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November 13, 2018

VIA ELECTRONIC FILING

Chairman Ajit Pai
Commissioner Michael O’Rielly
Commissioner Brendan Carr
Commissioner Jessica Rosenworcel
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: MB Docket No. 05-311. Second Further Notice of Proposed Rulemaking. 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.

Honorable Chairman Pai and Commissioners O’Rielly, Carr, and Rosenworcel:

The City of Concord is strongly opposed to the recently noticed proposed rulemaking, which would allow cable companies to deduct the fair market value for a wide range of public benefits from their franchise fee obligations, namely public, educational, and government (PEG) channel capacity and transmission.

In 2006, California passed the Digital Infrastructure and Video Competition Act, which streamlined the deployment of cable services by making the California Public Utilities Commission (CPUC) the sole franchising authority in the state and preserved many of the provisions commonly found in local franchise ordinances. It was the intent of the state legislature to streamline deployment while keeping local government revenues intact, ensuring that local public rights-of-way remained under control of cities and counties, and that a sufficient amount of capacity on cable networks was preserved for public, educational, and government (PEG) access channels.

Unfortunately, while the FCC would normally exempt from their Orders states with a centralized franchising authority that have preserved such policies, this Notice provides no such exemption, threatening to undermine such priorities. As proposed, the broad definition of all “cable-related, in-kind contributions” other than PEG capital costs and build out requirements could be treated as “franchise fees,” meaning:

- Cable operators currently paying the typical five percent franchise fee permitted by federal law will be able to reduce their current franchise fee payment by the fair market value of all in-kind contributions, with the exception of PEG capital costs required by the franchise associated with the construction of PEG access facilities and build out requirements.
- There will be significant reductions in cable franchise fees, depending on how the “fair market” value for PEG capacity and transmission are calculated within any given jurisdiction.
- PEG programming would be severely limited, if not altogether eliminated in some or most jurisdictions.

PEG programming offers a host of community benefits, including public access channels, educational access channels, and government access channels all aimed at providing locally beneficial information. Government access channels are often the easiest and best ways for the local governments to be transparent, often televising city, county, school district, and other government meetings or live local election returns, town hall meetings, community events, public debates, and other public policy topics or programs of interest to the community.

Over the last five years, the City of Concord has received more than \$9.2 million in Franchise Fees, and more than \$2.8 million in PEG funding. Any reduction in these revenue sources would seriously hamper our ability to provide the services upon which our residents rely. Not only would it affect our ability to maintain and upgrade our equipment needs related to public access television, a reduction in this revenue would divert money from General Fund-supported core services, such as public safety, infrastructure maintenance and recreation programs for youth and seniors.

The “fair market value” of such services may be impossible to determine and would likely be a source of litigation between cable operators and local governments. Most regrettably, however, is that this proposed rule-making threatens to limit or eliminate public, educational, and government access channels all meant to better help inform and empower the public. The potential loss of this public benefit alone

should be concerning enough for the FCC to reject this proposed change. In addition, the proposed rule-making further threatens the use of local right of ways for non-cable related purposes as well.

The Notice also includes a proposal to prohibit local governments from regulating the facilities and equipment used by cable operators in the provision of non-cable services, such as wireless communications services. If preempted from regulating these installations outside the franchise (since these franchises do not generally address the use of rights of way for non-cable facilities), local governments may lose their authority to manage a cable company's deployment of non-cable facilities, such as "small cells." This preemption would threaten to extend to fees for use of the rights of way, meaning:

- Cable companies can use local rights of way for any purpose, regardless of the terms of the franchise, and avoid having to pay fair compensation to the local government for the use of publicly funded assets in the rights of way.
- Cable companies could potentially install "small wireless facilities" with little to no public input, without having to meet any aesthetic or equipment size requirements aimed to mitigate blight and preserve community character.
- Cable companies would gain a significant advantage against their competitors, including telecommunications providers even though the FCC has just adopted an order lowering their deployment standards, resulting in a race-to-the-bottom deployment strategy for both cable and telecommunications companies.

Fair and appropriate use of the public right-of-way is the fundamental policy principle for the imposition of a cable franchise fee and any other reasonable conditions required to preserve the character of each community. While the cable and telecommunications industry continues to attack the responsibility of local governments to protect the public health and safety of their own communities, our residents stand to lose the most in terms of the public benefits they receive and the input they can provide for facilities installed in their own backyards. The FCC should instead consider ways that cable operators can: improve their services, help close digital divides, and expand deployment to rural and lower income communities. Unfortunately, this Notice continues a recent pattern of lowering standards and public responsibility for the communications industry as a whole.

For these reasons, the City of Concord **opposes** this second Further Notice of Proposed Rulemaking and respectfully urges the FCC to reject the deterioration of PEG services and fair use of the public right-of-way.

Sincerely,



Edi Birsan
Mayor
City of Concord

cc:

Senator Diane Feinstein, Senator
Senator Kamala Harris, Senator
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Rep. Mike Thompson
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