

In its desperate search for justifications, TCI cites the Commission's concern to promote system upgrades and improvements as if that concern supported its own attempt to prevent franchise requirements of system upgrades.<sup>44</sup> Yet it is franchising authorities, through negotiated franchise requirements, that have been instrumental in promoting such upgrades throughout the history of cable.<sup>45</sup> While TCI might prefer to be governed only with "one size fits all" national standards administered by the Commission, Congress was concerned that cable operators remain responsive to local needs and interests, as the renewal provisions of the Cable Act make clear.<sup>46</sup> While Congress may have envisioned a national set of technical standards governing subscriber equipment to ensure minimum capability or compatibility, there is no indication that Congress intended a national standard for facilities and equipment, heedless of the unique needs of each locale.<sup>47</sup>

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specifications such as system capacity, homes per node, or amplifiers per cascade. See TCI Comments at 29.

<sup>44</sup> TCI Comments at 30 n.65.

<sup>45</sup> See, e.g., Indianapolis Comments at 4 ("It is in actuality, the LFAs who are the impetus for the deployment of new technology, subscriber happiness and competition").

<sup>46</sup> See 47 U.S.C. § 546.

<sup>47</sup> See NYPS at 24-25; Kramer at 7; Denver Comments at 14-16. NYPS points out that Congress also retained Section 632, which authorizes franchising authorities to "establish and enforce . . . construction schedules and other construction-related requirements, including construction-related performance requirements, of the cable operator." NYPS Comments at 22-23, quoting Section 632(a) of 1992 Cable Act. These requirements, too, clearly relate to facilities and equipment.

Congress did not interfere in § 624(e) with the right of franchising authorities to establish facilities and equipment requirements, including specific system upgrade requirements, in the franchising process.<sup>48</sup> Cable operators' suggestions to the contrary run flatly contrary to the language of the Cable Act — language that Congress chose to leave unchanged in the 1996 Act.

**VI. THE TERM "AFFILIATE" MUST BE DEFINED TO CAPTURE ALL RELATIONSHIPS THAT GIVE AN OVS OPERATOR EFFECTIVE CONTROL OVER VIDEO PROGRAMMERS.**

As pointed out in our initial comments in this Docket, the term "affiliate" is the linchpin of the statutory OVS carriage requirements.<sup>49</sup> The intent of Congress — to make OVS an option distinctively different from cable — must guide the Commission's interpretation of the term "affiliate" as used in the OVS rules. To the extent an OVS operator is able to exercise indirect control of any kind over the selection of programming on a channel, that channel must be counted as one occupied by an affiliate of the OVS operator. Therefore, we support comments that define the term "affiliate" so as to capture not only ownership or management-based affiliations, but also affiliations based on other types of relationships that can give an OVS operator effective control over a video programmer using the OVS

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<sup>48</sup> See Indianapolis Comments at 3-4; Kramer Comments; and New Jersey Comments at 8.

<sup>49</sup> See Comments of the National League of Cities and the National Association of Telecommunications Officers and Advisors (June 4, 1996).

system.<sup>50</sup> In effect, for OVS purposes, an entity must be considered an affiliate whenever its relationship with the OVS operator exceeds the carrier-user relationship.

## VII. CONCLUSION

For the reasons indicated above, the Commission should craft its permanent rules as follows:

- Effective competition should be deemed to exist only in geographic regions where actual competition exists.
- "Comparable programming" should require PEG and broadcast channels, as well as access to comparable programming sources.
- The Commission's rules for CPS tier complaints should not impose additional administrative burdens on franchising authorities, but should retain the original Form 329 complaint process with only those modifications required by the 1996 Act.
- The Act's small cable operator provisions should not be extended to previously small operators owned by large entities.

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<sup>50</sup> "...[I]t is vital to the success of OVS that the Commission not create circumstances which will allow an OVS operator to retain control over the platform while meeting the facial requirement of any regulation promulgated by the agency." Comments of Alliance for Community Media at 2 (June 4, 1996). See also BellSouth Comments at 3-4; Denver Comments at 5-6 (supporting broad interpretation of "affiliate" with respect to ownership and management affiliation issues).

- Reasonable subscriber notice should include notice directly to subscribers.
- Franchising authorities may enforce the Commission's technical standards.
- The Commission's rules should recognize franchising authorities' right to establish facilities and equipment requirements.
- The term "affiliate" must be defined for OVS purposes to include all relationships exceeding the carrier-user relationship.

Respectfully submitted,

THE CITY OF LOS ANGELES, CALIFORNIA; NATIONAL  
LEAGUE OF CITIES; AND NATIONAL ASSOCIATION OF  
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