



November 2, 2018

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, District of Columbia 20554

RE: Second Further Notice of Proposed Rulemaking. 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.

Dear Ms. Dortch,

On behalf of the 351 cities and towns of the Commonwealth of Massachusetts, the Massachusetts Municipal Association appreciates the opportunity to file comments on the Second Further Notice of Proposed Rulemaking ("FNPRM"). We are writing to formally express our grave concerns regarding the Federal Communication Commission's ("FCC") proposal which would upset the longstanding understanding of the meaning of franchise fee and strip power from local governments to control cable operators' use of the rights of way when providing non-cable services.

For decades, franchise fees have been understood to be limited to monetary payments and would thus not include any in-kind franchise requirements such as services, facilities or equipment related to the establishment or operation of a cable system. In-kind considerations can vary from municipality to municipality, but some examples include: institutional network ("I-Net") requirements, complementary cable service to government buildings, and public, educational and governmental ("PEG") channels.

The FCC's FNPRM proports to include all in-kind contributions, other than PEG capital costs and build out requirements, within the meaning of a franchise fee and subject to the 5% cap. This would allow cable operators to deduct from their cable franchise fee payments the "value" of franchise requirements such as PEG channel capacity. The FCC is further suggesting that this "value" should reflect the fair market value of these services. If this line of thinking is adopted, this would directly harm PEG access and the communities they serve.

PEG channels provide a variety of benefits to communities, including public access channels, educational access channels, and government access channels. Local franchise agreements

commonly require cable operators to set aside capacity for PEG channels, which provide local residents with the ability to view their local governments in action and receive local educational and school-related programming. During local elections, PEG channels provide opportunities for candidates to address the public and are a good source for local election coverage. In short, PEG programming is an irreplaceable source of local programming for the public that is not otherwise available through cable services.

The fair market value assessments of these invaluable programs would lead to arbitrary deductions from franchise fees by cable operators, opening the door to legal challenges. Further, this loss of revenue and support would force municipalities to either divert resources away from core municipal and school services to maintain existing PEG programming, suffer a dramatic reduction in the scope of PEG channels, or lose them altogether. Additionally, some costs such as I-Net capacity costs and access channel costs are already passed along to subscribers by the cable operators. Allowing these companies to then deduct their fair market value from the franchise fee would create a windfall for these companies, essentially allowing them to double-recover.

Equally as concerning, this FNPRM would allow certain cable operators to construct and install facilities and equipment for non-cable services, such as small cells or other wireless deployments, in the rights of way without any local regulation or compensation. Most franchise agreements do not include provisions related to the installation of non-cable facilities, and consequently, under this FNPRM, local franchising authorities would be preempted from regulating these installations, raising aesthetic and public safety concerns. This preemption would also extend to fees for the use of the rights of way, meaning cable companies would not have to compensate local franchising authorities for the additional use of the rights of way. This would be another unwarranted windfall to private cable companies, this time at the expense of the general public and local taxpayers.

Compounding the effect of this preemption, the FCC's recent Declaratory Ruling and Third Report and Order states that municipalities cannot impose fees or aesthetic requirements related to small wireless facilities that would exceed fees or aesthetics requirements for other wireless telecommunications infrastructure for the similar use of the right-of-way, essentially creating a federally-set race to the bottom between telecommunications providers and cable companies that provide wireless services. We strongly believe that this is not in the public interest.

For decades, cities and towns across the Commonwealth have worked with private businesses to successfully negotiate franchise agreements that are beneficial to both parties. The MMA strongly opposes any efforts that would strip municipalities from receiving in-kind contributions outside of the 5% franchise fee cap and preempt local authority, especially in their rights-of-way. We strenuously oppose the FNPRM, and we urge you to reconsider and then reject these proposals. We ask you to safeguard the public interest by maintaining the current franchise fee structure and honoring the authority of cities and towns to control the public rights of way.

If you have additional questions or need further information on this matter, please do not hesitate to have your office contact me or MMA Senior Legislative Analyst Brittney Franklin at 617-426-7272 at any time. The MMA is prepared to work closely with you on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Beckwith".

Geoffrey C. Beckwith
Executive Director & CEO

cc: The Honorable Elizabeth Warren
The Honorable Edward Markey
The Honorable Richard Neal
The Honorable James McGovern
The Honorable Niki Tsongas
The Honorable Joseph Kennedy III
The Honorable Katherine Clark
The Honorable Seth Moulton
The Honorable Michael Capuano
The Honorable Stephen Lynch
The Honorable William Keating