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	)	

REPLY COMMENTS OF MEDIA ALLIANCE

I – INTRODUCTION

Media Alliance appreciates the opportunity to file reply comments on the Second Further Notice and Proposed Rulemaking ("FNPRM") in the above-referenced docket. We strongly oppose the tentative conclusion in the FNPRM that cable-related in-kind contributions are franchise fees.

Media Alliance is a Northern California-based democratic communications advocate. Our members include professional and citizen journalists and community-based media and communicationsprofessionals who work with the media and on various digital platforms powered by the Internet. The free flow of information is integral to all of their and our work, as it is in one way or another to virtually every resident of the United States of America.

Our executive director, Tracy Rosenberg, sits on the Western Regional board of Directors of the Alliance for Community Media, the trade association for public, educational and governmental (PEG) channels who would be directly impacted by this proposed rulemaking.

We also work closely with municipal governments in the Bay Area including the cities of San Francisco and Oakland on free speech, first amendment and other communication-related issues. The significant impact of this proposed rulemaking on general funds is of direct significance to many of our organizational goals.

I – THE PROPOSED RULEMAKING UPENDS DECADES OF PRECEDENT

The proposed rulemaking in the above-referenced docket reverses decades of consistent interpretations of the Cable Act of 1984 and the Act's specific instructions regarding the direct promotion of localism and diverse sources of information. I am sure the FCC does not need me to tell them that the lack of local news and information available to most Americans has reached a crisis point, as analysts and pundits across the U.S. have been writing at length about the significant threat to civic engagement posed by the dearth of local news coverage.[1] If the many governmental channels collapse from being defunded, our democracy does, in the literal sense, die in the darkness. Citizen journalists, especially those on the wrong side of the digital divide who lack robust broadband connections such as those in rural America, [2] cannot fill the void if public access channels can no longer provide mass forums for civic dialogue.

It is in no way easy for public channels to secure enough funding to survive. Municipal general funds are over-tasked with housing, public health and safety costs and are generally completely unprepared to replace franchise fee funding with other public funds. While franchise

1 https://www.washingtonpost.com/opinions/the-crisis-in-journalism-has-become-a-crisis-of-democracy/2018/04/11/a908d5fc-2d64-11e8-8688-e053ba58f1e4_story.html?utm_term=.0f57e3234336

2 https://emergence.fbn.com/the-internet-crisis-in-rural-america

fees have never paid all of the costs associated with running a robust PEG operation, they have provided a stable base upon which a diversified funding plan could be constructed by creative, entrepreneurial media professionals. For the FCC to pull the rug out from under these community institutions by upending long-established agreements for municipal benefits in exchange for cable rights of way, is an irresponsible bait and switch that will do great damage to much-needed local nonprofits that provide crucial, services.With little warning and with no plans for compensatory funding to prevent wholesale organizational failure, this proposed rulemaking is a disservice to localism, to information diversity, civic engagement, and American democracy itself.

II – PROVIDING CHANNEL CAPACITY FOR PUBLIC USE IS STATUTORY AND DISTINCT FROM FRANCHISE FEES

As the *Alliance for Community Media* points out in their comments,[3] the provision of channel capacity on both cable and I-Net systems, is not an elective donation or a negotiated agreement, it is a statutory requirement in 47 U.S.C. Section 531. The requirement is set entirely apart from the additional statutory requirement for payment of a 5% franchise free to the franchising municipality, which is cited in 47 U.S.C. Section 542.

Were these items essentially intended to be one and the same, as the proposed rulemaking generally argues, there would be little utility and less sense in this statutory differentiation.

3 COMMENTS ON SECOND FURTHER NOTICE OF PROPOSED RULEMAKING OF THE ALLIANCE FOR COMMUNICATIONS DEMOCRACY; THE ALLIANCE FOR COMMUNITY MEDIA; AND THE CITIES OF BOWIE, MARYLAND; EUGENE, OREGON; PALO ALTO, CALIFORNIA; AND PORTLAND, MAINE

The Cable Act indicates, and wisely so, that the provision of channel space, does not in and of itself, meet the Act's goals of increased localism and "assur[ing] that cable systems provide the widest possible diversity of information services and sources to the public, consistent with the First Amendment's goal of a robust marketplace of ideas—an environment of 'many tongues speaking many voices". [4] What does meet that goal is the provision of channel capacity with a basic floor of funding provided for the purpose of meeting some expenses associated with the functioning of the provisioned channels.

It is a quixotic interpretation of the public interest, and of the Cable Act's stated goals, to circumvent the 5% franchise fee so as to shift the burden for localism from regulated cable operators to the franchising entity itself - and in practical terms, to the taxpayers of that municipality, who are already providing the funding through surcharges on their cable bills . Local cable customers would essentially be paying twice to keep their public channels intact. Or paying for nothing if the channels collapse due to reductions in the franchise fee.

The conflation of sections 531 and 542 is a distortion of statute which states two separate, distinct and independent requirements for incumbent cable operators. Congress itself has defined the franchise fee; "a franchise fee is only *monetary* payments made by the cable operator, and does not include as a 'fee' any franchise requirements for the provision of [PEG] services, facilities, or equipment". [5]

4 H.R. Rep. No. 98-934 at 19 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4655, 4656 ("H.R. Rep. No. 98-934").

5 H.R. Rep. No. 98-934, at 65

The Commission appears to be relying heavily on *Mongomery County vs FCC* to support this novel interpretation, but that case did not bear on cable-related non-monetary contributions.

III – FCC ERRONEOUSLY CONCLUDES THAT PEG SERVICES ARE A TAX AND HAVE NO PUBLIC BENEFIT

Perhaps the most puzzling aspect of the proposed rulemaking is the carve out from franchise fees provided for build-out contributions.

The FCC presupposes the distinction on a characterization that PEG channel services are a tax applied for the direct benefit of the local franchising authority (LFA) and/or a third party PEG provider, and are not a public benefit.   By contrast, the FCC proposes that "build-out obligations that are **not** specifically for the use or benefit of the LFA or an entity designated the LFA should therefore not be considered contributions to an LFA."

The characterization of govermental, educational and public access channels as a subsidy to local government and/or a third party provider that is devoid of public benefit, is deeply askew. Governmental channels broadcast the meetings of local legislative bodies for the precise purpose of allowing residents to observe their elected representatives in action from the comfort of their own home and without having to secure childcare or miss out on other domestic obligations. Educational channels provide access to public institutions that is free and accessible to all regardless of mobility.Public channels provide the only remaining mass communication forum for residents to express their points of view, especially for those without robust broadband access.

All of these services provide significant public benefits. We should not forget that residents pay for them via surcharges on their cable bills. The primary recipients are not the franchising authority, but the cable customers who gain access to more information about their local government with less hassle, more access to public and educational institutions and a mass communications forum otherwise totally unavailable to them.

These services, which can correctly be encapsulated as “more localism” and “more diversity of information” are the manifestation of the Cable Act's goals and are in no way a tax nor a subsidy to any party, but are direct community benefits provided by the franchisee to the residents of the city in exchange for using their public rights of way.

Accordingly, since such cable-related in-kind contributions are “not specifically for the use or benefit of the LFA or an entity designated the LFA”, we would emphatically state for the record that they “therefore should not be considered as contributions to an LFA.”

IV - CONCLUSION

In conclusion, the proposed rulemaking is inconsistent with both long-established precedent and the specific language of statute, and relies on an incorrect interpretation of PEG channel services as a tax or subsidy rather than a community benefit.

It should therefore be abandoned as a misguided attempt to gift commercial cable operators that would diminish the resources available to support local voices.

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

Respectfully submitted,

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