



SUMMARY OF THE FCC'S SECOND FURTHER NOTICE OF PROPOSED RULEMAKING ON CABLE FRANCHISE FEES AND MIXED-USE NETWORKS

On September 25, 2018, the FCC released a [Second Further Notice of Proposed Rulemaking](#) proposing new rules that, if adopted, likely will have a significant impact on cable franchise fees, PEG channels and other common cable-related obligations in cable franchise agreements. The proposed rules also would preempt local regulations of non-cable services provided by certain incumbent cable operators, potentially creating disparities between cable operators and non-cable operators in the applicability of these regulations.

Specifically, the FNPRM proposes new rules that would:

- Allow all cable-related, in-kind contributions, other than PEG capital costs and build out requirements, to be treated as “franchise fees” subject to the 5% franchise fee cap.
 - This holding would appear to allow cable operators to deduct from their cable franchise fee payments the value of franchise requirements such as PEG channel capacity, connections to programming origination points, and complementary cable services to schools and other public buildings.
 - The FNPRM proposes that the value to be deducted would be the fair market value of these “contributions,” though the Commission requests comment on whether it instead should be the cable operators’ costs.
- Prohibit local franchising authorities from regulating the non-cable services offered over cable systems, other than I-Nets, and prohibit LFAs from regulating the facilities and equipment used in the provision of these non-cable services.
 - This holding would apply to incumbent cable operators that are common carriers, and the FNPRM seeks comment on whether it should also apply to cable operators that are not common carriers.
 - Though it is ambiguous, the proposed rule can be read to allow certain cable operators to construct and install facilities and equipment for non-cable services in the rights of way without any local regulation or compensation, which raises safety considerations and potential disparities in the application of regulations among competing providers.
- Potentially apply to state-level franchising actions. Unlike the draft FNPRM, which expressly excluded state-level franchising actions, the final FNPRM seeks comment on whether the new rules should apply to both state and local franchising actions.

Comments on the proposed rules will be due 30 days after the FNPRM is published in the Federal Register. Reply comments will be due 60 days after such publication.