

**Before the
Federal Communications Commission
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| Implementation of Section 621(a)(1) of |) | |
| the Cable Communications Policy Act of |) | MB Docket No. 05-311 |
| 1984 as Amended by the Cable Television |) | |
| Consumer Protection and Competition Act |) | |
| of 1992 |) | |

REPLY COMMENTS OF NTCA–THE RURAL BROADBAND ASSOCIATION

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these reply comments in response to comments filed pursuant to the Commission’s Further Notice of Proposed Rulemaking in the above-captioned proceeding.² The Commission tentatively concluded in the Further NPRM that cable-related “in-kind” contributions required by a franchise agreement should be treated as “franchise fees,” which are limited by the Communications Act to 5% of a cable provider’s annual gross revenues.³ Commenters were divided on the Commission’s tentative conclusion, with the American Cable Association (“ACA”) and National Cable Telecommunications Association (“NCTA”) supporting the

¹ NTCA represents nearly 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All of NTCA’s service provider members are full service rural local exchange carriers and broadband providers.

² 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, *Second Further Notice of Proposed Rulemaking*, MB Docket No. 05-311 (rel. Sep. 25, 2018) (“Further NPRM”).

³ Further NPRM at ¶ 1.

Commission’s tentative conclusion while local franchising authorities were opposed. NTCA supports the comments filed by ACA and NCTA. As the Commission tentatively concluded and NCTA and ACA commented, the Communications Act dictates that “any tax, fee, or assessment of any kind” required as part of a cable franchise agreement is subject to the 5% cap on franchise fees,⁴ unless the fee or other condition imposed in the franchising agreement is among those specifically excluded by the Act.⁵

Commenters who opposed including in-kind contributions in the 5% cap on franchise fees argued that this would result in the elimination of public access channels, to the detriment of communities and their residents.⁶ Anne Arundel County *et al*, for instance, claimed that “[r]equiring local governments to offset the cost of any ‘in-kind’ franchise obligation by a commensurate reduction in a local franchise fee would deny many communities basic communications infrastructure that benefits education, public safety, and consumers of all kind.”⁷ However, the Communications Act ensures this is not possible. Specifically, the Communications Act not only requires cable operators to “support [] the use of public, educational, and governmental [“PEG”] access facilities,” but also eliminates the cost of doing so from the five percent cap on franchise fees.⁸ Consequently, even if cable providers were

⁴ See Comments of American Cable Ass’n, MB Docket No. 05-311 (Nov. 14, 2018) at p. 5 (“ACA Comments”).

⁵ See Comments of NCTA, MB Docket No. 05-311 (Nov. 14, 2018) at p. 41 (“NCTA Comments”). See also, ACA Comments at pp. 3-4.

⁶ See Comments of Anne Arundel County, Maryland *et al*, MB Docket No. 05-311 (Nov. 14, 2018), at p. 3 (“Anne Arundel County Comments”).

⁷ *Id.*

⁸ 47 U.S.C. § 542(g)(2)(B).

inclined to eliminate PEG facilities or channels, the Communications Act prohibits them from doing so. Furthermore, because the Communications Act specifically excludes the cost of providing PEG facilities from the 5% franchise fee cap, local franchising authorities have the entire 5% to use for any cable-related needs they identify.

Anne Arundel County's assertion that treating in-kind contributions as franchise fees and thus subject to the 5% cap on franchise fees would deny communities many important services also does not ring true. Including in-kind contributions in the 5% cap does not mean local governments will have to "offset the cost of any 'in-kind' franchise obligation."⁹ The Commission's tentative conclusion in no way restricts the "in-kind" contributions franchising authorities can impose on cable operators, provided such contributions are cable-related and limited in value to the overall level of the cap. As a result, franchise authorities can continue to condition cable operators' franchise authority upon fulfilling certain community needs; they may just have to be more tailored and precise in value than is currently the practice. One example of how franchise agreements can be effectively tailored to work for both the community and cable operators is the State of Wisconsin's statewide franchising law. The State of Wisconsin passed this law in 2007 to ensure all of the state's municipal franchising authorities acted within the same guidelines when establishing franchise agreements, while also requiring cable providers to "make channels for PEG programming available."¹⁰

NTCA recognizes communities' need to have widespread, reliable and robust communications services. Many cable providers are working hard to deliver such services and

⁹ Anne Arundel County Comments at p. 3.

¹⁰ Wisconsin Legislative Council Information Memorandum, The New Law Relating to State-Issued Franchises for Video Service Providers (2007 Wisconsin Act 42), available at http://legis.wisconsin.gov/lc/publications/im/im_2008_01.pdf.

recognize the value of PEG channels to the communities they serve. However, requiring cable operators to plant trees or to contribute thousands of dollars toward a particular public relations campaign does nothing to further cable services, much less PEG channel services, to the communities the cable operators serve.¹¹ Furthermore, cable operators must often pass these costs on to their customers. These costs, in addition to pole attachment fees charged by some of the same communities as well as the high, and rapidly escalating, cost of programming, result in a heavy imbalance when compared to other video providers who are not subject to such fees or at the same levels. The imbalance has already resulted in a number of cable operators discontinuing service, leaving the communities in which they operated without the very services franchise authorities and the Communications Act have been designed to protect and promote.¹²

¹¹ See NCTA Comments at p. 42.

¹² See, e.g., “Sorry, but cable TV won’t exist by 2030,” by Chris Mills, BGR (Dec. 4, 2017) (describing a report estimating that by 2030, cable and satellite TV services will have shrunk by 26%) available at <https://bgr.com/2017/12/04/cable-tv-cord-cutting-streaming-services-omg-what/> (last visited Dec. 4, 2018).

Based on the foregoing, NTCA supports the Comments filed by ACA and NCTA and encourages the Commission to adopt its tentative conclusion that cable-related in-kind contributions are to be included in the 5% cap on franchise fees.

Respectfully submitted,



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