

**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 CITY OF BURNSVILLE, MINN.

The City of Burnsville, Minn. appreciates the opportunity to file comments on the Second Further Notice of Proposed Rulemaking (“FNPRM”) in the above-referenced docket. Along with many municipalities, we strongly oppose the tentative conclusions in the FNPRM that:

- o Cable-related in-kind contributions (such as those that allow local programming to be viewed on the cable system) can be deducted from franchise fees;
- o The stringent limitations on the use of PEG fees and the implications this would have;
- o That local governments have no authority regarding cable operators’ use of the rights of way to provide non-cable services.

Burnsville is a suburban City of approximately 61,000 residents in the Minneapolis/St. Paul metropolitan area. Our City is currently served by two locally franchised cable television operators – Comcast and Frontier Communications. **Through the funding we receive from these cable operators in the form of Franchise and Public, Education and Government (PEG) fees, we are able to provide a wide variety of important public services to our residents.** This funding allows us to provide transparent coverage of our local Council and Commission meetings; hyper-local news, event coverage and public service information; timely and important print,

digital and web-based communications to our residents using email/text alerts, social media and a variety of other tools; and broadband connectivity for video and data sharing between users of City buildings and students/teachers in our schools.

Serving as the local cable franchise administrator (LFA) for our residents, the City programs or provides for content on five (5) PEG channels on both Comcast and Frontier cable systems. This includes a channel dedicated to local voices, sports and entertainment; a channel dedicated to public meetings, City news and public service; and three channels respectively dedicated to the three school districts that serve our City.

If formalized, these proposed conclusions would have a drastic negative impact on many communities, including Burnsville, to provide a number of important services that are expected, demanded and needed by our residents.

Presently, the franchise fees we receive from cable operators fund our Communications Department – and every aspect of our communication initiatives that inform, empower and engage our residents. The importance of timely, accurate and meaningful communications – and the ever-growing demand to have access to that information – is crucial for local governments to operate.

If franchise fee payments are reduced, which they most certainly would under these proposals, our City and many others like us would be extremely limited in our ability to fund e-services (such as our website, online bill pay options, citizen feedback forums, etc.); email and text correspondence to residents (including emergency alerts and notifications); transparency (including television coverage of our local meetings and responding to public data requests); and the important data/internet connections that allow our schools to provide a robust and modern education to our youth.

Allowing the cable companies to determine and use “fair market value” to calculate the value of in-kind obligations will lead to arbitrary deductions in this important funding source for our residents.

It has been a long-standing agreement between the cable operator and LFAs that “cable-related in-kind” obligations are not franchise fees. Section 6.8 of the City of Burnsville’s existing franchise with Comcast expressly provides that “any costs to the Grantee associated with the provision of support for PEG access or Institutional Network... do not constitute and are not part of a franchise fee and fall within one or more of the exceptions to 47 U.S.C. § 542.” The parties have always understood that in-kind support for PEG access is over and above franchise fees and, for nearly two decades, have acted accordingly.

Burnsville and Comcast have been engaged in renewal negotiations for more than three years, at significant expense to both parties. At no time prior to release of the FNPRM did Comcast take the position that in-kind support for PEG could be deducted from franchise fees. Rather, the prior understanding that such support is in addition to franchise fees has been the shared understanding of both parties at all times in negotiations.

On Nov. 8, 2018, for the first time, Comcast’s representative indicated that the FNPRM would require the negotiation of a new provision, yet to be proposed to the City, changing the parties’ decades’ old understanding. Raising an entirely new issue, years into negotiations and due solely to the FNPRM, creates the potential that negotiations will be unsuccessful. The Commission’s actions may be undermining years of negotiations premised on decades of mutual understanding of federal law related to franchise fees and PEG support.

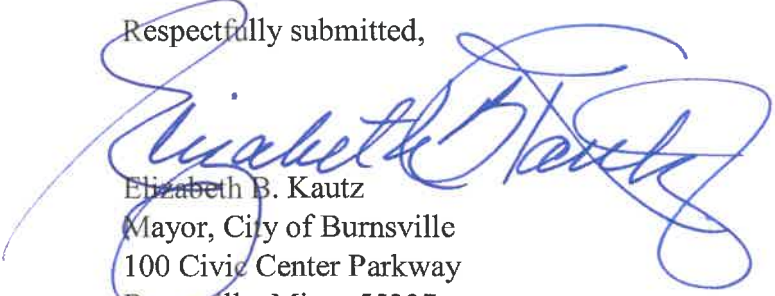
We also reject the implication in the FNPRM that PEG programming is for “the benefit of the local franchising authority (LFA),” and not the public – and thus, should be considered as part

of the franchise fee. As demonstrated above, the City of Burnsville provides valuable local programming and services that would not otherwise be available. Yet the Commission tentatively and incorrectly concludes that any and all PEG requirements not specifically linked to building a physical structure should be considered franchise fees.

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.” We support the tentative conclusion that build-out requirements are not franchise fees because they are not contributions to the franchising authority. This same reasoning should be applied to other cable-related contributions the Commission tentatively concludes are franchise fees. Franchise obligations such as PEG channels, PEG programming and local customer service obligations are more appropriately considered community benefits, not contributions to LFAs. Like build-out obligations, they should not be considered franchise fees.

In conclusion, the City of Burnsville, Minn. strongly opposes the tentative conclusions in the FNPRM and urges the Commission to truly understand the negative implications these rulings will have on municipalities and people across the country. We urge the commission to reconsider.

Respectfully submitted,



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Nov. 13, 2018