result in space being available to accommodate utilities.³

The County has two major cable providers: Comcast and Wave Broadband.

III. THE DEPLOYMENT OF HIGH-SPEED BROADBAND AT A REASONABLE COST SHOULD BE A PRIMARY GOAL OF OUR NATION

A. HIGH-SPEED BROADBAND IS AN ESSENTIAL PUBLIC SERVICE AND A BENEFIT TO KING COUNTY AND OTHER COUNTIES AS WELL

² See Article 8, Section 7 stating that "No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm....."

³ Richard A. Brater, P.E., 2016 Road Design and Construction Standards. At: <https://www.kingcounty.gov/~media/depts/transportation/roads/2016-road-standards/2016-king-county-road-standards.ashx?la=en> Last accessed on 10-29-18.

The Broadband Deployment Advisory Committee Rates and Fees Committee states:

“What Really Matters [is r]obust and affordable broadband should be available and accessible to all citizens, both urban and rural, throughout the United States.”⁴ We agree.

The Report goes on to define some of the benefits of broadband access:

Broadband access is important because of the unprecedented opportunities and benefits for consumers, businesses, and the U.S. economy that it generates. Citizens are increasingly using broadband to identify and pursue job opportunities, obtain education and training, secure government services and a host of other opportunities. Broadband is powering new technologies, such as smart grids and smart cities, and is critical to economic growth. It is improving health care and providing rural areas with access to higher quality and more specialized services. It is also providing first responders with unprecedented capabilities to help persons in need.⁵

Again, we fully agree with this analysis. While there are several broadband providers competing in downtown Seattle, many areas of the County have no cable or wireless access, to their detriment.

B. IT IS APPROPRIATE FOR THE FEDERAL GOVERNMENT TO SUPPORT THE DEPLOYMENT OF 5G AND OTHER TYPES OF BROADBAND

⁴ Broadband Deployment Advisory Committee, Rates and Fees Committee DRAFT - Final Report to the BDAC (v 2.5), page 4. At: <https://www.fcc.gov/sites/default/files/bdac-07-2627-2018-rates-fees-wg-report-07242018.pdf> Last accessed on 10-29-18.

⁵ Report, page 4.

There is no question that supporting the deployment of essential public services, as broadband is today, is an appropriate government function⁶.

The question then is: what tools, if any, will the Federal government use to encourage the deployment of broadband.

There are multiple incentives the Federal government could use to foster reaching this goal including tax measures, low interest loans, regulatory reform, loan guarantees, and grant programs. These measures would encourage deployment while still enabling rights-of-way owners to control their property rights and receive fair, market-based compensation.

In addition, we think this Not-In-My-Backyard (NIMBY) attitude is no longer a widespread problem. Most elected officials now understand the connections between broadband and health measures, cultural activities, educational achievement, and economic opportunity. Cell coverage is a point of competition and users seek ever faster data speeds. Where governments once fought to keep towers out of their communities, they now fight for programs such as Google Fiber.

What we have then is a situation where elected officials must balance a variety of factors in regulating cable systems including the many benefits that come with broadband, compensation, safety, historic preservation, and the law.

IV. THE COMMISSION FALSELY POSITS THAT ALLOWING FOR FRANCHISE FEE OFFSETS TO CABLE OPERATORS WILL CAUSE OPERATORS TO

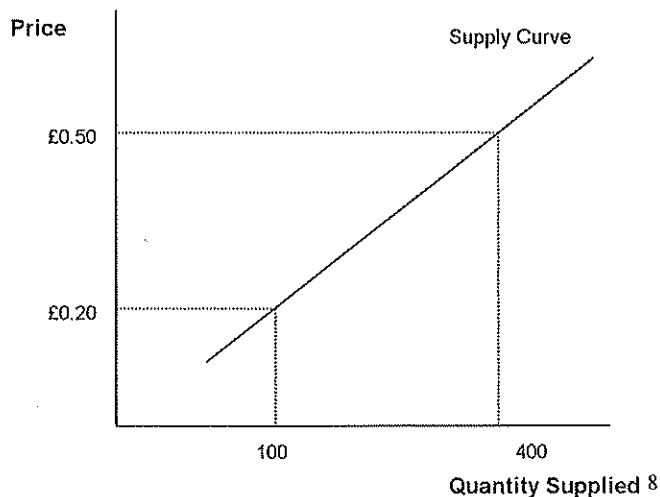
⁶ See *Poletown Neighborhood Council v. City of Detroit*, 304 N.W.2d 455 (Mich.) (1981) upholding the city's condemnation of private property so it could sell it to General Motors at a discount in an attempt to stimulate economic growth.

**INCREASE THEIR RATE OF BROADBAND INFRASTRUCTURE
DEPLOYMENT**

**A. THERE IS NO GUARANTEE THAT IF A COMPANY'S COSTS DECLINE
THAT IT WILL INCREASE ITS INVESTMENT A COMPARABLE AMOUNT**

The Commission argues that the burden of providing benefits that are required in franchise agreements slows down the deployment of broadband services.⁷ It is not obvious that if a cable operator's profit increases by one dollar that the operator will invest an additional dollar in broadband infrastructure deployment.

Many cable companies are functional monopolies. Because the data transfer speed of fiber-line cable systems significantly exceeds the speed of wireless systems, cable broadband is the preferred broadband service if the prices for other broadband services are comparable. As a result, cable companies' supply curves look like this:



⁷ Second Further Notice of Proposed Rulemaking, ¶3.

⁸ At:

<https://www.bing.com/images/search?view=detailV2&ccid=O0KirHpz&id=1304377BE8C5FBCC0C417B31F83C71EBE1F53828&thid=OIP.O0KirHpztLhEUwnqJYIn2AHaFq&mediaurl=https%3a%2f%2fwww.tutor2u.net%2fec0>

The elasticity of supply is not the same in all markets and may be more or less than 1:1.

**B. IF THE COMMISSION'S PROPOSED RULES ARE ADOPTED, A
SIGNIFICANT PERCENTAGE OF THE BENEFITS WILL ACCRUE TO
SUBSCRIBERS, NOT CABLE COMPANIES**

Much of the cost of the proposed franchise fee offsets provided to rights-of-way owners is paid by customers, not cable operators. Federal law permits cable operators to identify on customers' bill the amount of franchise fees, the name of the franchising authority, the amount of the total bill assessed to satisfy any requirements for the cable operator stated in the franchise agreement to support public, educational, or governmental channels or the use of such channels, and the amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber.^{9, 10}

Cable companies' costs consist of multiple components including sales, infrastructure, programming, etc. Listing only costs of the proposed franchise fee offsets and the name of the franchising authority gives the impression that the customer is paying for much of these benefits. If these costs are reduced, part of the reduction will accrue to the customer and only a portion will be available to the operator.

**V. THE IMPACTS OF THE PROPOSED RULES TO THE COUNTY, TO THE
COMMUNITY AND TO THE RESIDENTS WILL BE SUBSTANTIAL**

[nomics%2fgcse%2fimages%2fdemand_supply_supply1.gif&exph=421&expw=550&q=Supply+Curve+Economics&simid=608039828468008019&selectedIndex=2&ajaxhist=0](#) Last accessed 11-5-18.

⁹ 47 U.S.C §542(c).

¹⁰ The cable operators in King County include such a listing on their customer bills.

A. CRITICAL SERVICES WILL BE IN JEOPARDY DUE TO LACK OF FUNDING

If franchise fee offsets are deducted from franchise fee payments to Local Franchising Authorities (LFAs), the LFAs will be forced to decide between monetary fee collection that the County uses to fund General Fund Agencies and the offset services. This puts into jeopardy the following services:

- PEG channel capacity and PEG programming
- Free basic cable to County government buildings and schools
- Discounts for basic cable services to senior citizens and low income disabled community members

It also will limit our LFA's ability to enforce requirements in our Franchise Agreements with respect to monetary penalties should the Franchisee violate the terms of the Franchise Agreement. This includes liquidated damages, customer credits for poor service and the like.

King County utilizes the franchise fee payments that it receives from Comcast and Wave Broadband to fund several General Fund agencies, including the Police and Fire Departments. A reduction in these fee collections will have a significant negative impact on those agencies' budgets. Currently, King County receives about \$3 million in franchise fee payments from Comcast and Wave Broadband annually.

B. PEG CHANNEL SERVICES ARE VITAL AND ARE PROVIDED ONLY BY THESE CHANNELS

King County has several PEG channels that are aired by Comcast. These include King County Television, the Voice of Vashon and Puget Sound Access. These channels provide a variety of public programming that would not be provided by any other means, if these PEG channels were to cease operation. This includes live airing of County Council meetings, a vital way for the public to participate in local governmental processes, as well as programming targeted to specific sections of the minority community.

One prime example is the PEG programming produced by The Voice of Vashon, Channel 21, servicing Vashon Island. Vashon Island, with a population of 11,000, is part of unincorporated King County and can only be reached using the Washington State Ferry System. Voice of Vashon, Channel 21, provides residents information on the arts and community events, ferry schedules and emergency notifications. Loss of this channel would severely limit the ability of Vashon's residents to keep updated on important and urgent events. [This video](https://vimeo.com/voiceofvashon/review/299781336/2496fe51a8) is a brief illustration of the types of vital information that the Voice of Vashon provides to its community (url = <https://vimeo.com/voiceofvashon/review/299781336/2496fe51a8>).

C. PUBLIC SAFETY WILL BE AT RISK IN PUBLIC RIGHTS-OF-WAY

The proposal to prohibit local governments from regulating the facilities and equipment used by cable operators in the provision of non-cable services will put public safety at risk in public rights-of-way. The primary regulatory authority overseeing the use of County public rights-of-way is King County. The County has a duty to manage the placement and use of facilities here so as to protect the other users

of these rights-of-way. The most important users of it are the public – pedestrians, bicycle riders, auto drivers and passengers, and children. Without County oversight of the non-cable facilities that cable companies may place in public rights-of-way, the companies have no limitations on what they could or would do to install facilities that produce financially efficient and effective services with very little consideration for public safety beyond construction and electrical codes. This is a recipe for disaster.

VI. THE PROPOSED RULES VIOLATE THE CONSTITUTION’S PROHIBITION AGAINST THE IMPAIRMENT OF CONTRACTS

Article I, Section 10, Clause 1 of the US Constitution prohibits States from adopting laws “impairing the Obligation of Contracts.”¹¹ This clause has also been applied to the Federal Government.¹² Cable franchises are contracts between a city or county and a public or private utility provider who needs the public rights-of-way to deliver its services.¹³ One of the FCC’s stated goals for these rules is to change this contract to reduce the benefits to the agencies granting the franchises.

VII. RECOMMENDATIONS IF THE PROPOSED RULES ARE IMPLEMENTED

¹¹ This prohibition is not absolute but the exceptions are not applicable here.

¹² No specific inhibition is laid upon the Federal Government by the Constitution with reference to the impairment of the obligation of contracts. That government is, however, forbidden by the Fifth Amendment to deprive persons of property without due process of law or to take private property for a public use without just compensation. In so far, then, as contract rights may be treated as property they are protected from direct impairment by federal action. Westel Woodbury Willoughby, The Federal Government And The Obligation Of Contracts in The Constitutional Law Of The United States. At: <https://chestofbooks.com/society/law/The-Constitutional-Law-Of-The-United-States/476-The-Federal-Government-And-The-Obligation-Of-Contracts.html>. Last accessed on Nov. 13, 2018

¹³ Municipal Research Service Center, Franchising - An Essential Tool for Right-of-Way Management May 18, 2016. At: <http://mrsc.org/Home/Stay-Informed/MRSC-Insight/May-2016/Franchising-an-Essential-Tool-for-Right-of-Way.aspx>. Last accessed On Nov. 13, 2018.

A. RULES SHOULD APPLY GOING FORWARD, DO NOT MAKE THE RULES RETROACTIVE

If the FCC were to allow the value of the proposed franchise fee offset activities that were done in the past to be deducted from current or future franchise fee payments, the results to local governments would be debilitating. It could essentially end all monetary fee payments to King County by Comcast and WAVE Broadband for a number of years. This is not a feasible option. It is not realistic and it is not fair. King County strongly recommends that any rules regarding franchise fee offsets are not retroactive to past franchise activities.

B. IF FRANCHISE FEE OFFSETS ARE MADE, THE VALUE OF THE OFFSETS SHOULD BE COST BASED RATHER THAN FAIR MARKET VALUE

The FCC needs to be consistent in its rule making. In its recently approved rule for Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, the FCC requires that localities charge fees to wireless companies that are cost based. Yet here, the FCC proposes to value franchise fee offsets at fair market value. There is no valid reason why the FCC should not apply the same valuation method in both rules. King County suggests that the FCC's newly created Office of Economics and Analytics should analyze which valuation method should be used in both rules, and that the same valuation method be used in both rules.

VIII. CONCLUSION

For the reasons indicated above, the FCC should not allow the value of franchise fee offsets to be deducted from franchise fee payments to LFAs, and the FCC should not prohibit local governments from regulating the facilities and equipment used by cable operators in the provision of non-cable services.

Respectfully submitted,



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