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National Cable Television Association

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

December 8, 1998

**EX PARTE**

Ms. Deborah Lathen  
Chief, Cable Services Bureau  
2033 M St., N.W.  
Washington, DC 20554

Re: CS Docket No. 96-85

Dear Ms. Lathen:

In connection with the Commission's consideration of the above-captioned Cable Act Reform proceeding, questions have arisen regarding the scope of Section 301(e) of the 1996 Act. Section 301(e) amended Section 624(e) by deleting language that had allowed local franchising authorities ("LFAs") to enforce technical standards, and by including a broad prohibition on LFA involvement in this area. The Act provides that "[n]o state or franchising authority may prohibit, condition or restrict a cable system's use of any type of subscriber equipment or transmission technology."

Legislative history confirms that Congress's intent in amending the Act was to flatly "prohibit[] States or franchising authorities from regulating in the areas of technical standards, customer equipment and transmission technologies." H.R. Rep. No. 204, 104<sup>th</sup> Cong. 1<sup>st</sup> Sess. 110 (1995). Congress's action in this area was designed to "avoid the patchwork of regulations that would result from a locality-by-locality approach." Id.

The FCC's implementation of Sec. 301(e) must make clear that LFAs may not circumvent Congress's intent in adopting Section 301(e) by attempting to regulate cable equipment and transmission technologies through their general franchising or renewal authority found in Sections 621 and 626 of the 1992 Cable Act. Those provisions do not grant LFAs any independent power to regulate in the areas of technical standards, customer equipment, and transmission technologies. Indeed, in an environment in which cable operators' direct competitors are free to build their distribution systems utilizing the most appropriate design specifications and equipment, cable operators should not be disadvantaged by having their technical decisionmaking micro-managed by city councils. Rather, both the Commission and the courts have agreed that LFAs are only authorized to consider technical performance to the extent permitted by Section 624. See, e.g., City of New York v. FCC, 814 F. 2d 720 (D.C.Cir. 1987),

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aff'd, 486 U.S. 57 (1988). Allowing LFAs to continue to dictate a cable operator's use of equipment and transmission technologies through the franchising renewal process would undermine the entire thrust of Section 301(e) of the 1996 Act, rendering it meaningless.

The 1996 Act makes clear that LFAs may not adopt, impose or enforce either their own or FCC technical standards (e.g., carrier to noise ratios, signal levels), or dictate the type of equipment that an operator may choose to provide to its customers (e.g., by prohibiting the use of addressable converters; digital vs. analog or hybrid converters; scrambling vs. interdiction). Beyond that, local franchising authorities may not circumvent clear congressional intent through imposing technical standards or other requirements relating to equipment or transmission technologies in the franchising renewal process.

Because some LFAs have sought to regulate in contravention of these prohibitions, the Commission should clearly delineate in this rulemaking those areas that may not be regulated by LFAs. At a minimum, the prohibition should attach to the following specific areas:

- a) Approval of, modifications to, or specifications regarding system architecture and design (e.g., reviewing the transport technology, use of fiber, fiber count, type of security, or other design elements, as opposed to reviewing strand maps for system location);
- b) Requirements related to transport technology (e.g., insisting on use of fiber instead of coax or vice-versa; amount of fiber from headend to each node; digital vs. analog transmission; modulation schemes; signal processing; compression ratios and techniques);
- c) Node size (e.g., number of homes served by each node); number of nodes per headend; and node location;
- d) Number and specification of type of active and passive amplifiers/devices in any portion of the systems (e.g., no more than 4 amplifiers in any cascade);
- e) Redundancy level (e.g., rings to secondary, failure groups, equipment redundancy);
- f) Requirements relating to the number of analog and digital channels or the split between analog and digital bandwidth to be provided on the system;
- g) MHz specifications, such as requiring installation and activation of a 750 MHz system;
- h) Requirements relating to the means for transporting digital, analog, and HDTV signals (e.g., requiring transport in specific digital format, or within particular analog bandwidth);
- i) Requirements to implement two-way capability or reserve specific bandwidth for upstream signals;

- j) Requirements relating to the speed of Internet access or network design, modem speed or configuration, or transmission technologies;
- k) Requirements relating to I-Net design, network architecture or redundancy;
- l) Requirements relating to stereo channel specifications.

Specifying that LFAs may not dictate terms in these areas does not mean that LFAs do not have an important role to play in franchise renewal. To the contrary, they can require system upgrades if such upgrades are necessary to meet future cable-related needs, taking into account costs, and if there is a demonstrated demand for such upgrades. For example, assuming it is based on community needs at reasonable costs, an LFA could negotiate as part of renewal the number of channels of the upgraded system (e.g., X channels, regardless of transport technology used), and the connection points for an I-Net, leaving the architecture and design to the cable operator. LFAs are simply prohibited from dictating that such upgrades be completed using any particular equipment or transmission technology, or that a cable operator go about accomplishing the upgrade utilizing particular design specifications.

The Commission should implement Congress's deregulatory intent in this area in order to ensure that cable systems no longer face the technology micromanagement that the 1996 Act was designed to avoid and can vigorously compete with other broadband providers.

Respectfully submitted,



Daniel L. Brenner

cc: Magalie Roman Salas, Secretary, FCC  
Susan Fox, Esq.  
Rick Chesson, Esq.  
Jane Mago, Esq.  
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