



**9 Bayberry Court, Nantucket MA 02554**

November 14, 2018

VIA ELECTRONIC FILING

Chairman Ajit Pai;  
Commissioner Brendan Carr;  
Commissioner Michael O'Reilly; and  
Commissioner Jessica Rosenworcel  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 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 Carr, O'Reilly and Rosenworcel:

Nantucket Community Television ("NCTV") appreciates the opportunity to file comments on the Second Further Notice and Proposed Rulemaking ("FNPRM") in the above-referenced docket. We are located on the island of Nantucket and our PEG channel is extremely important to our community. Our local government relies on us to film all the government meetings for complete transparency amongst our community. NCTV is vital to the Nantucket residents and businesses understanding of, and participation in, government, the local

economy, and community events. We operate one channel and we have around 10,000 subscribers, all with access to the PEG (Public, Educational and Government) channels. That channel has a wide range of programming, with a strong emphasis on local issues and matters of direct impact on and/or interest in the lives of those who live on this island.

We strongly oppose the tentative conclusion in the FNPRM that cable-related in-kind contributions, such as those cable license commitments that allow Nantucket access programming to be viewed on the cable system, are franchise fees. Frankly, such a conclusion is not grounded in common sense. How could it be reasonably concluded that a law (the Cable Act) that empowers a town to impose requirements on cable providers for the use of the public way would then permit that town to be back charged for the execution of those requirements? Such a conclusion is both unreasonable and clearly not supported by the historical record, both for the PEG channels and the cable operators. Rather, what is clear is that the equipment and means needed to effectuate the use of PEG access channels-- is in addition to, and outside of-- the franchise fee. All such obligations are part of a reasonable and successful comprehensive statutory structure to compensate taxpayers for the use of their public way by cable operators. The Cable Act should not be contorted to incentivize cable operators to force towns to choose amongst a franchise fee, the provision of socially beneficial PEG Access channels, and the means to make those channels workable. The public relies on the full implementation of all three.

We reject the implication in the FNPRM that PEG programming is for the benefit of the local franchising authority (LFA) or a third-party PEG provider, rather than for the public or the cable consumer. As described above, and demonstrated day to day, Nantucket Community

Television provides valuable local programming that is not otherwise available on the cable system or in other modes of video delivery such as satellite. Yet the Commission tentatively concludes that non-capital PEG requirements should be considered franchise fees because they are, in essence, taxes imposed for the benefit of LFAs or their designated PEG providers. By contrast, the FNPRM tentatively concludes that build-out requirements are not franchise fees because they are not contributions to the franchising authority. The FNPRM then 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 the LFA and therefore should not be considered contributions to an LFA.” PEG programming fits squarely into the category of benefits that do not accrue to the LFA or its designated access provider, yet the Commission concludes without any discussion of the public benefits of local programming that non-capital PEG-related provisions benefit the LFA or its designee rather than the public at large. NCTV's mission statement centers around the public. Even its government coverage is clearly not for the direct benefit of the government officials, but for the citizens to monitor and learn about their government.

The Nantucket cable license with its sole cable operator, Comcast, provides clear evidence that the Commission's express concern that “[i]f cable-related in-kind contributions are not counted as franchise fees, LFAs could easily evade the five percent cap by requiring, for example, unlimited free or discounted cable services and facilities for local franchise authorities, in addition to a five percent franchise fee” is not warranted. We respectfully suggest that it is incumbent on the Commission to support its expressed concern regarding unwarranted cable franchise requirements with evidence on the record, and not supposition, particularly when the

stakes are so high for the future of community media. Given the benefits fostered by these many laboratories and workshop of creativity, entrepreneurship, public participation, citizenship, arts, culture and community participation, only a clear and present danger should warrant sacrifices of these worthy services. (A copy of the Nantucket cable license with Comcast is available on the web-site of the Massachusetts Department of Telecommunication and Cable (<https://www.mass.gov/lists/cable-television-licenses>) and upon request to NCTV.

For the past 30 or more years, the conduct of cable companies and municipalities and the resulting cable licenses/franchises clearly demonstrate that “cable related in-kind contributions” (more accurately referred to as “commitments”) were not, and are not, franchise fees. If the FNPRM suggestions take effect, it will also detract from the confidence that future cable agreements can be made in good faith. NCTV’s cable agreement was signed with an understanding that “in-kind contributions” would not affect the franchise fee. To change this arrangement without input from NCTV or Nantucket’s Select Board makes the original agreement obsolete. In the future, contentions of funding and uncertainty of terms will cause delays and expenses. Legal disputes will follow. It is important to foster trust in government/private relationships. The FNPRM reduces that and reduces the value of PEG channels to the public.

We appreciate the opportunity to add to the record in this proceeding.

Respectfully submitted,

Nantucket Community  
Television

Lisa Getter



Executive Director