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

In the Matter of Implementation of Section 621(a) 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 COMMON FREQUENCY

Common Frequency is a nonprofit organization based in California that serves more than a hundred community radio stations across the United States, including over 50 low power FM stations operated by Public Access organizations, with technical support, education, and advocacy. As advocates of media justice and free speech we believe community media, especially Public, Educational, and Government Access (PEG) providers are essential institutions for local programming, civic engagement, and education for communities across America. If the proposed rules in the FNPRM are implemented it would result in the loss of billions of dollars of essential funding given to PEG stations through franchise fees which would be detrimental not only to our constituents, but more importantly, to the millions of residents of municipalities that receive PEG programming and access to its facilities.

Common Frequency strongly opposes the tentative conclusion in the FNPRM that cable-related in-kind contributions, such as those that allow PEG programming to be viewed on the cable system, are franchise fees. Furthermore, we believe it is a government overreach for the

FCC to regulate how local governments determine Local Franchise fees and get payment for the use of the right of the public way. We do not believe the benefit cable operators would receive as a result of changing the way franchise fees are assessed would outweigh the harm that would be caused to communities who rely on PEG for local programming and access to its facilities. In effect, the proposed rules would make Cities choose between receiving revenue or continuing PEG operations.

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 long time members of the Alliance for Community Media and consultants to PEG stations we have been able to see the positive impact PEG providers across the nation have made on their community by increasing local programming and providing media education training to residents. PEGs also provide platforms for free speech, space for communities to organize, and serve as advocates for media access. In many communities PEG providers are the only source of local media content in a sea of homogenous, commercial, consolidated media. Without PEG, many communities would have no sources of diverse, non-commercial, community media. 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."[1] 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.

The proposed rulemaking appears to fit within a pattern of a reckless 'bait and switch' trajectory that effectively permits an abandonment of cable's long relationship developed grounded in local communities, that was thoughtfully codified within the Cable Act. It is difficult to consider the proposed rulemaking without also accounting for the larger context eroding at protections for Localism: for example, the Commission's summary elimination of the Main Studio Rule for broadcasters, further increases in consolidation, rollbacks of Net Neutrality, allowing Translators to overtake LPFM spectrum despite the Local Community Radio Act, and other measures regressive to Localism. By contrast, maintaining protections for PEG does provide some mitigation of these losses while preserving a vital and proactive avenue for Localism, but now this too is threatened.

It appears the Commission has lost sight of key core values on which it was established by Congress: to ensure that all telecommunications will serve the public interest, convenience and necessity; and is not actually mutually exclusive to maintaining continued and healthy returns for investors. Nonetheless, in the hope that this process for Rulemaking can provide some enlightenment, we'd like to offer some perspective as to the long and mutually-beneficial

[1] FNPRM ¶ 21.

relationship between cable operators and local communities.

During the earlier "blue skies" period when cable was starting out, competing cable operators sought to launch services which necessitated access the Public Right-of-Way, subsidized by taxpayers, and managed by the respective cities and counties in their roles as Local Franchise Authorities. As a 'value-added' offering, the cable operators willingly availed channels, studios, and resources for use by local nonprofit public, educational, and governmental purposes. Availing PEG channels and related spectrum allocation reserved for Institutional Networks (I-NET) for local non-commercial often made the difference between a cable operator being awarded a franchise and allowed to access the taxpayer-subsidized public right-of-way, on which cable companies make a profit.

While recent industry representatives and new entrants without this institutional memory may have occasionally complained that providing PEG resources as frivolous and unnecessary, the Cable Act actually provides that Local Franchise Authorities seeking to establish PEG resources are subject to conducting a broad-based ascertainment process, specified in the Act as a Community Needs Assessment. At the end of the process the cable operator is granted a multi-year franchise agreement, which yields financial rewards.

This mutually-beneficial partnership, and commitment to fulfill local community needs and interests, helped make possible for cable operators to grow their menu of services, and since returned healthy profits over the years. Studies within conducted within the past decade in

California indicate that cable communities that offer PEG access channels generally enjoy a higher rate of retention and subscribership than operators that do not offer PEG access for community use.

To propose an elimination or restructuring of PEG resources is not only an abandonment of these time-honored relationships. It is also an overreach of powers already delegated by statute to Local Franchise Authorities via a heavy-handed intervention to work and negotiate with service providers proposing to use the taxpayer-subsidized local right-of-way to exact profits; and at the same time, prevent LFAs to act in the best interests and address needs of their local communities.

Common Frequency rejects the proposed rule in the FNPRM referenced above to "prohibit LFAs from using their video-franchising authority to regulate non-cable services offered over cable systems by incumbent cable operator." Non-cable services delivered over cables systems using public infrastructure may include broadband and Internet access services. Having classified broadband as an information service, the Commission determined that it is an unregulated service that it lacks regulatory authority over. However the Commission now proposes regulations around broadband, delivered using cities' public infrastructure, which is at odds with its own ruling around what they can regulate as a federal agency. We reject this logic and believe local municipalities should have the ability to regulate non-cable services that utilize their public rights of way.

In summary, we reject that this proposed rulemaking is anything other than an attempt to further limit cable companies' responsibilities to pay for their use of the public rights of way, as well as to undermine the spirit of the historical decisions that laid the groundwork requiring these entities to provide community access to the cable systems. For those reasons we urge the Commission not to adopted the proposed rules.

Respectfully submitted,

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November 14, 2018