September 5, 2018

FCC FACT SHEET*

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

Second Further Notice of Proposed Rulemaking – MB Docket No. 05-311

Background: Title VI of the Communications Act of 1934 governs the manner in which local franchising authorities (LFAs) may regulate cable operators and cable television services. For example, Section 621(a)(1) provides that an LFA may award one or more cable television franchises within its jurisdiction but may not grant an exclusive franchise or "unreasonably refuse to award an additional competitive franchise." Section 622 imposes a five percent cap on the fees that an LFA may impose on the gross revenues of cable operators from the operation of cable systems to provide cable services. The Commission has adopted several orders interpreting these statutory provisions that have been reviewed by the U.S. Court of Appeals for the Sixth Circuit.

In this Second Further Notice of Proposed Rulemaking, we address two issues raised by the remand from the Sixth Circuit in *Montgomery County, Md. et al. v. FCC* of two of these orders. Specifically, the court vacated and remanded the Commission's decision to treat cable-related, in-kind contributions to an LFA as franchise fees subject to the statutory five percent franchise fee cap, finding that the Commission had failed to explain the extent to which such treatment was allowed under Section 622. The court also vacated and remanded the Commission's ruling that an LFA may not use its cable franchising authority to regulate the mixed-use network (i.e., facilities used to provide both cable services and non-cable services) of an incumbent cable operator that is not a common carrier. The court found that the Commission had failed to offer a valid statutory basis for this ruling.

What the *Second Further Notice* Would Do:

- Tentatively conclude that cable-related, in-kind contributions required by LFAs from cable operators (both new entrants and incumbents) as a condition or requirement of a franchise agreement should be treated as "franchise fees" subject to the statutory five percent franchise fee cap set forth in Section 622 of the Act, with one limited exception.
- Tentatively conclude that capital costs for public, educational, and government channels required by the franchise are the only cable-related, in-kind contribution excluded from the statutory five percent franchise fee cap.
- Tentatively conclude that the mixed-use network ruling should be applied to prohibit LFAs from using their video franchising authority to regulate non-cable services offered over cable systems by incumbent cable operators, with the exception that LFAs are not precluded from regulating I-Nets.

* This document is being released as part of a "permit-but-disclose" proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in MB Docket No. 05-311, which may be accessed via the Electronic Comment Filing System (https://www.fcc.gov/ecfs/). Before filing, participants should familiarize themselves with the Commission's *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. *See* 47 CFR § 1.1200 *et seq*.