

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Implementation of Section 302 of)
the Telecommunications Act of 1996)
)
Open Video Systems)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

CS Docket No. 96-46

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To the Commission:

PETITION FOR RECONSIDERATION OF
MICHIGAN, ILLINOIS AND TEXAS COMMUNITIES CONSISTING OF:

- Michigan:** City of Detroit, City of Grand Rapids, Ada Township, Alpine Township, City of Cadillac, Village of Chelsea, Village of Clinton, City of Coldwater, Coldwater Township, City of Garden City, Georgetown Charter Township, Grand Rapids Charter Township, Harrison Township, Holland Township, City of Ithpeming, City of Kentwood, City of Livonia, City of Marquette, City of Plainwell, Richmond Township, Robinson Township, City of Romulus, City of Southfield, City of Westland, Whitewater Township, City of Wyoming, Zeeland Township, Southwest Oakland Cable Commission
- Illinois:** City of Aurora, Illinois Chapter of the National Association of Telecommunications Officers and Advisors
- Texas:** City of Fort Worth, City of Arlington, City of Carrollton, City of Flower Mound, City of Grand Prairie, City of Irving, City of Lewisville, City of Longview

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SUMMARY

Michigan, Illinois and Texas Communities ("MIT Communities") respectfully submit this Petition for Reconsideration of the Commission's open video systems Second Report and Order (May 31, 1996) because the Commission exceeded its delegated authority in allowing non-local exchange carriers to become OVS operators, and erred in concluding that franchising authorities cannot require cable operators to build institutional networks, and therefore, the Commission did not require OVS operators to provide institutional networks comparable to those of the incumbent cable operator.

In allowing non-local exchange carriers to become OVS operators, the Commission acted in contravention of the clear language and intent of the Telecommunications Act of 1996. Congress limited the OVS alternative solely to common carriers, such as LECs. Nothing in the Telecommunications Act of 1996 or its legislative history permits the Commission to allow non-LECs to become OVS operators.

Further, public policy does not support the Commission's decision to allow non-LECs to become OVS operators. If cable operators can convert into an OVS, competition will be lessened. Indeed, a cable operator as an OVS operator will further entrench its monopoly status. Moreover, the Commission erroneously created an exception to its OVS rules which would allow cable operators which are not subject to effective competition to convert into an OVS. The Commission must address and rectify these issues if it is to properly carry out Congressional intent.

The Commission must require OVS operators to provide institutional networks comparable to those of the incumbent cable operator. Institutional networks are extremely important to municipalities in a number of respects. Institutional networks are vital to meet the changing communication needs of state and local governments.

Further, franchise authorities can require cable operators to provide institutional networks under Section 611(b) of the Communications Act. Congress has already recognized that franchise authorities are particularly well-suited to determine the current and future community needs at the local level.

MIT Communities, for the convenience of the Commission, respectfully submit modifications to Section 76.151 of the Commission's rules to accommodate institutional networks. MIT Communities also respectfully request that the Commission reconsider its open video system Second Report and Order to incorporate changes set forth in the Petition.

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MICHIGAN, ILLINOIS AND TEXAS COMMUNITIES

I. INTRODUCTION

A. MIT Communities and Their Interest In This Matter.

Michigan, Illinois and Texas communities ("MIT Communities") collectively represent approximately 7.7 million people. They are composed of the following:

From Michigan, 27 municipalities,¹ plus the Southwest Oakland Cable Commission ("SWOCC") which is the cable franchising authority for the Cities of Farmington, Farmington Hills and Novi. From Illinois, the City of Aurora and the Illinois Chapter of

¹City of Detroit, City of Grand Rapids, Ada Township, Alpine Township, City of Cadillac, Village of Chelsea, Village of Clinton, City of Coldwater, Coldwater Township, City of Garden City, Georgetown Charter Township, Grand Rapids Charter Township, Harrison Township, Holland Township, City of Ishpeming, City of Kentwood, City of Livonia, City of Marquette, City of Plainwell, Richmond Township, Robinson Township, City of Romulus, City of Southfield, City of Westland, Whitewater Township, City of Wyoming, and Zeeland Township

II. THE COMMISSION EXCEEDED ITS DELEGATED AUTHORITY IN ALLOWING NON-LECS TO BE OVS OPERATORS

A. Nothing In The Act Nor The Legislative History Either Authorizes Or Supports Non-LEC Operation Of OVS Systems.

The Commission is not authorized by the Telecommunications Act of 1996 to allow non-common carriers to operate open video systems ("OVS"). Neither the statute nor its legislative history contains an express Congressional intention to permit any entities other than common carriers (i.e., telephone companies or local exchange carriers, "LECs") to be OVS operators. In fact, the plain language of the statute and its legislative history consistently indicate a clear Congressional intent to limit the OVS option to LECs. This intent is shown in several instances.

For example, in Section 651 of the 1996 Telecommunications Act, under Part V of Title VI of the Act ("Video Programming Services Provided By Telephone Companies"), the election to operate as an OVS is described as follows: "A common carrier that is providing video programming in a manner described in paragraph (1) [video through radio-based communications] or (2) [video on a common carrier basis], or a combination thereof, may elect to provide such programming by means of an open video system that complies with Section 653." Telecommunications Act of 1996. § 651(a)(4) [emphasis added]. No mention in the foregoing "election" section is made of cable operators. Congress affirmatively chose to limit the OVS option to common carriers (i.e., LECs).

Section 653 which establishes OVS and the associated certification requirements also limits the OVS certification to LECs. Section 653(a)(1) states, "A local exchange carrier

may provide cable service to its cable service subscribers in its telephone area through an open video system that complies with this section." Telecommunications Act, § 653(a)(1) [emphasis added]. This section clearly limits the scope of the OVS option to LECs. Moreover, had Congress intended to extend the OVS alternative to cable operators and others it could easily have added to Section 653(a)(1) the phrase "or others" after the "local exchange carrier" reference, and could have changed "telephone area" to "service area." Although Congress did not insert such language into Section 651(a)(1), presumably with good reason, the Commission now inappropriately reads such terms into the Act.

If any question remains after examining the statute, then the legislative history provides clear guidance that the OVS option is limited to telephone companies. The Conference Report to the 1996 Telecommunications Act states, in part, as follows:

"The conferees recognize that telephone companies need to be able to choose from among multiple video entry options to encourage entry . . . New Section 653(a) focuses on the establishment of open video systems by local exchange carriers and provides for reduced regulatory burdens subject to compliance with the provisions of new section 653(b) and Commission certification of a carrier's intent to comply...

* * *

"First, the conferees hope that this [OVS] approach will encourage common carriers to deploy open video systems and introduce vigorous competition in entertainment and information markets. Second, the conferees recognize that common carriers that deploy open systems will be 'new' entrants in established markets and deserve lighter regulatory burdens to level the playing field. . . ." Conf. Rep. No. 104-458, 104 Cong. 2d Sess., 177, 178 (January 31, 1996) [emphasis added].

the National Association of Telecommunications Officers and Advisors ("Illinois NATOA"), and from Texas, 8 municipalities.²

Each of the municipalities and SWOCC is the franchising authority for cable television service in its area and has had a franchise³ with its cable television operator for some time.

Illinois NATOA informs and participates in legislative, judicial, regulatory and technical developments that impact local governments in Illinois on cable and telecommunications matters. Its membership includes municipalities involved in and responsible for cable and telecommunications matters throughout the State of Illinois.

All the municipalities, SWOCC and Illinois NATOA, by their attorneys, submit this Petition for the Commission to reconsider certain aspects of its May 31, 1996 Second Report and Order, CS Docket No. 96-46, FCC 96-249 (released June 3, 1996) ("Second Report and Order") in this proceeding pursuant to Section 1.429 of the Commission's rules.

²City of Arlington, City of Carrollton, City of Flower Mound, City of Fort Worth, City of Grand Prairie, City of Irving, City of Lewisville, and City of Longview.

³Communities sometimes use different terms for the permission given cable companies and others to use the local rights of way and to transact a local business. The term "franchise" is used in this Petition for Reconsideration in the same manner as it is used in Section 602(9) of the Communications Act (47 U.S.C. § 522(9)), namely meaning the initial or renewal authorization to construct and operate a cable system (or telephone system, as the case may be) even though its title may vary.

No mention is made anywhere in the legislative history of allowing cable operators to become OVS operators presumably because that is inapposite to the intention of the conferees: To introduce video competition between cable companies and new entrant telephone companies in established cable markets, with the inducement to telephone companies of lighter regulatory burdens to level the playing field. *See id.*

Despite this clear statutory language and intent, the Commission has inappropriately relied on the second sentence of Section 653(a)(1) of the Telecommunications Act of 1996 in authorizing non-LECs to become OVS operators. *See Second Report and Order*, at ¶ 12. Section 653 of the Telecommunications Act, by its own terms, is not intended to authorize additional entities to be OVS operators. Instead, Section 653 merely requires the Commission to establish procedures for certifying local exchange carriers as OVS operators. Thus, the Commission's reliance on Section 653(a)(1) to extend the OVS option to non-LECs is misplaced.

Further, Section 653(a)(1) merely permits cable operators and others to provide video programming through a certified open video system. Telecommunications Act of 1996, § 653(a)(1). Congress did express its intention to allow cable operators and others to provide video programming on open video services. This sentence standing alone has meaning. But, the Commission cannot rely on such an ambiguous statement -- at most -- so as to contradict several other statements in the Telecommunications Act of 1996 and its legislative history which limit OVS to LECs.

In addition, Section 653(b), which mandates Commission OVS regulations, does not authorize the Commission to extend the scope of eligibility to become an OVS operator to non-LECs. The Commission was not directed by Congress to expand the definition of an OVS operator. Indeed, the definition of an OVS operator was intentionally defined narrowly to foster competition from new entrants in established cable markets.

B. The Commission's Reliance On Section 4(i) Is Misplaced.

The Commission's authority under Section 4(i) of the Communications Act does not permit the Commission to allow non-LECS to become OVS operators. The Second Report and Order cites Section 4(i) to support the erroneous conclusion that the Commission has the power to exceed the clear and unambiguous language of the 1996 Telecommunications Act and allow non-LECS to become OVS operators. Second Report and Order, at ¶ 20.⁴ First, by its own language, Section 4(i) excludes Commission acts, rules, regulations and orders which are "inconsistent with this Act." The Commission in allowing non-LECs to become OVS operators would be acting in direct contravention of the plain language of the 1996 Telecommunications Act.

Second, Congress has not expressly provided the Commission with the function of interpreting the 1996 Act to permit non-LECS to become OVS operators. Although the Commission correctly cites Congress' purpose in enacting Section 653 of the 1996 Act as "to promote competition in the video marketplace and to 'meet the unique competitive and

⁴Section 4(i) states, "The Commission may perform any and all acts, make such rules and regulations, and issue such orders not inconsistent with this Act, as may be necessary in the execution of its functions." 47 U.S.C. § 154(i).

consumer needs of individual markets," the Commission's action in permitting non-LECs to become OVS operators would most likely reduce competition for the reasons set forth below.

III. PUBLIC POLICY DOES NOT SUPPORT ALLOWING NON-LECS TO BECOME OVS OPERATORS

A. If Non-LECs Can Become OVS Operators, The Result Will Be Lessened Competition In Contravention Of The 1996 Act.

Congress specifically developed Part V of the Cable Act to allow telephone companies to provide video programming services. As stated above, Congress intended the OVS option, which includes reduced regulatory burdens, to induce telephone companies to compete with incumbent cable operators. Now, however, the Commission completely eviscerates the statutory scheme Congress developed

Cable operators, with the ability to convert to an OVS system, can effectively avoid competition. As an illustration, consider a telephone company which may decide to enter into competition with a cable operator in a particular area. Once it does so, then under certain circumstances (*see* Section 622(1)) effective competition will be present. Under the Commission's present formulation, the cable operator can then switch to an OVS system. The telephone company would then lose the benefits of OVS -- leveling the playing field -- once the telephone company begins actually competing with a cable operator because the cable operator can switch to OVS and receive the same regulatory benefits. Potential competitors will most likely choose not to engage in competition if its competitor stands to benefit.

MIT Communities respectfully submit that the Communications Act provides enough deregulation in the context of effective competition such that cable operators do not need the added benefit of converting into an OVS operator once competition is introduced in the incumbent's franchise area. The Commission's position in the Second Report and Order is untenable. The Telecommunications Act and its legislative history make no mention of a need to induce cable operators to become OVS operators.

B. The Commission Must Remove The Exception To Its Rule.

In this regard, MIT Communities believe that Note 1 to Section 76.1501 should be deleted in its entirety.⁵ The public interest, convenience and necessity are not served by permitting a monopoly cable operator which is not subject to effective competition to become an OVS operator within its cable service area. The entry of a facilities-based competitor into its cable service area arguably could be infeasible for a variety of reasons: such as, the presence of a monopoly cable operator, the cost of building a new system, etc. The Commission itself has identified the reasons as to why competition among video competitors has not developed. See Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992, Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 94-48,

⁵Note 1 to Section 76.1501 reads as follows: "An example of a circumstance in which the public interest, convenience and necessity would be served by permitting a cable operator not subject to effective competition to become an open video system operator within its cable service area is where the entry of a facilities-based competitor into its cable service area would likely be infeasible." 47 CFR § 76.150 Note 1.

FCC 94-235, First Report (released September 28, 1994).⁶ As Congress and the Commission recognize, there is virtually no facilities-based competition at present. Accordingly, Congress created the OVS option as an inducement to telephone companies to compete with incumbent cable operators. The Commission, by opening the OVS option to non-LECs and creating the exception in Note 1, completely ignores Congressional intent.

The exception Note 1 provides will certainly swallow the rule. The Commission may have inadvertently created an exception which cable operators will use to become OVS operators where effective competition does not exist, which will even further entrench their monopoly status and reduce competition.

MIT Communities respectfully submit that the Commission not allow non-LECs to become OVS operators.⁷ Nevertheless, if the Commission chooses to exceed its delegated authority and ignore the plain language of the 1996 Telecommunications Act and its legislative history, then MIT Communities respectfully submit that the Commission not provide exceptions where competition is "infeasible."

⁶The Commission cited the following as examples to barriers to competition: The cost of constructing a cable distribution network, the access to program supply, cable operators' refusal to disconnect subscribers in a timely manner and refusing to coordinate with the alternative provider, and the aggressive use of the legal process. *Id.* at ¶¶ 228-238.

⁷MIT Communities reserve all claims and arguments that the Commission's OVS Rules result in an unconstitutional taking of public rights-of-way.

IV. INSTITUTIONAL NETWORKS

A. Introduction.

The Commission erred in its Second Report and Order in concluding that under Section 611 of the Communications Act, franchising authorities cannot require cable operators to build institutional networks. Second Report and Order, at ¶ 143. Due to this incorrect assumption, the Commission did not, in its rules, require OVS operators to provide institutional networks comparable to those of the incumbent cable operator.

The Commission's assumption and thus its conclusion are incorrect. The Commission must impose institutional network obligations on OVS operators that "are no greater or lesser" than the obligations imposed on cable operators. Telecommunications Act of 1996, § 653(c)(2). MIT Communities set forth below a description of institutional networks and their importance to municipalities. They are the local branch of the information highway. MIT Communities then show how under Section 611 and the 1996 Act they may require cable operators to provide institutional networks. Under Section 653(c)(2) of the 1996 Act, OVS operators thus must have similar obligations and MIT Communities set forth specific, redlined changes in Section 76.1505 of the Commission's rules to accomplish this. *See* Appendix 1.

B. Institutional Network Description.

Institutional networks (I-NETs) are the information highway for local governments. They have performed this function for over 20 years. Their role is increasing with the

continued deployment of fiber optic cable and the rapid expansion of local government communication needs which I-NETs meet.

Some of the functions that institutional networks currently handle for local governments include the following.

- Connection of municipal buildings for local telephony.
- Direct connections of municipal PBXs to long distance carriers for better access and to avoid local access charges.
- High speed data communications between dispersed municipal locations.
- Monitoring and control of a City's traffic light system.
- Monitoring and control of streetlights in a City.
- Connection of courts and jails for video arraignments.
- Monitoring and control circuitry connecting substations, power plants, major customers and the like to the operations centers of municipally-owned electric systems (which serve 15% of the U S., including such cities as Los Angeles and Seattle).
- Similar monitoring and control systems for pumping stations, storage tanks and the like for municipal water systems and municipal sewer systems.

- Deployment of Geographical Information Systems⁸ (GIS) so that widely dispersed users can access the GIS system to identify subsurface utilities and structures and update the GIS system.
- Access to municipal accounting and financial systems from dispersed locations for the purposes of entering data (purchase orders, time sheets, posting of accounts) and generating reports locally on an as-needed basis.
- Use with water treatment plants for continuous remote video monitoring of water quality (in addition to remote sensing and display of water volume, chemical characteristics and the like).
- As part of "smart highway" programs which use digital cameras and remote video observation to control traffic lights, lane barriers and other traffic control devices.
- Local area networks (LANs) and wide area networks, such as for a distributed personal computer network.
- Direct links to municipal mainframe computers.

As can be seen from the preceding list, institutional networks are vital to local governments. Their role is increasing. It would be unfortunate if this Commission's OVS rules damage or destroy this part of the information highway at a time when this

⁸A Geographical Information System utilizes a high capacity computer system to record, update and display underground and above ground utilities. The GIS system allows the user to promptly identify from one source the utilities and structures in a given location. High capacity video lines are necessary for the graphic information to be accessed from remote sites.

Commission and Congress are putting great emphasis on expanding the information highway.

MIT Communities are concerned because cable operators are likely to contend on discrimination grounds that they are not obliged to provide institutional networks if OVS operators do not have comparable obligations. Cable operators have been aggressive in making such discrimination-type claims, both to this Commission and to units of local government.

In this regard, the Commission should be aware that cable operators typically ground such claims on U.S. Supreme Court decisions extending some First Amendment protections to cable operators. The Commission should be careful to interpret Section 653 of the 1996 Act so as to prevent this result.

C. Communities Can Require Institutional Networks.

Municipalities may require cable operators to provide institutional networks under Section 611(b) of the Communications Act. MIT Communities believe this was, and is, crystal clear.

Section 611 states in pertinent part as follows:

"(b) A franchising authority may in its request for proposals require as part of a franchise, and may require as part of a cable operator's proposal for a franchise renewal, subject to section 626, that channel capacity be designated for public, educational, or governmental use, and channel capacity on institutional networks be designated for educational or governmental use, and may require rules and procedures for the use of the channel capacity designated pursuant to this section.

“(c) A franchising authority may enforce any requirement in any franchise regarding the providing or use of such channel capacity . . .

“(f) For purposes of this section, the term “institutional network” means a communications network which is constructed or operated by the cable operator and which is generally available only to subscribers who are not residential subscribers.” [emphasis added]. 47 USC § 531(b), (c), (f).

These sections could not be clearer. In each case they allow a franchising authority to require both (1) -- channel capacity for PEG channels and (2) -- channel capacity for institutional networks. The language and phraseology of section (b) is identical for both PEG and institutional networks. As the Commission correctly concludes, municipalities may require a cable operator to provide PEG channels. Municipalities may do the same for institutional networks.

The Commission's apparent interpretation that franchising authorities may not require the provision of an institutional network, but if provided, can mandate its use is nonsensical. It is also flatly contrary to both the language of the statute and how it has been uniformly interpreted.

In this regard, MIT Communities respectfully note that the Commission has had no experience in franchising matters and must defer on the interpretation of Section 611 to franchising authorities -- who have exclusive authority in this respect, who have exercised it, and who are knowledgeable as to the manner in which this section of the 1984 Cable Act has consistently been interpreted.

In this regard MIT Communities wish to advise the Commission that the studies to “identify the future cable-related needs” of a community which are conducted as a part of renewal proceedings under Section 626(a) (1) of the Communications Act commonly include institutional network requirements, as well as PEG requirements. The cable operator’s renewal proposal under Section (b)(2) must then contain “such information as the franchising authority may require,” which requirements in general are those from the community needs survey of Section (a)(1). 47 U.S.C. § 546.

These are the provisions referred to in Section 611 when it states that a franchising authority may “require as part of a cable operator’s proposal for franchise renewal . . . channel capacity for institutional networks. ” thus again making clear that a municipality may require the provision of institutional networks.

It is such “ascertainment studies” of future community needs which have identified the need for the many and varied types of institutional networks described in Section IV.B above. In response to these studies, cable operators have been required to include institutional networks in their franchise renewal proposals, resulting in such networks being built and placed in operation. Cable operators, in all likelihood, would not have built such networks but for the preceding requirements and the ability of franchising authorities to enforce them.

The provisions of the 1996 Act dealing with institutional networks also show that the Commission’s interpretation of Section 611 is wrong. Section 303 of the 1996 Act added the following sentence (among others) to Section 621(B) [47 U.S.C. § 541(B)]:

“(B) Except as otherwise permitted by sections 611 and 612, a franchising authority may not require a cable operator to provide any telecommunications service or facilities, other than institutional networks, as a condition of the initial grant of a franchise, a franchise renewal or a transfer of a franchise.” [emphasis added].

By this sentence, Congress made clear that franchising authorities expressly may require a cable operator to provide an institutional network as a condition of a franchise grant or a renewal. The Conference Report reinforces this in its statement that “subparagraph (D) establishes that franchising authorities may not require a cable operator to provide any telecommunications service or facilities, other than inter-governmental services [i.e. I-NETs], as a condition of the initial grant of a franchise or a renewal.” Conf. Rep. 104-458, 104 Cong. 2d Sess., 180 (Jan. 31, 1996). [emphasis added].

The preceding statutory provisions singly, let alone in combination, make clear that franchising authorities may require I-NETs as a part of the grant or renewal of a franchise.

D. Changes in Rule 75.1505.

Under Section 653(c)(2)(a), the Commission must impose obligations on OVS operators that “are no greater or lesser” than the obligations of cable operators under Section 611 of the Communications Act. Because under Section 611 franchising authorities may require institutional networks, the Commission’s OVS rules need to be amended to address this issue.

MIT Communities attach as Appendix 1 a redlined copy of Section 76.1505 of the Commission’s regulations with the necessary changes made to incorporate institutional networks.

In general, in Appendix 1 Section 76.1505 is unchanged, except for the repeated addition of the words "institutional networks" so that an OVS operator's institutional network obligations basically parallel its PEG obligations.⁹

The following description of the specific changes in Section 76.1505 and the reasons for them may be helpful.

- Title -- Changed to add institutional networks.
- Section (a) -- Institutional networks added. The OVS operator is subject to the separate institutional network requirements of each franchising authority where it offers service.
- Section (b) -- Institutional networks added. The OVS operator must meet the institutional network requirements of each franchise area, just as it must ensure that all subscribers in each such area receive all PEG channels applicable to that area.
- Section (c) -- Institutional networks added.
- Section (d) -- Institutional networks added.
- Section (d)(1) -- Institutional networks added in several places to make clear that if negotiations are unsuccessful the OVS operator must meet the same institutional network obligations as the cable

⁹Appendix 1 only corrects the Commission's Second Report and Order by adding institutional networks to Section 76.1505 while leaving the overall structure and substance of the Section intact. It does not attempt to correct other deficiencies in the Section.

operator and must connect with the cable operator's institutional network

Section (d)(3) -- Institutional networks added to make cable operators duty to interconnect clear, and "connection" changed to "connections" with corresponding grammatical changes.

Section (d)(4) -- Institutional networks added.
-- Second and third sentences changed to make clear that cost sharing does not apply to capital costs which the cable operator has recovered from subscribers, such as by an "external cost" passthrough under the Commission's rate regulation rules.

Section (d)(5) -- Reworded to make clear that it is the combination (i.e., the sum) of the PEG and institutional network obligations of the cable operator which is compared against the combined PEG and institutional network obligations of the OVS operator.

Section (d)(6) -- Institutional network services added to make clear that the same requirements apply to it as to PEG channels.

Note -- Institutional networks added to make clear that the requirements for them must be complied with as well.

Section (d)(7) -- Institutional network services added to make clear that OVS must comply with obligations imposed on the cable operator as the latter change.

Section (e) -- Deleted and subsequent section renumbered.

In Section 76.1505, institutional networks should and must be treated similarly to PEG channels. This is for several reasons: First, the exact institutional network requirements (like those of PEG channels) vary from municipality to municipality, as is evidenced by the list of types of services provided set forth above.

Second, the “no greater or lesser” requirement of Section 653(c)(2)(b) is not met unless institutional network requirements are addressed and met on a franchise area by franchise area basis.

Note that an effective interconnection between the institutional network of the cable operator and that of the OVS operator is essential. For example, if a municipal wide-area network currently operates on the cable operator institutional network, and it is desirable to extend it to additional locations on institutional network facilities provided by the OVS provider, an effective interconnection is essential.

Finally, as this Commission has noted “some flexibility” is desirable with respect to PEG access requirements. Second Report and Order, at ¶ 140. This is true both for institutional networks and for the combination of PEG and institutional network requirements.

In this regard, the inclusion of institutional networks in the Commission’s rules adds some needed flexibility. For example, where it makes little sense for the OVS operator to duplicate a portion of the incumbent cable operator’s PEG requirements, the OVS operator may be required to do more in terms of institutional network requirements with the result

that community needs are met, duplication is minimized and the obligations of the OVS operator overall are similar to those of the cable operator. Thus, the presence of institutional network obligations provides some flexibility and assistance in assuring that the OVS operator's obligations overall make sense and are comparable to those of the cable operator.

Revised Section 76.1505(d)(5) addresses this point specifically by making clear that it is the combined PEG and institutional network requirements of the OVS operator that cannot exceed the combined PEG and institutional network requirements of the cable operator, thus allowing some needed flexibility in the specific requirements applicable to each operator.

V. CONCLUSION

In light of the foregoing, MIT Communities respectfully request reconsideration of the Commission's Second Report and Order.

Respectfully submitted,

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