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By First Class Mail

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

Re: In the Matter of 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.

As the public body charged with negotiating and approving cable franchise agreements on behalf of the residents of the Town of Arlington, this Select Board writes to voice its objections to the FCC's tentative conclusions that that "in-kind" contributions required by a franchising agreements should offset "franchise fees" subject to the statutory cap on such fees set forth in Section 622 of the Communications Act of 1934 (as Amended). Arlington is already a community with three cable franchise operators (Comcast, Verizon, and RCN). The proposed rule will not foster more competition or increase the number of providers. It will eviscerate our community media provider while constituting a windfall for sophisticated businesses capable of negotiating fair terms for themselves.

The Federal Communications Commission's ("FCC") Second Notice of Proposed Rule Making regarding "in-kind" offsets to local cable franchise agreements posits that purportedly "in-kind" contributions such as provision of channels for local PEG access providers and technology for schools should be deducted from the franchise fees each operator pays to provide for expenditures authorized under the Act. According to the Commission's notice, the purpose of this order is to decrease the costs of entering the market and thereby stimulating competition. While Arlington is only one community in the United State, nothing in this community's experience confirms such assertions.

In brief, the Town of Arlington has been serviced by and negotiated with the three aforementioned cable franchises for nearly twenty years. Each has proven itself an effective corporate citizen in their own way and we appreciate their contributions to this community. However, within each of those negotiations, the categories of purported “in-kind” contributions contemplated by the FCC – channels for local government access providers, fiber for school television studios, etc. have always been understood to be separate terms from the overall franchise fee. Moreover, each of the cable franchises have ably negotiated their respective agreements based upon their means and circumstances, typically with more variation on these alleged “in-kind” contributions than either capital contributions or franchise fee percentages of revenue. Specifically, some franchises have been willing to offer HD channels to our PEG access provider, while others have not. Some franchises have been inclined to explore access to electronic program guides, while others have not. Hence, while these alleged “in-kind” contributions have been important elements of franchise agreements, they have not constituted the kinds of barriers that would preclude the entry of new competitors in the same way that the costs of building out cable infrastructure, or providing competitive program selections might.

Meanwhile, our PEG access provider, Arlington Community Media, Inc. has developed into a treasured resource in Arlington for myriad reasons; marshaling both franchise fees and what the FCC proposes to term “in-kind” contributions into outstanding service. ACMI serves as a platform for residents and community groups to communicate with the wider public, an educational tool and form of expression for our youth, and of course, an essential service in ensuring access to and transparency in government meetings. ACMI is utilized to keep our residents informed on pressing issues, relay their stories, and prepare our young people for the future. Yet, in each of our community assessments pursuant to the franchise negotiation process, ACMI has shown itself to be an efficient, effective operation facing increased demand from the community. Existing service, let alone demand for more, cannot conceivably be met if merely possessing channels to broadcast its content begins to eat into ACMI’s most significant source of funding.

As such, the Town of Arlington respectfully, but strongly urges the FCC's to reconsider its position and reject the proposed "in-kind" offset order. This Board further commits itself to working with our congressional delegation and State and regional partners to keeping the Commission fully informed of both the lack of need for this rule change and its negative impacts upon this community.

Very truly yours,

ARLINGTON SELECT BOARD

Daniel J. Dunn, Chair

October 10, 2018