June 3, 2015

Filed under ECFS
Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, ROOM TWB-204
Washington, DC 20554

EX PARTE

Re: In the Matter of Amendment to the Commission's Rules Concerning Effective Competition, Implementation of Section 111 of the STELA Reauthorization Act. MB Docket No. 15-53; Released March 16, 2015

Dear Ms. Dortch:

The National Association of State Utility Consumers Association ("NASUCA")[1] hereby files this *Ex Parte* in reference to the above matter. NASUCA joins other numerous commenters that express concern about the Commission's proposal to presume a default finding of effective competition across the country for cable television services. NASUCA believes that adoption of such a presumption would go beyond Section 111 of the STELA Reauthorization Act and would be detrimental and contrary to the public's best interest.[2]

As stated by the FCC's own Intergovernmental Advisory Committee ("IAC") under Advisory Recommendation No: 2015-7, dated May 15, 2015 in this matter, although the FCC's

[1]/ NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA's members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General's office). NASUCA's associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

[2]/ NASUCA and Rate Counsel Reply Comments dated April 20, 2015, at pp. 4-6.

proposal came in response to a new directive from Congress, Congress left the FCC plenty of leeway: "As has been explained to the IAC, Congress asked for the FCC to consider ways to streamline the process to declare effective competition in the case of small cable operators. Federal law did not ask the FCC to consider creating a nationwide presumption that the entire country is subject to effective competition."[3] Moreover, IAC found that "there are important consumer protections in federal law that cable operators claim disappear when there is a finding of effective competition," and as approximately 23,000 local franchise authorities remain subject to effective competition, the Commission actions herein would clearly affect millions. [4]

In particular IAC's Advisory Recommendation finds that "the state of the video industry indicates that there is less competition, not more"[5] and a presumption of effective competition will allow cable operators to require subscribers to purchase any number of programming tiers before they may order premium and pay per view offerings; removes the prohibition against negative option billing [charges for services or equipment that a subscriber has not affirmatively requested by name]; and there remains a question whether public educational and government (PEG) channels must still be carried on a carrier's basic service tier, if such a tier is offered, where there has been a determination of effective competition.[6] As noted by NASUCA and the New Jersey Division of Rate Counsel in its reply comments in this docket, Comcast's February 2015 price sheet information shows elimination of a basic service tier which includes PEG and bumping the PEG platform to the next higher level which would "adversely affect the forty-five million Americans, or approximately fifteen million households, that live in poverty." [7] Lastly, even IAC submits that the FCC's numerous grants of effective competition in past years may not necessarily be due to the existence of effective competition but rather due in part to a failed process which includes a combination of bad data and often a local authority's lack of expertise and resources to successfully oppose petitions for effective competition.[8]

NASUCA agrees with the concerns voiced by commenters that a presumption of effective competition will jeopardize existing rules meant to protect consumers in the event of service outages or billing disputes; local franchising regulations that may exist to ensure that low-income areas are not excluded from any competitive alternatives in the marketplace; and potentially make it more difficult for local government to require service to an entire area, risking that companies will only invest and build out in the most profitable areas.[9] NASUCA

---

[3]/ IAC Advisory Recommendation at paragraph 1, at p. 1.
[4]/ IAC Advisory Recommendation at paragraph 8, at p. 3.
[5]/ Id., at paragraph 13, p. 4.
[6]/ Id., at paragraphs 9, 10 and 11, pp. 3-4.

[7]/ NASUCA and Rate Counsel Reply Comments dated April 20, 2015, citing to American Community Television, ("ACT") Comments filed in MB Docket 15-53, at p. 7 and *fn* 1, quoting a Huffington Post article: 45 Million Americans Still Stuck Below Poverty Line: Census, the "Poverty Line" in 2013 was $23,550 per year for a family of four.

[8]/ IAC Advisory Recommendation at paragraph 4, 5, 6 and 7 at pp. 2-3
[9]/ Verizon Won't Expand FiOS Beyond Current Franchise Obligations, CFO Tells Investors, Phillip Dampier September 25, 2012: citing to a N.J. State Commission Report: "While it is possible for Verizon to extend service throughout its authorized territory, to an additional 155 municipalities in the state that are not included in its current application of 369 towns, Verizon has indicated it will now concentrate its capital expenditures, expected to be between $16.8 billion and $17.2 billion in 2010 on its wireless telephone network. Further FiOS expansion will be

notes that in New Jersey, where Verizon NJ was granted a state-wide franchise, deployment of its FiOS offerings was rapidly deployed in the more affluent regions of the state while FiOS build-out continues to lag in more rural, and financially challenged areas. [10]

For all these reasons, it is critical for the Commission not to adopt a rebuttable presumption of effective competition without a more detailed examination of the true state of cable competition across the country. All interested and affected parties should be afforded the opportunity to issue discovery and submit data and other empirical evidence on the state of competition in each state to ensure continued and essential consumer protections.

We thank the Commission for its attention to these important considerations, which we believe are essential and in the public interest.

Respectfully submitted,

CHARLES A. ACQUARD,
EXECUTIVE DIRECTOR
NASUCA

8380 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380

Dated: June 3, 2015
Filed through the ECFS

limited to increasing penetration in those communities where FiOS is currently available, according to the company." New Jersey Board Of Public Utilities Report To The Governor And Legislature "The Effects Of The System-Wide Cable Television Franchise In New Jersey" under Public Law 2006, Chapter 83; Lee A. Solomon, President; Jeanne M. Fox, Commissioner, Joseph L. Fiordaliso, Commissioner; Nicholas Asselta, Commissioner; and Elizabeth Randall, Commissioner. Dated June 2010. See article and access NJ Board of Public Utilities Report therein at:
http://stopthecap.com/2012/09/25/verizon-wont-expand-fios-beyond-current-franchise-obligations-cfo-tells-investors/

[10]/ *Will Verizon be allowed to break its FiOS promise to New Jersey?* Sam Wood, Philly.Com, posted: Thursday, March 13, 2014, 4:41 PM
http://www.philly.com/philly/business/Will_Verizon_be_allowed_to_break_its_FiOS_promise_to_New_Jersey.html