



November 14, 2018

VIA ELECTRONIC FILING

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.

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

The Iowa League of Cities (League) appreciates the opportunity to provide comment and express concerns related to the Further Notice of Proposed Rulemaking (FNPRM) in the above-noted docket. While the League is a proponent of ensuring affordable broadband access across our State, regardless of income level or address, it does not feel that the FNPRM would accomplish that goal, and instead, construes strong concerns for local government.

**Who are we?**

The Iowa League of Cities serves more than 870 of the 942 city governments in the State of Iowa, providing training, advocacy, and guidance to strengthen Iowa’s communities. Since 1898, the League has been serving as a key resource, since a small group of city leaders gathered in a small Iowa town to exchange ideas on how to strengthen and improve local government.

**Context in Iowa**

The Iowa League of Cities strongly advocates for its member cities’ home rule authority, granted by amendment to the Iowa Constitution in 1968. This authority allows local control and local decisions be made, in concert with federal and state law. Further, in 2007, the Iowa Legislature enacted legislation that authorized the Iowa Utilities Board to issue certificates of franchise authority to cable and video service providers at the state-level.

State law allows cities to grant franchises, including cable television, for a term of not more than twenty-five years. This agreement/contract covers use of the local right-of-way and terms in concert with the State Code of Iowa. It also allows cities to adopt franchise fees as a part of a franchise agreement of up to five percent of the franchisee’s gross revenues, and requires cities to hold public hearings prior to adopting or increasing a franchise fee. State Code also states that any excess in costs associated with the franchise fee in effect must strictly go toward a specific public purpose. In Iowa, cities must adopt a resolution with a revenue purpose statement, hold a public hearing, consider and pass an ordinance, and hold an election, if required.

### **Strong Concerns Related to FNPRM for Local Governments in Iowa and Across the United States**

FNPRM proposes that cable companies be allowed to deduct the fair market value for a range of in-kind public benefits from their franchise fee obligations to include channel capacity for public, educational, and government (PEG) stations, and connection to school or government buildings, while preempting both state franchising and local control. As written, FNPRM may disincentivize these resources that are valuable in terms of community educational services and catalyzing community engagement. However, cities must make difficult decisions each day about where their limited local resources are spent, and pressures on local governments are generally high. If local agreements are preempted via FNPRM, and franchisees impact local revenues significantly as a result of deducting a value for in-kind public benefits or other services that had been previously negotiated locally, cities may be forced to make tough decisions related to supporting PEG stations versus funding other critical community needs.

The FNPRM is vague in terms of what will constitute in-kind considerations that would be deductible from franchise fee obligations. Sometimes in-kind considerations are paid for in part of full by cable subscribers via a separate line item on invoicing or through basic service rates. If a cable operator could also deduct these amounts as in-kind, it may be possible for local government and local users to end up overpaying for the same asset. The FNPRM is also vague in terms of how the fair market value would be determined (ie. one-time/limited, or ongoing; retroactive or going-forward; etc.). The League would have very strong concerns if FNPRM would be interpreted as including retroactive recovery of previously provided in-kind agreements.

Fair and appropriate use of the public right-of-way and reasonable conditions required to preserve the community character are fundamental purposes of a cable franchise fee agreement. FNPRM precludes local government from enforcing basic requirements to ensure efficient use of the rights-of-way. Our cities urge preservation of their ability to protect the public health, safety, and quality of life within their communities.

The Iowa League of Cities urges reconsideration of this FNPRM, particularly related to local reduction in franchise revenues, continuation/sustainability of PEG services and fair use of public right-of-ways.

Thank you very much for your strong consideration of these issues.

Sincerely,



Alan W. Kemp  
Executive Director