

**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 BOSTON COMMUNITY ACCESS AND PROGRAMMING
FOUNDATION, INC.**

Boston Community Access and Programming Foundation, Inc. appreciates the opportunity to file reply comments in the *Second Further Notice of Proposed Rulemaking* (“FNPRM”) in the above-referenced docket. Boston Community Access and Programming Foundation, Inc., d/b/a Boston Neighborhood Network (“BNN”), is a 501(c)(3) educational nonprofit corporation operating a local cable community programming studio for program production, cablecasting facilities, and related training and education opportunities for Boston residents and organizations. BNN operates two public access cable television channels¹ cablecast on three cable systems serving the City of Boston, Massachusetts.

1. BNN supports the many Comments filed in this rulemaking that emphasize how the proposed offset of cable franchise in-kind benefits against franchise fees will work *against* the purposes of the Cable Act as discussed below.² Franchising Authority and municipal

¹ BNN operates the BNN Community TV Channel and the Boston News & Information Channel.

² See generally *Comments of Anne Arundel County et al*, MB Docket 05-311, joined in by the City of Boston, Massachusetts; *Comments of City of Philadelphia et al*, MB Docket 05-311 at p. vii; *Comments of National Association of Telecommunications Officer and Associates et al*; MB Docket 05-311; and *Comments of the Alliance for Communications Democracy et al*, MB Docket 05-311, comments supported by BNN in these Reply Comments.

comments note how the federal Cable Act explicitly establishes promotion of the “widest possible diversity of information sources” and ensuring that “cable systems are responsive to the needs of the **local** community” (emphasis supplied) as central purposes of the Cable Act.³ Local PEG Access channels and local programming directly carry out these Cable Act purposes of promoting true localism and diversity of information, as local PEG channels are designed to and do provide a uniquely broad and diverse spectrum of sources of local information otherwise not available on cable, including important regular local programming about local schools, community events, neighborhood news, local artists, nonprofits and more unique, irreplaceable and diverse local programming.⁴

BNN remains very grateful to the cable operators serving Boston for their historic and consistent support of diverse and local programming and seeks to continue to work in a spirit of partnership with the cable industry to maintain a reliable franchise fee framework consistent with current practices. However, BNN urges that the FCC’s proposals will directly and substantially reduce the historic support for the diverse local programming produced by BNN and other access centers, as detailed in the initial Comments of numerous franchising authorities and access providers.⁵

BNN has produced a video (viewable at <https://vimeo.com/305882521>), submitted here for the Commission’s consideration, making clear the breadth, scope and significance of BNN’s robust provision of diverse local programming to the public and BNN’s consequent contributions to carrying out the Cable Act purposes of providing truly diverse and local

³ See 47 United States Code §§ 521(2) and (4).

⁴ The Cable Act intentionally provided that access channels not be subject to cable operator editorial control, enabling access channels to provide a uniquely broad spectrum of diverse local programming and information, programming which would not have found a cable system outlet without the existence of a robust system of PEG Access cable services, which carries out the Cable Act’s localism and diversity purposes.

⁵ See fn. 2 above.

information sources. Such diverse local programming has been made possible by the current franchise fee system and the public stands to lose such local and diverse access programming with reductions in franchise fee support. We invite the Commission to view for themselves the important benefits provided by PEG programming as amply documented in the above-described video viewable at <https://vimeo.com/305882521>. The BNN video demonstrates the breadth and value of local PEG programming to the community, showing actual examples of unique school sports coverage (including ‘Game of the Week’); unique local and even neighborhood news (‘Neighborhood Network News’); programming by ‘disabled’ persons and disabilities advocates (‘The Disabilities Connection’); producers describing invaluable training and career development opportunities provided at the local studio; programming about and involving public schools, nonprofits, youth activities, anti-hunger food aid programs, community forums and much more local and diverse information not otherwise cablecast in Boston.

Recognizing the role of local and diverse public affairs and other programming to a healthy democracy and a vibrant community, BNN opposes the FNPRM as it proposes to allow the offsetting of the costs of in-kind benefits, including components of the cable system itself (e.g., access and INet channel capacity) that have not previously been understood to be franchise fees, against payments to municipalities of franchise fees allocated to the very PEG channels and programming that directly promote localism and diversity of information. We therefore respectfully urge that the Commission reconsider the offsetting and diminution of municipal and PEG franchise fees that would result from the new franchise fee offsets proposed in the FNPRM. BNN also urges that the FNPRM franchise fee proposals would be unreasonable in light of additional factors and considerations discussed below.

2. We also strongly support the many initial Comments filed in opposition to the tentative conclusion in the FNPRM that the value of cable franchise obligations, such as obligations to provide PEG Access channel capacity and upstream I-Net video return lines (among other offsets), that allow our programming to be viewed on the cable system, can be deducted from franchise fees. Longstanding precedent and custom provide strong, common sense evidence of the existence of a consensus about PEG channel capacity and INet video return lines and longstanding in-kind benefits not being within the definition of ‘franchise fee’ as commonly understood.

3. Further, it strikes us as inconsistent with the very purpose of the 5% franchise fee cap to implement, as proposed by the FCC, franchise fee offsets for in-kind benefits valued at **‘fair market value’** instead of at cost. Note that the very purpose of the 5% franchise fee cap is plainly to provide a system of cost control; however, if the franchise fee can be reduced by the ‘fair market value’ of local channel capacity, then the reduction in fee has no relation to cost, and is entirely based on market value considerations unrelated to cost which can bestow windfall reductions in franchise fees agreed to as payments due to the franchising authority and/or access provider.

4. Further, we strongly support the many municipal commenting parties that reject the implication in the FNPRM that PEG channels and INets used for upstream video are franchise fees as urged by the Commission based on such in-kind benefits being so-called exactions for the benefit of the local franchising authority (LFA) or the PEG provider, rather than for the benefit of the public. As described above and as detailed in the video provided with these Reply Comments (see above), the PEG channels and upstream INet paths are intended for the benefit of the general public and subscribers, and are not narrowly for the benefit of the Franchising Authority or access provider.

5. The FNPRM acknowledges that the Cable Act definition of ‘franchise fee’ excludes PEG capital costs from being counted as part of the franchise fee paid by cable operators to municipalities.⁶ However, the FNPRM appears not to consider that offsetting access channel capacity costs and costs of INets used only for PEG origination against franchise fees may result in counting excluded capital costs as franchise fees as the access channels and upstream INet paths are but components of a larger physical, capital plant and we urge they are ‘capital’ and excluded from franchise fee. Even more inconsistent with the statutory exclusion for capital costs for PEG from franchise fee is the FCC proposal to exclude equipment costs not related to facility construction. We support those comments urging that equipment is capital by any definition, and equipment costs are plainly for PEG access facilities, making equipment costs well within the capital exclusion.

Conclusion

BNN is very grateful to the cable operators serving Boston for their service to the public and appreciate the cable industry’s spirit of partnership with the City of Boston, and BNN likewise deeply appreciates the historic cable operator support of BNN, PEG access channels, local and diverse programming and local facilities; however, BNN opposes the FCC proposal to reduce beneficial franchise fee support of local facilities by allowing franchise fee offsets for in-kind benefit costs not previously considered to be franchise fee offsets. Local PEG access channels have been a true engine of localism and diversity of information sources, thus carrying out the purposes of the Cable Act and the FCC proposal would reduce current support levels for PEG access franchise fees, thus negatively impacting the ability of access providers to ensure localism and diverse sources of

⁶ See 47 U.S.C. §542(g)(2)(c) and FNPRM at Para. 4, fn. 16, “Section 622(g) also excludes from the term “franchise fee”...capital costs which are required by the franchise to be incurred by the cable operator for PEG access facilities.”

information. Accordingly, BNN respectfully urges the Commission to hold off on its proposals to restructure cable franchise fees and franchise requirements for fees paid to municipal franchising authorities and access providers.

Boston Community Access and Programming Foundation, Inc.
Respectfully submitted by and as authorized:

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