

# FCC Releases Draft Report and Order on Cable Franchising

- **The FCC's Proposed Order would Reduce Cable Revenues to Cities and Towns, and Threaten PEG Station Funding •**
- **Please Submit Comments to the FCC's Docket by Thursday, July 25 to Record Your Opposition to the Proposed Order •**

The FCC has released a proposed "Third Report and Order" related to cable franchise agreements and fees, in advance of a planned vote by the Commissioners at their August 1st meeting.

The FCC's proposed order would dramatically reduce cable franchise fee revenue to cities and towns, and also restrict municipal authority regarding use of public rights-of-way by cable companies.

So far, almost 2,000 Massachusetts individuals, community media centers, elected officials, local officials, and non-profit organizations representing different ethnic, religious, arts, cultural, economic development, and educational stakeholders have responded in the docket expressing their opposition to the proposed rulemaking.

The MMA has also expressed grave concerns with the FCC's proposal to preempt municipal authority, including a letter submitted this week in response to the FCC's latest draft.

[Please click here to see a copy of MMA's July 17, 2019 letter to the FCC](#)

## The FCC's Third Report and Order would do the following:

- Allow cable operators to deduct certain "in-kind" contributions from the 5 percent franchise fee cap set by federal law. Currently these in-kind contributions are *in addition* to the basic franchise fee in each contract. Going forward, the FCC would allow cable operators to count these costs toward the 5 percent.
- In-kind contributions are defined by the FCC as any non-monetary contribution related to the provision of cable services provided by cable operators as a condition or requirement of a local franchise agreement, including but not limited to free or discounted cable service to public buildings, costs in support of PEG access other than capital costs, and costs attributable to the construction of I-Nets. It does not include the costs of complying with the terms of the franchise agreement that are an essential part of the provision of cable service to subscribers, such as build-out and customer service requirements.
- This is a radical change, undermining decades of common interpretation and implementation of federal law. While this order is considered to be prospective, meaning that cable operators cannot recoup past franchise fee payments, the FCC would apply it to existing franchise agreements. This is startling, because the FCC is attempting to overtly

interfere with long-term contracts freely and consensually negotiated between two parties. The FCC order would ignore the entire negotiation process, tip the scales, and give industry an unearned financial benefit.

- After the effective date (several months after the final order is published in the Federal Register), a cable operator will be able to request modification of an *existing* franchise agreement to conform with this Order, and cities and towns will have 120 days to make a final decision about the request. If the community rejects or disputes the value the cable operator assigns, the cable operator may bring suit.
- The loss of revenue triggered by the FCC Order would force municipalities to either divert resources away from core municipal and school services in order 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 the fair market value from the franchise fee would create a windfall, essentially allowing them to double-recover.
- This ruling is prospective, and thus cable operators may only count ongoing and future in-kind contributions toward the 5% franchise fee cap after the order is effective.
- However, the FCC would preempt and supersede any existing provision of any cable franchise agreement is inconsistent with this Order.
- In addition, the Order would prohibit and preempt Massachusetts cities and towns from using their cable franchising authority to regulate or charge for non-cable services offered by cable companies, including the use of public rights-of-way for non-cable equipment and services. This includes the ability to impose any fees or to require service quality or performance standards for the provision of information services via cable systems.

**Please record your opposition to the FCC’s proposed order by July 25:**

At this stage it appears unlikely that the FCC will change its mind and reverse course. However, it is very important that cities and towns and key stakeholders record their objections in the official record. That is because litigation will certainly result from this order, and it will be important to show that the FCC is ignoring the legitimate public interests that would be harmed by the Order.

There is a very short comment period. Official submissions to the docket will only be accepted until 5 p.m. on Thursday, July 25. Please submit your comments into the docket detailing your community’s opposition before the deadline.

**How to file with the FCC (it’s easy):**

Step 1: Address your letter as follows:

**VIA ELECTRONIC FILING**

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

*RE: 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, Third Report and Order - MB Docket No. 05-311*

Dear Ms. Dortch,

(Insert the text of your letter – you can use the MMA’s letter (link above) as a guide and add your own examples of the impact on your PEG stations or your revenue).

Step 2: When you have an electronic (PDF or Word) version of your letter ready, go to the following site: <https://www.fcc.gov/ecfs/filings>

Step 3: Once you are on the site, type in “05-311” in the first box (“Proceeding(s)”)

Step 4: Fill out the required fields with your name, address and contact info

Step 5: Upload your letter as instructed – that’s it!

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Thursday, July 25 to Record Your Opposition to the  
FCC’s Proposed Order – Thank You!!!**