

**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 THE CITY OF AUBURN, WASHINGTON

The City of Auburn presents the following comments on the Second Further Notice of Proposed Rulemaking ("FNPRM") related to the reduction of cable franchise fees and the associated potential detrimental impacts to the City. Auburn opposes the FNPRM because (1) cable-related in-kind contributions are not franchise fees and (2) local governments must have authority and discretion to regulate the cable operators' use of the public rights-of-way to serve the public interest and to protect local government property and infrastructure. Based on the FCC's proposed rules, the City estimates it will lose up to \$1,000,000 annually, due to the proposed reduction of the cable franchise fee. As a result of this lost revenue, the City may be forced to cut public, educational, or governmental (PEG) channel services. This is significant as Auburn's PEG channel provides necessary information and resources to the local population. And, for some low-income and disabled members of our community, this is their only source of vital information. The City respectfully requests that the FCC revise its proposal to allow the City to exercise appropriately delegated regulatory authority to protect the public interest and to provide necessary services to the community.

I. BACKGROUND INFORMATION

The City of Auburn has a population of over 80,000. There is only one cable operator that currently holds a cable franchise in the City of Auburn, Comcast. As part of the cable franchise agreement, the City of Auburn requires the cable operator to set aside three standard digital format PEG channels for public, educational, or governmental (PEG) programming to serve the general public. The programming for the PEG channels includes: public meetings, important public announcements, original programming highlighting Auburn's services and events, regional shared programming from neighboring counties as well as the State Legislature, and streaming content for the City's local radio station AM 1700, an official emergency broadcast channel for Auburn residents. Franchise obligations such as PEG channels and local customer service obligations provide a community benefit, and should not be considered franchise fees.

The City relies on the cable franchise fee to fund primary services such as public safety and streets. As a result of the proposed fee change, the City of Auburn's budget will be impacted up to \$1,000,000 annually and many of the services funded by the franchise fee may be in jeopardy as a result. The City has always relied on—and justifiably so—an agreement with the cable operator that “cable-related in-kind” obligations are not franchise fees.

Simply put, using the FCC's proposed fair market value to determine the amount to be considered a franchise fee will lead to arbitrary deductions, it will likely reduce the PEG channels serving the community, and many key services will be subject to funding cuts resulting in detrimental harm to our community members.

II. THE FRANCHISE FEE SHOULD BE CALCULATED BASED ON COST.

The FNPRM proposes that all “cable-related, in-kind contributions,” other than PEG capital costs and build-out requirements, are to be treated as franchise fees subject to a cap of 5%. The result of this proposed rule is that a cable-operator will reduce the current franchise fee payment by the fair market value of all in-kind contributions. The cable-operator will determine the fair market value of these contributions as a reseller, without competition in our local market to act as a check on the self-serving valuation, and without consideration of the public benefit to the community of these obligations that the cable operator has authorized in a negotiated contractual agreement.

The City of Auburn supports 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 proposes are franchise fees. Franchise obligations such as PEG channels and local customer service obligations are more appropriately considered community benefits and, like build-out obligations, should not be considered franchise fees. For example, our franchise agreement requires the cable operator to provide a low income discount to individuals who are either permanently disabled or 65 years of age or older and who are the legal owners of the Dwelling Unit, a clear public benefit to these individuals who might otherwise not be able to access important public information.

In addition to the community wide public benefit of the in-kind contributions that should not be used to calculate a reduction in the franchise fee, the proposed rule from the FCC to allow cable operators to use fair market value—not actual costs—to calculate deductions from the franchise fee directly conflicts with the FCC’s recent decision to limit the amount public agencies

can charge for the use of public property by small wireless facilities to be subject to actual cost-based charges. The FCC ruled in the Declaratory Ruling and Third Report and Order, WT Docket No. 17-79, WC Docket No. 17-84 (Sept. 27, 2018), that local governments can charge small wireless facilities providers fees for each small wireless facility deployed in the public right-of-way at the rate of the actual cost, yet the City under the proposed rules could not impose the same fee on the cable operator's small wireless facility. Instead, under the mixed-use proposal, the FCC would allow a cable operator to use the public right-of-way for any purpose, regardless of the term of the franchise, while providing no additional compensation to the local government for the additional use of the right-of-way.

III. THE CITY'S REGULATORY AUTHORITY FOR USE OF THE RIGHT-OF-WAY.

The proposed mixed-use rule threatens to preempt local government regulations of cable operators' non-cable services. For example, the City of Auburn's franchise agreement segregates non-cable services, defined as any service that is distributed over the cable system other than a cable service. The FNPRM proposes to prohibit the City from regulating those non-cable service facilities and equipment used by the cable operator, including undermining the right of the City to regulate the deployment of non-cable facilities. The proposal places public safety at risk if a cable operator can install non-cable facilities without any local review or approval requirements. It also would lead to inconsistent regulation of non-cable services because under the FCC's proposal, the small wireless facilities deployed by a non-cable operator would be subject to the City's regulatory authority but a cable operator's deployment of the same service would not be. The City of Auburn seeks to maintain a fair and level playing field among providers of similar services and requests that the FCC remove the proposed rule precluding the City from applying the same regulations to cable operators as are applied to non-cable operators that provide competing services.

IV. CONCLUSION

The City of Auburn requests that the FCC elect to not adopt the proposed new rules set forth in the September 25, 2018 Second Further Notice of Proposed Rulemaking that would (1) reduce franchise fee payments from cable operators; (2) preempt the City from regulating or imposing fees related to non-cable services provided by the cable operators; and (3) remove the City's regulatory authority for the public right-of-way.

Respectfully submitted,

A handwritten signature in blue ink that reads "Nancy Backus". The signature is written in a cursive, flowing style.

Nancy Backus, Mayor
City of Auburn, Washington

November 14, 2018