

**Before the
Federal Communications Commission
Washington, D.C. 20554**

VIA ELECTRONIC FILING

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 MARIN TELECOMMUNICATIONS AGENCY (MTA)

The Marin Telecommunications Agency (“MTA”), based in San Rafael, California appreciates the opportunity to file comments on the Second Further Notice and Proposed Rulemaking (“FNPRM”) in the above-referenced docket. The MTA, a Joint Powers Authority (JPA) comprised of the County of Marin and nine cities/towns, including San Rafael, Belvedere, Corte Madera, Fairfax, Mill Valley, Ross, San Anselmo, Sausalito and Tiburon, oversees the cable franchise agreements under DIVCA, California’s state franchise, and the region’s PEG channels. The franchise agreements generate about \$3.6 million per year for services and programs in the ten (10) jurisdictions, within Marin County, California, north of San Francisco. The Community Media Center of Marin (“CMCM”) has served as the Direct Access Provider (DAP) and operates three channels offering a wide variety of locally produced, locally curated and focused entertainment and information based on community interest.

Subscribers through three (3) cable operators – AT&T, Comcast and Horizon – number in the thousands and serve rural and suburban viewers with an array of relevant content. At MTA,

we have reviewed the proposed FNPRM in detail, and with local government colleagues and regional organizations across the nation. In particular, MTA strongly oppose the tentative conclusion in the FNPRM that cable-related in-kind contributions, such as those that allow our programming to be viewed on the cable system, are franchise fees. We oppose the deletion of the Public, Education and Government (PEG) fees in the tentative decision in the FNPRM.

A number of issues raised in the FNPRM will detrimentally affect our jurisdictions' ability to appropriately manage the custodial relationship among the local government, cable operators, and other public and private companies and agencies that collaboratively occupy the public right of way. The FNPRM in essence significantly negatively impacts the amount of franchise fees, and thus our local governments' ability to provide services. Services include water distribution systems, sanitary sewerage, storm water/drainage runoff, flood control channels, paths of travel for walking, bicycling and for people with physical challenges, and then natural gas lines, electrical infrastructure, including traffic control devices, street lights, transmission and distribution lines, and conduit above and below ground for communications services – all of which allow our communities to deliver essential and necessary services to residents, businesses and public facilities, like schools.

Of the \$3.6 million in franchise fees generated annually among the 10 jurisdictions, the funding is used for basic community services, such as maintaining the physical appearance and structures in the public right of way, coordinating street openings and repairs, and vegetation management for fire prevention and visibility. The FNPRM proposes to reduce these funds based on the “fair market value” of the three PEG channels, their capacity and the transmission of programming. Even before the State franchise went into effect, these services were part of long-

standing agreements from the cable operators that such obligations are not franchise fees, and should not be subject to reductions or offsets.

At this point we have no idea what methodology or factors the cable operators will use to determine the “fair market value” of the assets described above. The FNPRM does not provide guidance to help us identify the potential financial impact, nor does it help us understand why this methodology is appropriate, rather than using other methodologies such as cost basis. Using “fair market value” appears to be arbitrary and capricious, especially since the FNPRM has left it to the cable operators to determine the financial criteria to be used to set the “fair market value”. The proposed FNPRM fundamentally lowers the amount of franchise fees significantly and would “zero-out” PEG fees.

Regarding programming, our communities like many others around the nation, are losing local fact-based information sources, like routine local broadcast news coverage of community events and activities. In addition, local print media is affected by the onslaught of nationally generated on-line content, social media and sources of information that lack provenance.

The PEG services delivered by our Designated Access Provider, the Community Media Center of Marin (CMCM) delivers thousands of hours of city, town and county government meetings, roundtable discussions about local issues of concern and interest, and candidate/issue forums during elections. Areas that CMCM particularly addresses are providing live stream and televised local government meetings in every jurisdiction, interviews with prospective elected officials during election season, and training academies for youth to provide PEG programming including science topics, local sporting events, and others, all of which are often also produced by the students. Marin County citizens are keenly politically active, and the kind of election related

coverage provided by CMCM simply does not exist in commercial broadcast media. A significant void will exist in the County if these programs and community services are reduced or eliminated.

Marin County's PEG channels are widely viewed and are considered a vital link between the citizens and important issues in the communities and the region. The MTA rejects the implication in the FNPRM that PEG programming is for the benefit of the local franchising authority (LFA) or a third-party PEG provider, rather than for the public or the cable consumer. No other channels provided by the cable operators deliver this kind of content, which is immediate and relevant. As demonstrated above, CMCM provides valuable local programming that is not otherwise available on the cable system or in other modes of video delivery such as satellite. Yet the Commission tentatively concludes that non-capital PEG requirements should be considered franchise fees because they are, in essence, taxes imposed for the benefit of local governments or their designated PEG providers. By contrast, the FNPRM tentatively concludes that build-out requirements are not franchise fees because they are not contributions to the franchising authority.

The FNPRM then requests comment on "other requirements besides build-out obligations that are not specifically for the use or benefit of the communities governed by the State Franchise Agreement ("SFA") or an entity designated by the SFA and therefore should not be considered contributions to an SFA."¹ PEG programming fits squarely into the category of benefits that do not accrue to the SFA or its designated access provider, yet the Commission concludes without any discussion of the public benefits of local programming that non-capital PEG-related provisions benefit the SFA or its designee rather than the public at large.

The MTA encourages FCC Commissioners and staff to visit the CMCM website and channels to discover this important community resource, at www.cmcm.tv

¹ FNPRM ¶ 21.

We appreciate the opportunity to add to the record in this proceeding and encourage the FCC to carefully and thoughtfully consider the comments. We respectfully request that the proposed decisions regarding franchise fees and PEG fees be revised and restored to “make whole” our jurisdictions with the both fees. Our abilities to provide local government services and PEG programming will be significantly diminished under the FNPRM as I have outlined above.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Barbara Coler".

Barbara Coler, Chair
Board of Directors
Marin Telecommunications Agency
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November 5, 2018

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November 5, 2018

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RE: MB Docket No. 05-311. 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.

Dennis Rodoni

County of Marin

Honorable Chairman Pai and Commissioners O’Rielly, Carr, and Rosenworcel:

Elizabeth Robbins

Town of Ross

The Marin Telecommunications Agency (MTA), a Joint Powers Authority (JPA) comprised of the County of Marin and nine cities/towns, including San Rafael, Belvedere, Corte Madera, Fairfax, Mill Valley, Ross, San Anselmo, Sausalito and Tiburon, oversees the cable franchise agreements under DIVCA, California’s state franchise, and the region’s PEG channels.

Kay Coleman

Town of San Anselmo

Andrew McCullough

City of San Rafael

The MTA joins with the League of California Cities and other local and regional governments throughout the nation in strongly opposing the Further Notice of Proposed Rulemaking (FNPRM), which proposes to allow cable companies to deduct the fair market value for a wide range of public benefits from their franchise fee obligations, namely public, educational, and government (PEG) channel capacity and transmission.

Joe Burns

City of Sausalito

David Kulik

Town of Tiburon

Jean Bonander

Executive Officer

In 2006, California passed the Digital Infrastructure and Video Competition Act, which streamlined the deployment of cable services by making the California Public Utilities Commission (CPUC) the sole franchising authority in the state and preserved many of the provisions commonly found in local franchise ordinances. It was the intent of the state legislature to streamline deployment while keeping local government revenues intact, ensuring that local public rights-of-way remained under control of cities and counties, and that a sufficient amount of capacity on cable networks was preserved for public, educational, and government (PEG) access channels.

Unfortunately, while the FCC would normally exempt from their Orders states with a centralized franchising authority that have preserved such policies, this FNPRM provides no such exemption, threatening to undermine such priorities. As proposed, the FNPRMs broad definition of all “cable-related, in-kind contributions” other than PEG capital costs and build out requirements could be treated as “franchise fees,” meaning:

- Cable operators currently paying the typical five percent franchise fee permitted by federal law will be able to reduce their current franchise fee payment by the fair market value of all in-kind contributions, with the exception of PEG capital costs required by the franchise associated with the construction of PEG access facilities and build out requirements.
- There will be significant reductions in cable franchise fees, depending on how the “fair market” value for PEG capacity and transmission is calculated within any given jurisdiction.
- PEG programming would be severely limited, if not altogether eliminated in some or most jurisdictions.

PEG programming offers a host of community benefits, including public access channels, educational access channels, and government access channels all aimed at providing locally beneficial information. Public access channels are available for use by the general public, usually created by a diverse variety of individuals, groups, and organizations within a community that is non-commercial in nature and generally free from editorial oversight. Educational channels are typically dedicated for learning institutions, such as local schools, colleges, and/or universities for school related activities, fully televised courses of instruction, and other educational purposes. Government access channels are often the easiest and best ways for the local governments to be transparent, often televising city, county, school district, and other government meetings or live local election returns, town hall meetings, public debates, and other public policy topics.

The “fair market value” of such services may be impossible to discern and would likely be a source of litigation between cable operators and local governments. Most regrettably, however, is that this FNPRM threatens to limit or eliminate public, educational, and government access channels all meant to better help inform and empower the public. The potential loss of this public benefit alone should be concerning enough for the FCC to reject this FNPRM. Unfortunately, the FNPRM further threatens the use of local right of ways for non- cable related purposes as well.

The FNPRM also proposes to prohibit local governments from regulating the facilities and equipment used by cable operators in the provision of non-cable services, such as wireless communications services. If preempted from regulating these installations outside the franchise (since these franchises do not generally address the use of rights of way for non-cable facilities), local governments may lose their authority to manage a cable company’s deployment of non- cable facilities, such as “small cells.” This preemption would threaten to extend to fees for use of the rights of way, meaning:

- Cable companies can use local rights of way for any purpose, regardless of the terms of the franchise, and avoid having to pay fair compensation to the local government for the use of publicly funded assets in the rights of way.
- Cable companies could potentially install “small wireless facilities” with little to no public input, without having to meet any aesthetic or equipment size requirements aimed to mitigate blight and preserve community character.

- Cable companies would gain a significant advantage against their competitors, including telecommunications providers even though the FCC has just adopted an order lowering their deployment standards, resulting in a race-to-the-bottom deployment strategy for both cable and telecommunications companies.

Fair and appropriate use of the public right-of-way is the fundamental policy principle for the imposition of a cable franchise fee and any other reasonable conditions required to preserve the character of each community. While the cable and telecommunications industry continues to attack the responsibility of local governments to protect the public health and safety of their own communities, our residents stand to lose the most in terms of the public benefits they receive and the input they can provide for facilities installed in their own backyards. The FCC should instead consider ways that cable operators can: improve their services, help close digital divides, and expand deployment to rural and lower income communities. Unfortunately, this FRNPRM continues a recent pattern of lowering standards and public responsibility for the communications industry as a whole.

For these reasons, the MTA **opposes** the FNPRM and respectfully urges the FCC to reject the deterioration of PEG services and fair use of the public right-of-way. If you have any questions or need any additional information, please contact me or Jean Bonander, the MTA's Executive Officer at 415.446.4427.

Sincerely,



Barbara Coler, Chair
Marin Telecommunications Agency

cc: League of California Cities – BY EMAIL
Senator Feinstein - BY EMAIL
Senator Harris - BY EMAIL
Representative Huffman - BY EMAIL