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July 10, 2019

**VIA ECFS**

Marlene H. Dortch, Esq.  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: Notice of Ex Parte, 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, MB Docket No. 05-311**

Dear Ms. Dortch:

On July 8, 2019, Rick Chessen and Radhika Bhat of NCTA – The Internet & Television Association; Tara Corvo of Mintz, on behalf of NCTA; Elizabeth Andrión of Charter; Howard Symons of Jenner & Block LLP, on behalf of Charter; Jordan Goldstein and David Don of Comcast; and Jennifer Prime of Cox met with Joel Miller and Christopher McGillen of Commissioner O’Rielly’s office to discuss the above-referenced proceeding.<sup>1</sup> Also on July 8, Messrs. Chessen, Symons, Don, and Goldstein and Ms. Corvo, Bhat, and Prime met with Evan Swartztrauber of Commissioner Carr’s office, and Messrs. Chessen, Symons, Don, and Goldstein and Ms. Corvo and Bhat met with Kate Black of Commissioner Rosenworcel’s office regarding this proceeding.

Consistent with prior filings in this proceeding,<sup>2</sup> the cable representatives urged the Commission to adopt its tentative conclusions in the *Second FNPRM* and rein in the harmful practices of state and local franchising authorities who ignore the clear limits in the Cable Act, to the ultimate detriment of consumers. The cable representatives emphasized that the Cable Act established a framework for the deployment of cable systems that carefully balances the interests of state and local governments, cable operators, and cable subscribers. As a result of this federal framework, state and local governments receive roughly \$3 billion annually in franchise fees

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<sup>1</sup> 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, 33 FCC Rcd. 8952 (2018) (“*Second FNPRM*”).

<sup>2</sup> See Comments of NCTA – The Internet & Television Association, MB Dkt. No. 05-311 (Nov. 14, 2018); Reply Comments of NCTA – The Internet & Television Association, MB Dkt. No. 05-311 (Dec. 14, 2018) (“NCTA Reply Comments”).

from cable operators – funds that are more than sufficient to defray any regulatory costs related to cable systems and that state and local governments may spend to meet the needs of their communities. But despite these substantial franchise fee payments – payments that cable’s competitors are not obligated to make – some state and local governments are demanding even more, requiring in-kind exactions and imposing duplicative authorizations and fees for the provision of broadband and other services over already franchised cable systems, over and above the maximum five percent franchise fee permitted by the Cable Act.<sup>3</sup> According to an economic analysis submitted by NCTA, such practices will result in consumer welfare losses in excess of \$40 billion over five years.<sup>4</sup>

It is therefore essential that the Commission act expeditiously to stop to these harmful practices by (i) clarifying that under the statute all requests for in-kind contributions made by franchising authorities are franchise fees subject to the five percent cap, with the exception of PEG capital costs; and (ii) reaffirming that the mixed-use rule applies to all cable operators and clarifying that the scope of the mixed-use rule precludes the imposition of duplicate fees and authorizations for the provision of broadband and other services over franchised cable systems, even when states and localities claim not to be acting as franchising authorities.

This letter is being filed electronically pursuant to Section 1.1206 of the Commission’s rules. Please direct any questions to the undersigned.

Respectfully submitted,

/s/ **Rick Chessen**

Rick Chessen

CC: Joel Miller  
Evan Swarztrauber  
Kate Black  
Christopher McGillen

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<sup>3</sup> NCTA has provided numerous examples of such excessive demands and fees in prior filings in this proceeding. *See, e.g.*, NCTA Reply Comments, at Appendix; NCTA – The Internet & Television Association *Ex Parte*, MB Dkt. No. 05-311 (filed Mar. 13, 2019); NCTA – The Internet & Television Association *Ex Parte*, MB Dkt. No. 05-311 (filed Apr. 19, 2019).

<sup>4</sup> *See* NCTA Reply Comments, Attachment 1 at 6, 26.