November 14, 2018

VIA ELECTRONIC FILING

Chairman Ajit Pai;

Commissioner Brendan Carr;

Commissioner Michael O’Reilly; and

Commissioner Jessica Rosenworcel

Federal Communications Commission

445 12th 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:

The Town of Hingham (Massachusetts) Cable TV Advisory Committee appreciates the opportunity to file comments on the Second Further Notice and Proposed Rulemaking (“FNPRM”) with the Commission. The Cable TV Advisory Committee (“Cable Advisory Committee”) has a leading role both in ascertaining the future cable-related needs and interests of Hingham for cable licensing and related purposes, and in overseeing, cable television matters, on behalf of the Board of Selectmen (the Town’s cable license “Issuing Authority”). It is from this perspective that the risk and harm that would result from the FNPRM’s tentative conclusion that the value of a cable operator’s “cable-related in-kind contributions” should be deemed to be a franchise fee, subject to being deducted from the cable operator’s franchise fee obligations, is evident and of great concern. By changing years of accepted practice resulting from good-faith negotiations between municipalities and cable operators, the proposed rule would unreasonably and without good reason, interfere with mutually agreed upon terms negotiated and agreed to by franchising authorities and cable operators.

The Town of Hingham is served by both Comcast and Verizon, both of which have been granted cable licenses by the Town’s Board of Selectmen. This past April, the Town granted a renewal license to Verizon, and the cable license renewal process is currently proceeding ahead with Comcast. Both the current and former cable licenses of Verizon and Comcast were reached by siting down and negotiating terms and conditions, including cable-related in-kind commitments.

The Town of Hingham has an active and vibrant Public, Education and Government (“PEG”) Access program, operated by Harbor Media, a non-profit corporation, which has a grant agreement with the Town of Hingham to serve the public. Harbor Media has, in less than seven (7) years, become an integral part of the Hingham community, connecting residents, businesses, community organization and places of worship to each other. Harbor Media is part of and foster the local economy, as well as arts, culture, local and national history, sports and many other participator activities and events. Harbor Media also provides live and taped coverage of many Town of Hingham board, commission and committee meetings, as well as coverage of annual and special town meeting, the Town’s legislative body. Also shown are programs and interviews with various Town officials and employees, and coverage of important town events and celebrations. Political events, such as, candidate debates are also cablecast.

The Cable Advisory Committee strongly opposes the tentative conclusion, contained in the proposed rulemaking of the Second Further Notice of Proposed Rulemaking (“FNPRM”), that “cable-related in-kind contributions” should be treated as “franchise fees” and subject to the statutory five percent cap on franchise fees set forth in the Cable Act. It cannot be reasonably concluded that that a law (the Cable Act) which allows, for instance, towns to require cable operators to set aside channels for PEG Access, would allow, as the Commission tentatively proposes, those same cable operators to select and place a value on the provision of those channels, and on the cost of getting access programming to those channels, and then back charge that cost from the franchise fee cable operators provide the city and town for their private/for profit use of the public way? Such a conclusion is both unreasonable and not supported by the clear historical record.

The Commission has concluded inaccurately that “cable-related in-kind contributions” returned to the Town are for the benefit of the municipality when it is far more accurate to classify these as benefits or commitments to the community and public. As such, cable-related in-kind contributions are in the same category as cable franchise build-out requirements assuring access to cable services is not denied based on income (also addressed in this proposed rulemaking), since they are not for the benefit of the town or it PEG access provider, but rather for the benefit of the public.

The reasonableness of the cable license terms of both the Comcast and Verizon licenses in Hingham are reflective of cable licensing/franchising in general. The terms of each of these licenses, including cable-related in-kind contributions, are the product of diligent, thoughtful, reasonable and fair cable license negotiations by both parties, which carefully consider “future cable-related needs and interests, taking in account the cost of meeting such needs and interests”. There is no basis in or from the Comcast or Verizon cable licenses in Hingham, for the Commission’s to conclude 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 LFAs, in addition to a five percent franchise fee.” Rather, quite the opposite is true, the provision of PEG Access video return and cable service for public buildings, including schools, are not only financially reasonable, they are integral to the provision of the cable system and cable service, including the provision of PEG Access funding and PEG Access channels. As the Commission is aware, the Cable Act requires that any such obligations, including cable-related in-kind contributions, be reasonable in light of the cost thereof.

Over thirty (30) years of cable licensing in the Town of Hingham, which for the last ten (10) years has included two (2) cable licenses/operators, illustrates the unique strength of the Cable Act. The Cable Act encourages and incentivizes both sides to carefully consider their needs and interests and to sit down together and workout a cable franchise agreement. That has consistently been the practice and experience in Hingham.

By defining “franchise fee” in an overly broad fashion to include “in-kind” support, the Commission’s proposal will shift the balance between cities/towns and cable operators, and will force communities to choose between PEG Channels and/or cable service to public buildings and franchise fees, a result which is not the intent of the Cable Act, and which is contrary to over thirty (30) years of practice by and between franchise authorities and cable operators.

The proposed rule will inevitably result in cable licensing/franchising disputes, costs and delays.

Thank you for your consideration of these comments.

Respectfully,

Town of Hingham Cable TV Advisory Committee

Dave Jones, Chairman

cc: Paul Healey, Chair, Board of Selectmen

Tom Mayo, Town Administrator