

OLD NORTH BRIDGE

TOWN OF CONCORD

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Implementation of Section 621(a) 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

FCC 18-131

REPLY COMMENTS OF THE CONCORD SELECT BOARD

The Concord Select Board of the Town of Concord, Massachusetts (Town) respectfully submits these reply comments regarding the Second Further Notice of Proposed Rulemaking (FNPRM) released by the Federal Communications Commission (FCC) on September 25, 2018. In the FNPRM, the FCC seeks comment on two tentative conclusions: 1) that cable-related in-kind contributions required by a franchising agreement should be treated as franchise fees and subject to the 5% statutory cap of cable gross revenues set forth in Section 622 of the Communications Act of 1934, as amended; and 2) that local franchising authorities (LFAs) such as the Concord Select Board should be prohibited from using their franchising authority to regulate non-cable services, such as broadband Internet access service, over a cable operator's cable system.

The Concord Select Board concurs with the comments filed in this docket by the Massachusetts Municipal Association (MMA), the National Association of Town Officers and Advisors (NATOA), U.S. Senator Ed Markey, U.S. Senator Elizabeth Warren, numerous town and city governments, Public, Education and Government (PEG) access providers, PEG access committees, and individuals who strongly oppose these tentative conclusions. Adopting the tentative conclusions will reduce revenues and services to the Town of Concord and will restrict the Town's authority to reasonably regulate their rights of way. Furthermore, adopting the tentative conclusion that cable-related, in-kind contributions should be valued at their fair market value for purposes of the franchise fee cap will inject a significant level of unnecessary regulatory uncertainty, as the Town will find itself debating with its cable operator over the value of those in-kind contributions now and during the next franchise agreement negotiation process.

The Town of Concord, Massachusetts, incorporated in 1635 and known for its American Revolutionary war battles at the Old North Bridge, home of Walden Pond, and home of authors

Henry David Thoreau, Ralph Waldo Emerson, Nathaniel Hawthorne and Louisa May Alcott, is located in the Greater Boston area. Concord has a population of 15,500 residents who are served by one cable TV operator, Comcast, and whose basic tier rates are regulated by the Massachusetts Department of Telecommunications and Cable.

Approximately 5500 Concord households and businesses subscribe to the cable provider's cable TV service, and the cable provider received roughly \$8 million in gross revenues from Concord in 2017. The Town's franchise fee, 4.8%, generated approximately \$396,000 as revenues in 2017 for use by the Town-operated PEG public access station, Minuteman Media Network (MMN). The Town's franchise agreement with its cable operator expires in 2024.

The Town provides valuable PEG services to the community through local broadcasts over Channels 8, 9, and 99 and on-line through MMN and its YouTube channel. The Town covers the meetings of Town boards and committees, Town Meeting, School Committee and other municipal meetings; candidate forums and local programs by civic groups, non-profits, Council on Aging and other community forums; and educational, musical and local sports programs. Concord shares its head-end cable TV facilities and PEG services with the neighboring Town of Carlisle. Funding for these valuable community-based programs comes from PEG revenues, and any reduction in funding levels will lower the quality of programming and coverage for the Town's citizenry.

The FCC seeks comment on its proposed definition of the types of in-kind contributions that LFAs like Concord have received under the franchise agreement. In-kind contributions would include non-monetary contributions related to cable services, such as free or discounted cable services, the use of cable facilities or equipment, institutional networks (I-nets), PEG channels and PEG channel capacity, complimentary cable service to schools and other government buildings, fiber optic networks, local customer service, and electronic programming guide services. These contributions may or may not be spelled out in the franchise agreement and, under the FNPRM proposal, would be subject to the 5% statutory cap on PEG revenues, valued at a fair market price, and provided directly to the LFA (the Town / Select Board) or to any entity designated by the LFA.

The Town of Concord has received in-kind (non-monetary) contributions from its cable TV provider that includes cable drops and basic cable TV service to the Town House, fire stations, and other Town buildings. The Town's franchise agreement called for providing an I-net service for some school buildings, and the Town uses PEG capacity through three PEG channels. When the Town begins its next round of franchise negotiations with its cable provider in a few years, part of that discussion may involve in-kind contributions, the values of which do not fall currently under the 5% franchise fee cap. These contributions have provided valuable assistance to Concord citizens, businesses, and those who wish to visit and learn about Concord, so in-kind contributions should not be limited by the cap.

Equally disturbing is the FCC's proposal that the contributions would be calculated at "fair market value." As the MMA correctly noted on page 2 of their comments, "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." The City of Lowell asserted in its comments that the PEG channels have no commercial value as they are dedicated

for public use – a view some cable operators may contest, if the fair market value proposal is adopted. The Foxborough Board of Selectmen concisely framed the issue: permitting a cable operator to deduct the value of the PEG channel is problematic, vague, and subject to wide interpretation.

The Town of Marshfield accurately observed in their comments that reclassification of in-kind contributions will reduce franchise fees without any corresponding increase in services. The Town of North Andover, like the Town of Concord, sees that changing these regulations will upset the stability of franchise negotiations and Town operations. This leads the Concord Select Board to conclude that using a fair market value approach is not in the public interest, and that this industry-led proposal should be rejected.

For these reasons, the Concord Select Board strongly opposes the tentative conclusions in the FNPRM and encourages the FCC to not adopt the proposed changes.

Respectfully submitted,

CONCORD SELECT BOARD



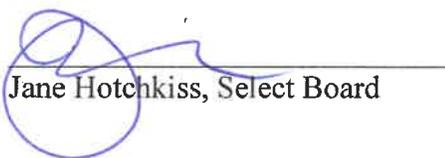
Thomas McKean, Chair, Select Board



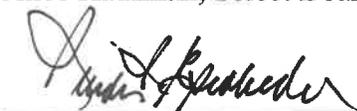
Michael Lawson, Clerk, Select Board



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Jane Hotchkiss, Select Board



Linda Escobedo, Select Board

December 11, 2018