Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
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	)))))	MB Docket No. 05-311

REPLY COMMENTS OF FRONTIER COMMUNICATIONS

Frontier Communications Corporation ("Frontier") hereby submits these reply comments in response to the *Second Further Notice of Proposed Rulemaking* seeking comment on whether franchising authorities should be prohibited from requiring in-kind contributions above the five percent franchise fee cap imposed by Congress.[1] Frontier responds with an emphatic yes – by prohibiting fees and obligations in excess of the five percent franchise fee cap, the Commission can promote broadband deployment and help ensure a more level playing field.

Frontier agrees with other commenters that including in-kind contributions within the five percent franchise fee cap will promote the Commission's steadfast commitment "to accelerate the deployment of broadband networks and facilities."[2] As Chairman Pai has explained, halting unreasonable local cable franchise practices "accelerate[s] the deployment of high-speed broadband" by allowing companies "to use their networks to offer additional

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[1] *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, FCC 18-131 (released Sept. 25, 2018) ("*Second FNPRM*").

[2] *See, e.g.*, *In the Matter of Communications Marketplace Report*, https://docs.fcc.gov/public/attachments/DOC-355217A1.pdf, ¶ 300 (adopted Dec. 12, 2018) ("*Communications Marketplace Report*").

products," thereby giving companies "a greater incentive to expand and upgrade those networks" and giving "consumers enormous benefits in the forms of more choice and better services."[3] Similarly, in the new *Communications Marketplace Report*, the Commission acknowledges that excessive "franchise fees" stand as a barrier to additional broadband deployment.[4]

Whether in-kind contribution demands in excess of the five percent cap or franchise fees directly levied on broadband, commenters recognize that these types of unreasonable franchise fees are a drain on investment and a barrier to deployment. As NCTA explains, "[s]tate and local regulations and requirements for franchises or fee payments for broadband services . . . disincentivize investment" by depleting a provider's capital budget and thus "stand as a barrier to deployment of broadband services."[5] Verizon agrees: excessive or burdensome in-kind demands discourage new broadband deployment and ultimately deprive consumers.[6] This is particularly true for carriers like Frontier, which invest heavily in rural broadband. Deploying broadband in rural areas is already expensive due to the infrastructure investment required; in-kind contributions above the five percent franchise fee cap drive these costs up considerably further. Allowing these exactions to continue will only further slow reaching our collective goal of closing the digital divide.

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[3] Remarks of FCC Commissioner Ajit Pai at the International Institute of Communications, Telecommunications, and Media Forum, Miami, FL (May 27, 2015), http://bit.ly/2vg5MVH (emphasis added).

[4] *Communications Marketplace Report* ¶ 193.

[5] Comments of NCTA—The Internet & Television Association, Docket No. 05-311 at 30 (Nov. 15, 2018) ("NCTA Comments").

[6] Comments of Verizon, Docket No. 05-311 at 4 (November 14, 2018) ("Verizon Comments").

Excessive franchise fees are particularly unfair to terrestrial multichannel video programming distributors ("MVPDs") like Frontier when considering that close competitors, including online video distributors (OVDs) and satellite, do not even pay franchise fees. As the Commission observed in the *Communications Marketplace Report*, with a robustly competitive video marketplace, cable companies are losing subscribers steadily and have been since 2013.[7] Meanwhile, OVDs, for example, continue to expand and see significant subscribership growth.[8] Frontier – by seeming virtue of having made facilities-based investments – must expend substantial sums on franchise fees and in-kind contributions. Such an imbalanced playing field is untenable and harms consumers. While the Commission's hands are tied by the statute from providing relief on the five percent franchise fee maximum, giving terrestrial MVPDs some relief by including in-kind contributions in the fee cap will allow terrestrial MVPDs to more effectively compete in the video marketplace and will have the additional benefit of promoting broadband deployment.[9]

Frontier also supports the Commission applying its decisions in this proceeding to franchising actions taken at the state level as well as the local level.[10] Frontier agrees that

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[7] *Communications Marketplace Report* ¶ 53.

[8] *Id.* ¶ 125, Fig. B-6.

[9] *See e.g.*, Comments of ITTA – The Voice of Mid-Size Communications Companies, Docket No. 16-247 at 2, n. 3 (Sept. 21, 2016) ("ITTA members' provision of video service also drives broadband adoption when it is offered as part of a bundle with other communications services. In markets where ITTA members offer video as part of a bundle with broadband services, most have experienced steady and continued growth of fiber, DSL, and cable modem subscriptions. According to one ITTA member, over 95 percent of its video subscribers also purchase high-speed Internet service.").

[10] *Second FNPRM* ¶ 32 ("We seek comment on whether to apply the proposals and tentative conclusions set forth herein, as well as the Commission's decisions in the *First Report and Order* and *Second Report and Order*, as clarified in the *Order on Reconsideration*, to franchising

uniformity across state lines is necessary to avoid conflicting decisions and disparate treatment in neighboring states.[11] The Commission should preempt state laws imposing unreasonable state franchise requirements (or even state laws enabling unreasonable local franchise requirements) to the same extent the Commission preempts unreasonable local franchise requirements. And as NCTA has detailed, there is evidence that "state franchising authorities are engaging in the same type of overreaching occurring at the local level."[12] By clarifying that states cannot impose the very same obligations the FCC has found localities cannot impose, the FCC can remove a significant impediment to broadband deployment.

Frontier applauds the Commission's ongoing efforts to encourage broadband deployment by reducing barriers to investment. The Commission's proposal that in-kind contributions count towards the statutory five-percent franchise fee cap would go far in reining in the abusive practices and overreach by state and local franchising authorities, who have long tried to exploit a perceived loophole in the law. Consumers, who have ultimately suffered from this inhibited investment, will see the greatest benefit from the adoption of the proposed rules.

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actions taken at the state level and state regulations that impose requirements on local franchising.").

[11] Verizon Comments at 11.

[12] NCTA Comments at 60-63.

Respectfully submitted,

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