Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the matter of:	)	
	)	
Implementation of Section 621(a)	)	
of the Cable Communications Policy Act of 1984	)	MM Docket No. 05-311
as amended by the Cable Television Consumer	)	
Protection and Competition Act of 1992	)	
	)	

REPLY COMMENTS OF COMMON FREQUENCY

December 14, 2018

I. INTRODUCTION

Common Frequency, Inc. ("CFI"), a nonprofit 501(c)(3) California corporation that advocates for, assists, and educates new community, student, and alternative non-commercial media outlets, submits this reply comment concerning *Implementation of Section 621(a) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992,*
MM Docket No. 05-311. CFI would specifically like to reply to the comments of Charles County, Maryland.

II. REPLY REGARDING COMMENTS OF CHARLES COUNTY, MARYLAND.

We completely agree with Charles County, Maryland, ("Charles County"), when they state:

> *The FCC's proposed rule would impair the private franchise agreement contract between these two sophisticated parties by forcing the "treatment" of non-franchise fee payments as "franchise fees," subject to the five percent statutory cap. Indeed, the proposed rules would destroy the private contract between these parties, and many others. Section 201(b) of the Act does not grant the FCC such broad and unchecked authority.*

The FCC is proposing to redefine franchise fees based on one side of a contractual relationship: the private company. This flies in the face of years of practice and the maintenance of community infrastructure already in place as a result of those contracts. The evidence of harm imposed by franchise authorities onto private companies is insufficient to necessitate such a wholesale change.

Charles County goes on to state:

> *For example, as detailed in the quote above from the FNPRM, the FCC concludes that the current statutory scheme allows local franchising authorities to "easily evade the five percent cap by requiring any manner of in-kind contributions, rather than a monetary fee." Similarly, the FCC concludes the current statutory scheme allows local franchising authorities to "circumvent the five percent cap by requiring, for example, unlimited free or discounted cable services and facilities for LFAs, in addition to a five percent franchise fee." The FCC has not provided any empirical data, analysis or reasoning to support its conclusions; both are erroneous.*
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> *The first error is the conclusion that cable operators are "required" to remit "any manner in-kind contributions, rather than a monetary fee." Local franchising authorities can never "require" payment or transfer of value beyond what's currently authorized by the statute. That is to say, cable operators are not ever coerced, forced, threatened, or required to sign cable franchising agreements they don't accept. The FCC's unsupported assumption that local franchising authorities dictate such non-monetary exactions, other forms of value transfer, reflects a fundamental misunderstanding of the franchise renewal process.*

Charles County correctly points out that the proposed rules are a solution in search of a problem. The FCC appears to be attempting to placing a heavy hand on the side of the cable company during franchise negotiations, by giving them negotiating leverage prior to franchise negotiations even beginning. This is simply an attempt to redefine contractual terms in a completely different way than accepted practice, for no other purpose than enrich the bottom line of private companies involved in contractual matters with government entities. Empirical evidence to support the need of such redefinitions is sorely lacking in the FCC filings. Again, where is the harm being done after years of accepted practice and interpretation of the relevant laws? Even a base level assessment of impact should be required prior to such wholesale change of practice.

Lastly, Charles County states:

> *Furthermore, the plain text of the statute vests local franchising authorities with exclusive possession and control of PEG channels and capacity. The local franchising authority is even vested with the right to "hold" the PEG channel capacity open for itself in the future and prohibit the cable operator from using it for the provision of other cable or internet services.*
>
> *These obligations are not, however, without reward for the cable operator. They are the fundamental obligations cable operators must observe in exchange for undisturbed access to the public rights-of- way.*

We could not agree more. The regulatory language is very clear. Attempting to monetize a statutory requirement is like giving private citizens the ability to deduct the cost of following the law from their taxes, or renters deducting the cost of following apartment building rules from their rent. While there is logic for a private company to account internally for costs incurred due to statutory requirements, there is no public interest served by allowing them to move those statutory requirement costs out of their expense ledger altogether, or lump all statutory expenses into one statutory limit. These are separate rules, with separate requirements. Trying to monetize one rule to meet the monetary requirement of another rule is simply an accounting slight of hand, borrowed from corporate accounting methods. This “slight of hand” has no place in public infrastructure management that serves the public interest.

III. CONCLUSION

Common Frequency, Inc (CFI) would like to thank the FCC for the opportunity reply to the comments on this proposed rulemaking. We recognize the inherent conflict between serving the public interest and the needs of telecommunications companies. When balance is needed, regulatory bodies like the FCC have a role in striking a balance. As the comments of Charles County, Maryland show, however, the proposed rules far exceed striking any balance, as they fail to identify any harm currently being imposed by the franchising authority in the first place. Furthermore, assigning monetary value to certain statutory requirements in the hopes of meeting completely separate statutory requirements does not serve the public interest, but rather, the accounting interests of private companies. Along with Charles County, Maryland, CFI *“strongly urges the FCC to decline to issue an order implementing the rules proposed in its FNPRM.”*

Respectfully Submitted

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