

**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 THE VERMONT DEPARTMENT OF PUBLIC SERVICE

The Vermont Department of Public Service (“VDPS”) respectfully submits these reply comments in response to the Federal Communications Commission’s (“Commission”) Second Further Notice of Proposed Rulemaking (“*Second NFPRM*”) in the above-captioned proceeding.¹ The VDPS opposes the rules as proposed in the *Second NFPRM*. Specifically, the VDPS opposes requiring cable-related, “in-kind,” obligations to be included as part of the franchise fee subject to the 5% cap allowed by the Cable Communications Policy Act of 1984, as amended (“Cable Act”).

I. INTRODUCTION.

The VDPS is an executive branch agency charged with representing the public interest in energy, telecommunications, water, and wastewater utility matters. The mission of the VDPS is to serve Vermont through public advocacy, planning, programs, and other actions that meet the public's need for least cost, environmentally sound, efficient, reliable, secure, sustainable, and safe energy, telecommunications, and regulated utility systems in the state. The Vermont Public

¹ *In re 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, Second Further Notice of Proposed Rulemaking, FCC 18-131 (2018) (“*Second FNPRM*”).

Utility Commission serves as the Local Franchising Authority (“LFA”) for the entire state, and the VDPS represents the public interest in cable franchise proceedings before the VPUC.

II. THE *SECOND FNPRM*’S CABLE FRANCHISE PROVISIONS RUN COUNTER TO THE STATED PURPOSE OF THE CABLE ACT AND SHOULD BE ABANDONED.

Vermont has a strong heritage of supporting local, public media through the cable franchising process. Vermont has 25 Access Management Organizations (“AMOs”) that provide Public, Educational, and Government (“PEG”) media to a diverse set of communities. Most Vermont communities are small and lack the resources to independently record and disseminate recordings of local selectboard and schoolboard meetings. For many Vermont communities, the AMO is the only entity capable of covering school events, local theatre, high-school sports, church services, and local government coverage. AMOs also provide residents with production training and education. These services are in part paid for with revenues derived from a franchise fee imposed upon cable operators pursuant to VPUC Rule 8.417 and the Cable Act.²

In past franchise proceedings, the VDPS has conducted studies on the value of PEG media, which have all shown that Vermonters by-and-large support and appreciate the local content produced by PEG stations.³ This appreciation for local content is reflected in the many cable franchising decisions of the VPUC, which require cable companies to make capital investments in public access networks and allocate channel capacity for use by PEG stations.

This grant of authority to the LFAs to require such investments in local PEG stations is integral to furthering the stated policies of the Cable Act. Among its many purposes, the Cable Act was intended “to establish franchise procedures and standards which encourage the growth

² 47 U.S.C. § 542(a)

³ See Vermont Public Utility Commission Docket 8301, Prefiled Testimony of Christine Peterson on Behalf of Vermont Department of Public Service, Jan. 26, 2016 at 3-4.

and development of cable systems and which assure that cable systems are responsive to the needs and interests of the local community,”⁴ and “assure that cable communications provide and are encouraged to deliver the widest possible diversity of information sources and services to the public.”⁵ These policies are effectuated through the LFA’s authority to designate channel capacity for local use. Allowing cable providers to include the “in kind” value of channel capacity in the franchise fees paid to PEGs could leave Vermont AMOs with insufficient operating revenues to adequately fund their operations.

III. CONCLUSION

The proposed rules if enacted will restrict affordable access to television capacity for local use and place new limits on an LFA’s authority to ensure that cable systems are responsive to the needs and interests of the local community. The VDPS therefore urges the Commission to leave in place the current regulatory structure available to LFA’s under the Cable Act.

Respectfully submitted,

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⁴ 47 U.S.C. § 521(2).

⁵ 47 U.S.C. § 521(4).