

**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	)	

**COMMENTS OF THE TOWN OF SMYRNA, TENNESSEE**

The Town of Smyrna, TN appreciates the opportunity to file comments on the Second Further Notice of Proposed Rulemaking ("FNPRM") in the above-referenced docket. We strongly oppose the tentative conclusions in the FNPRM that cable-related in-kind contributions are cable franchise fees.

The Town of Smyrna, TN with a population of 49,000 residents has a local issued Comcast cable franchise and a state issued AT&T cable franchise serving 15,000 subscriber homes within the City. The City receives \$353,000 in cable franchise fees annually. We use these cable franchise fees to create local government programming on our PEG channel for the public's benefit. Cable franchise fees also support our efforts to provide help to consumers as they seek to resolve service and billing complaints with our franchised cable operator as no other governmental entity at the federal or state level offers such services. Cable franchise fees are also used to help keep our public right of ways, used by these cable operators, maintained and safe for the public.

Counting negotiated cable-related in-kind contributions as part of cable franchise fees, which will in turn reduce the franchise fees collected by the Town, will impact the operations and services associated with such funding and allow the cable operator to double dip in some cases.

For example, our institutional dark fiber network (I-Net) which was a negotiated cable-related in-kind contribution from Comcast was completely paid for and funded by cable subscribers via a separate line item on their bill. This I-Net provides broadband communication services to our fire and police stations, 911 communications center and other government institutions/buildings to benefit in part the safety and welfare of our citizens. This FNPRM would allow the cable operator to deduct the value of the I-NET already paid for by cable subscribers and result in the Town and cable subscribers paying for this asset more than once and perhaps many times over. There has been a long-standing cable franchise agreement from the cable operator that cable-related in-kind obligations are not cable franchise fees; using fair market value to determine the amount to be considered a cable franchise fee will lead to arbitrary deductions.

The FNPRM requests comment on “other requirements besides build-out obligations that are not specifically for the use or benefit of the LFA or an entity designated [by] the LFA and therefore should not be considered contributions to an LFA.”<sup>1</sup> We support the tentative conclusion that build-out requirements are not cable franchise fees because they are not contributions to the franchising authority. The same reasoning should be applied to other cable-related contributions the Commission tentatively concludes are cable franchise fees. Franchise obligations such as PEG channels are more appropriately considered a community benefit, not a contribution to LFAs, and, like build-out obligations, should not be considered cable franchise fees. For example, our franchise agreement requires the cable operator to dedicate and make available one government access channel for use by the Town and two future access channels. The Town uses its government access channel to

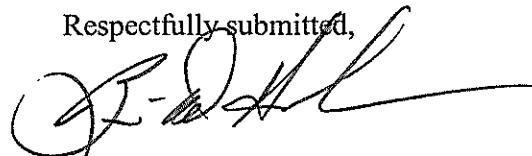
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<sup>1</sup> FNPRM ¶ 21.

promote the education of the Town's citizens concerning government by televising meetings of the Town; inform the citizenry at large about programs and public services provided by Town departments and Town-sponsored agencies; promote the education of citizens by presenting educational and cultural programs beneficial to the City's citizens; provide a forum for discussion of issues that bear upon the Smyrna community; explain the opportunities for citizen participation in programs and services; provide information on public health, safety and welfare issues. This type of television programming is not available to the public from regional broadcasters or national media companies. The City government access channel is also a primary source of local emergency alert information for elderly and low-income residents, who for a variety of reasons, are low adopters of alternative forms of communication, such as Twitter and other social media.

The Town of Smyrna, TN strongly disagree in the tentative conclusion in the FNPRM that cable-related in-kind contributions are cable franchise fees and respectfully requests reconsideration in this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "B. D. Hercules", written over a horizontal line.

Brian D. Hercules  
Town Manager  
Town of Smyrna  
315 S Lowry Street  
Smyrna, TN 37167

December 14, 2018