**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 Competition Act of 1992)**

**REPLY COMMENTS OF FAIRFAX CABLE ACCESS COPORATIOM**

**(D/B/A FAIRFAX PUBLIC ACCESS)**

**Chuck Peña**

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**December 14, 2018**

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**Fairfax Cable Access Corporation1 (FCAC) disagrees with numerous tentative conclusion in the Further Notice of Proposed Rulemaking in the above-referenced docket.**

**While FCAC appreciates the FNPRM specifically states that PEG (public, educational and government access) capital fees, payable to LFAs, are not franchise fees (and thus not included as a proposed off-set to franchise fees otherwise payable to LFAs), we believe other tentative conclusions, related to PEG channels, are not supported by the Cable Act or its legislative history. Further, the FNPRM would have significant, negative impacts on PEG access centers across the country.**

**We respectfully urge the Commission to reconsider its tentative conclusions in this matter.**

**FCAC concurs with comments regarding this FNPRM filed with the Commission by the National Association of Telecommunications Officers and Advisors (NATOA), *et al.*2 that**

**The proposed rule is based on the premise that franchise requirements— like public, educational and government (“PEG”) channel capacity for local programming and customer service obligations—are “contributions” to the local franchising authority (“LFA”).**

**Further:**

**As discussed below, however, these provisions are not contributions to LFAs. In fact, these requirements are authorized in the Cable Act**[**2**](#_bookmark9) **to meet two of the primary policy goals of the Act: to “ensure that cable systems are responsive to the needs and interests of the local community” and to “provide the widest possible diversity of information sources and services to the public.”**[**3**](#_bookmark10)

**1 Fairfax Cable Access Corporation** **(FCAC) is an IRS Code 501(c)(3) nonprofit educational organization located in Fairfax County, Virginia. FCAC provides training in public access television and radio production to residents of our community and operates cable channels in the County serving the needs of our community. As an independent, nonprofit organization, FCAC is neither a part of the County government nor any MVPD.**

**FCAC currently operates four cable channels. CHANNEL 10 is our traditional public access channel, which includes programs on public affairs, the arts and children’s programming. INTERNATIONAL CABLE 30 is our International Channel, which features programming in nine different languages, including Spanish, Vietnamese, Korean and other languages serving our ethnic communities, which provides a great benefit and service to our richly diverse population. SPIRITUAL TV 36 presents religious, spiritual and inspirational programming, serving our community’s diverse spiritual needs and interests. RADIO FAIRFAX 37 is our cable radio channel, which features an incredibly wide spectrum of radio show genres, perspectives & music -- and a video community bulletin board that runs announcements for numerous community, civic and volunteer organizations serving our community.**

**2 Comments, dated November 14, 2018, in the matter of MB Docket No. 05-311, were filed jointly by the National Association of Telecommunications Officers and Advisors (NATOA), the United States Conference of Mayors, the National Association of Counties, the National League of Cities, the National Association of Regional Councils and the National Association of Towns and Townships (hereinafter referred to as “NATOA, *et al*.”).**

**3 As used in these Comments, the “Cable Act” refers to the Cable Communications Policy Act of 1984, P. L. 98-549, as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act.**

**4 47 U.S.C. § 521(2); (4).**

**Unfortunately, [the proposed FNPRM] ignores these goals and effectively rewrites cable franchise agreements to significantly reduce negotiated community benefits and compensation for use of public assets —replacing meaningful franchise agreements with contracts incapable of addressing the community needs and the intent of the Cable Act.”**

**“[The FNPRM view] is inconsistent with “the plain language of federal law and counter to the legislative history of the Cable Act and Telecommunications Act,**[**4**](#_bookmark14) **and thus the Commission lacks authority to promulgate [the] rule.”**

**FCAC concurs with NATAO, *et al*. that the FNPRM proposed rules would have devastating impacts on local budgets and (as stated above) local PEG programming.**

**Further, FCAC is moved by the sound reasoning in the additional comments of NATAO, *et al*., that cable franchise requirements are not franchise fees, and FCAC respectfully requests and urges the Commission to given its full consideration to the summary of comments filed by NATOA, *et al*.**

**In addition, FCAC finds that the National Cable Telecommunication Association (NCTA) contention that PEG capital costs should only apply to the construction of (studio building) “facilities” (and thus not to equipment)5 is a position not supported by the Cable Act. Section 622(g)(2)(c) excludes from the five percent franchise fee cap “capital costs which are required by the franchise to be incurred by the cable operator for *public, educational, or governmental access facilities.” 5***

**The term “public, educational, or governmental access facilities” is a defined term that means: “(A) channel capacity designated for public, educational, or governmental use; and (B) facilities and equipment for the use of such channel capacity.” 6 Thus, by its very terms, the Cable Act excludes from franchise fees the costs of “facilities and equipment” that facilitate use of PEG channel capacity. This unambiguous statutory language cannot be reinterpreted as suggested by NCTA.**

**Further, NCTA’s interpretation was rejected by the Sixth Circuit in *Alliance for Community Media:*7**

**In clarifying the precise scope of the term “PEG access facilities,” Congress explained that it refers to “channel capacity (including any channel or portion of any channel) designated for public, educational, or governmental use, as well as facilities *and equipment* for the use of such channel capacity.” H.R.Rep. No. 98-934, at 45 (emphasis added). In further detail, Congress specified that “[t]his may include vans, studios, cameras, or other equipment relating to the use of public, educational, or governmental channel capacity.” Thus, the unambiguous expression of Congress confirms that “PEG access capacity” extends not only to facilities but to related equipment as well.8**

**As such, NCTA’s position is not supported by the Cable Act nor what Congress intended, and FCAC urges the Commission to reject NCTA’s position would inappropriately and unnecessarily restrict the use of PEG capital funds.**

**Furthermore, some have proposed that the FNPRM would allow cable providers to deduct the “fair market value” of PEG channel bandwidth as an off-set against franchise fees. However, the use of the term “channel capacity” in the context above, clearly shows that Congress did not intend for a “fair market value” of channel bandwidth to be used to off-set franchise fees.**

**Respectfully yours,**

**/s/**

**Chuck Peña**

**Executive Director**

**Fairfax Cable Access Corporation (D/B/A Fairfax Public Access)**

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**5 47 U.S.C. § 542(g)(2)(C) (emphasis added).**

**6 47 U.S.C. § 522(16).**

**7 *Alliance for Community Media et al. v. FCC*, 529 F.3d 763 (6th Cir. 2008), *cert. denied*, 557 U.S. 904 (2009) (citation omitted).**

**8*Id*. at p. 784-85.**

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