incumbents' assertion, frequently with no proof whatsoever, that they own the inside wiring, or have a right to exercise dominion over the wiring under an agreement with the building owner and/or a state mandatory access law. In the Boston area RCN is currently unable to serve many hundreds of potential subscribers in MDUs in which it has placed a drop from its fiber optic system because some building owners will not allow overbuilding and the incumbent will not share use of the wiring with RCN. It should be emphasized that in such cases RCN has offered to negotiate terms and conditions for the lease or purchase of such wiring, but has consistently been rebuffed in such efforts.[28]

The Commission has attempted to address this issue through the adoption of complex video inside wiring rules.[29] These rules, however, do not go far enough to compel fair access to inside wiring. Indeed, some 10 months ago RCN sought an informal letter ruling from the Bureau with respect to the proper interpretation of the "demarcation point" concept as set forth in the Commission's inside wiring rules – an interpretation which, in RCN's opinion, would have materially assisted it in gaining access to hundreds of potential subscribers who were unreachable because the incumbent has refused to allow RCN access to its wiring even after

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[28] In these circumstances, the incumbents give lip service to welcoming competition, but of course do everything in their power to make such competition impossible. The incremental revenue from leasing access to wiring is, presumably, far less important than the attempt to freeze RCN out of the building in question altogether, and to create a hostile climate for other potential entrants.

[29] *See* 47 C.F.R. sections 76.800-806; *See also Telecommunications Services Inside Wiring, CS Docket No. 95-184, Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring*, MM Docket No. 92-260, Report and Order and Second Further Notice of Proposed Rulemaking, 13 FCC Rcd 3659, *recon. pending, appeal pending sub nom. Charter Communications, Inc. v. FCC*, (8th Cir., Case No. 97-4120).

RCN offered to negotiate equitable arrangements to share costs.[30] Numerous pleadings were subsequently filed addressing the RCN request. Sadly, to date RCN has received no response whatsoever from the Cable Services Bureau; its request for immediate relief, narrowly conceived to minimize its impact in factually different circumstances, has gone unaddressed and as a result hundreds of potential subscribers have been denied the opportunity to subscribe to an alternative MVPD service. In an industry which evolves as quickly and which is still as heavily regulated as telecommunications, administrative inaction covering very nearly an entire year is simply unreasonable.[31] Indeed, it is itself a barrier to the development of competition.

D. Denial Of Access To Essential Programming

The Notice of Inquiry seeks information on a number of issues which, from RCN's perspective, are interrelated. These include access to programming,[32] the effects of clustering,[33] and the carriage of sports programming.[34] Programming is of course essential to MVPD competition since in the absence of appealing programming nothing else matters. RCN has found it necessary to file a number of program access complaints against Cablevision, one of its

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[30] *See* RCN letter of September 23, 1998, characterized by the Bureau as a Petition for Special Relief (CSR-5311).

[31] Even a negative response is better than none whatever since a denial of relief can be the basis of a judicial appeal or serve as evidence of the need for legislation.

[32] Notice, par. 28.

[33] *Id.*, par. 25.

[34] *Id.*, par. 22.

entrenched competitors in the Boston and New York markets. A program access complaint filed by RCN-BecoCom in 1997 was subsequently resolved by the parties in RCN's favor.[35]

More recently, in May of this year RCN filed a complaint against Cablevision involving Cablevision's denial of sports programming to RCN in New York City.[36] As noted above, RCN currently serves approximately 50,000 subscribers in New York. Cablevision serves some 2.7 million subscribers in the city and surrounding suburban areas, as a result of the acquisition by it last year of some 850,000 TCI subscribers in the New York area.[37] Cablevision also owns the sports programming rights to 7 of the 9 professional teams in the New York area, and owns outright two of those 9 teams, as well as Madison Square Garden. It is thus overwhelmingly dominant in the sports programming market in New York City. Sports programming is widely understood in the MVPD industry to be crucial to any competitor. It is highly sought after by subscribers and is therefore an ideal weapon in the incumbents' anticompetitive arsenal. RCN alleged that, in early 1999, Cablevision had unlawfully withdrawn certain sports programming which RCN had previously been carrying and which RCN believed was an important element in its efforts to establish a competitive foothold in the New York City market. RCN alleged that Cablevision's withdrawal of the sports programming, which coincided with a shift in the distribution technology from satellite to terrestrial means, violated both §628(b) and 628(c) of

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[35] *Interface Communications Group, Inc., Digital Broadband Applications Corp., and RCN v. Cablevision Systems Corp., et al,* 12 FCC Rcd 6052 (1997).

[36] *RCN Telecom Services of New York, Inc. v. Cablevision Systems Corporation, et al,* File No. 99-CSR 99-5404-P.

[37] *In the Matter of Cablevision Systems Corp.*, FTC File No. 971-0095, 63 FR 5545 (1998).

the Communications Act.[38] RCN noted that sports programming is crucial for any MVPD distributor and that it had been deluged with complaints from its subscribers about the loss of the programming.

In its Answer Cablevision claimed that, because the programming at issue had been moved from satellite to terrestrial distribution, § 628 of the Act was irrelevant. It noted also that RCN was still able to carry most of the sports programming it had been carrying earlier and that the withdrawn programming had been integrated into a suite of local programs. Significantly, Cablevision also relied on the *Comcast* decisions -- two prior Bureau rulings involving the denial of sports programming to two DBS providers in the Philadelphia market.[39] RCN believes that these prior rulings of the Cable Bureau are wrong as a matter of law but in any case are factually distinguishable from its own complaint. These rulings, however, stand for the proposition that the Cable Bureau does not believe it has authority under § 628 of the Communications Act to enforce program access provisions for terrestrially distributed programming, and undoubtedly are of great potential importance to the future of MVPD competition both from DBS and from other MVPD competitors. The RCN complaint is currently before the Cable Bureau.

The two Philadelphia area program access complaints are also before the Cable Bureau on petitions for reconsideration filed by the two DBS complainants. These two complaints and RCN's provide an adequate factual basis for the Cable Bureau or the full Commission, *sua sponte*, to face up to the commercial reality that the cable industry is resorting to terrestrial

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[38] 47 U.S.C. § 548(b) and (c).

[39] *DirecTV v. Comcast Corp.*, DA 98-2151, *rel.* Oct. 27, 1998. *EchoStar Communications Corp. v. Comcast Corp.*, DA 99-235, *rel.* Jan. 26, 1999.

transmission in large part to avoid the program access provisions of § 628 of the Act. The Bureau's narrow and mechanistic reading of that section of the Act in the *Comcast* proceedings illustrate yet another direction in which regulation itself has become a substantial barrier to the development of MVPD competition. In each of the three cases one of the crucial issues is whether § 628 of the Act is applicable to programming which is being distributed by terrestrial means rather than by satellite. Complainants have contended that it is applicable, notwithstanding the reference in § 628 to "satellite cable programming," citing legislative history, public policy, and other provisions of the Communications Act, including sections 4(i) and 303(r).[40]

RCN contends in its complaint that the authority granted to the Commission in § 628 is not limited to cable programming distributed by satellite and that its broad authority under sections 4(i) and 303(r), which permit the Commission to take action necessary to carry out its broad mandate, are themselves sufficient to give the Commission jurisdiction to address instances in which vertically integrated program distributors deny programming to their competitors in violation of the overarching purpose of § 628(a), *i.e.*, to "promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming marketplace."[41] The RCN complaint cites language from the Supreme Court's seminal decision in *U.S. v. Southwestern Cable* Co., 392 U.S. 157 (1968), in which the Court sustained the FCC's assertion of regulatory authority over cable television systems even

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[40] 47 U.S.C. § 154(i) and 303(r).

[41] 47 U.S.C. § 548(a).

though no provision of the Act as it then existed purported to give the Commission such authority. In doing so, the Court emphasized at length the breadth and scope of the Commission's authority:

> The Commission's authority to regulate broadcasting and other communications is derived from the Communications Act of 1934, as amended. The Act's provisions are explicitly applicable to 'all interstate and foreign communication by wire or radio ***.' 47 U.S.C. s 152(a). The Commission's responsibilities are no more narrow: it is required to endeavor to make available*** to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service ***." 47 U.S.C. s 151. The Commission was expected to serve as the 'single Government agency' with 'unified jurisdiction' and 'regulatory power over all forms of electrical communication, whether by telephone, telegraph, cable, or radio." It was for this purpose given 'broad authority.' *Id.* at 167-8 (footnotes omitted).

In its complaint RCN also contends that because the programming in issue had previously been distributed by satellite and that there is a reasonable basis to believe the very purpose of moving the programming from satellite to terrestrial means was specifically to evade the provisions of § 628, the Bureau should grant RCN discovery rights to explore such questions.

This proceeding is not the forum in which to seek resolution of the merits of RCN's pending program access complaint. The nature of that complaint, however, and the kind of legal issue which it presents to the Bureau and to the Commission is relevant to the question posed in the Notice of Inquiry about barriers to MVPD competition. For a nascent competitor like RCN it is difficult enough to challenge immensely larger entrenched operators like Time Warner and Cablevision. While RCN hopes to ultimately establish a significant market share in the New York metropolitan area, as of now it has only slightly more than one (1) percent of the market. It must rely on the dominant ILEC in the market, Bell Atlantic-New York, to provide conduit space for its fiber optic network in Manhattan. When the Cable Services Bureau adopts narrow,

legalistic or static interpretations of law which predictably have the effect of further stifling competition, the market entry challenges are vastly enlarged. RCN does not expect the Commission to create jurisdiction where it has none. But where there is uncertainty, ambiguity, or latitude within the four corners of Congressional mandates, the Commission should be adopting approaches which advance overriding public policy, *i.e.*, approaches which stimulate new competition and facilitate existing competition. Its failure to do so becomes, as noted above, itself a serious barrier to new competition.

E. Difficulty In Accessing Local Rights-Of -Way On Fair And Reasonable Terms

RCN has encountered virtually universal enthusiasm among municipal or county franchise authorities for the entry of a substantial alternative service provider.[42] Nevertheless, serious governmental barriers to such entry exist. In its Initial Comments filed in the Commission's 1998 review of MVPD competition, RCN observed that access to local rights-of-way on fair and reasonable terms was a widespread and growing problem.[43] RCN will not reiterate here its prior citations to relevant provisions of law or to the Commission's numerous cases interpreting those provisions. It will advise the Commission, however, that the message concerning the limited scope of local authority in respect to use of public rights-of-way is not being received. Indeed, the intervening 12 months have only exacerbated the problem. As municipal authorities become more aware of the potential for raising revenue by imposing unreasonable fees on new competitors, the need to confront such pressures becomes ever more

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[42] *See* Appendix B hereto.

[43] RCN, Initial Comments in Docket No. 98-102, at 17-19.

steady. By way of illustration in one community served by an RCN MVPD operator local authorities attempted to impose a franchise fee which was based both on video and on any future telecommunications revenues. Such a fee would have violated § 622(b) of the Communications Act[44] and might well have been unlawful under other provisions of the Act. In another jurisdiction local authorities asserted virtually unconstrained power to grant or deny rights to continued use of public rights-of-way and to alter fees in mid-stream unilaterally. In a third jurisdiction, concessions which were commercially unreasonable were sought from RCN as the *quid pro quo* for use of public rights-of-way and which, if accepted, would have largely destroyed the commercial viability of the proposed new MVPD competition. On numerous occasions RCN has been faced with the expectation that as a newcomer RCN would agree to use underground conduit for distribution, even though the incumbent telecommunications and cable companies rely on overhead distribution.

RCN understands that municipal authorities are under pressure to find new sources of revenue and that growth in the telecommunications industry makes that industry look like easy pickings. Nevertheless, the necessity to negotiate community-by-community for reasonable rates, the necessity to explain the limits on local authority arising from the Communications Act, and the delay which these negotiations invariably involve, create substantial barriers to the growth of MVPD competition. The Commission's Notice of Inquiry in WT Docket No. 99-217, addressing these issues in the context of telecommunications carriers and section 253 of the

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[44] 47 U.S.C. § 552(b). *See, e.g.*, section 621(b)(3).

Act,[45] is laudable and RCN suggests that the Commission explicitly broaden that proceeding to cover MVPDs. The obligations on municipal or state franchising authorities set forth in section 253 of the Act apply in principle as well to management of public rights-of-way in the case of wireline MVPD providers, as the Commission has made clear in prior decisions. These obligations apply both in the case of traditional Title VI franchised cable companies[46] and for OVS providers.[47] The focus of the Inquiry which RCN suggests the Commission initiate (or the broadening of the above-mentioned Docket No. 99-217 Inquiry), should be to set forth for the use of local authorities clearly and succinctly the limits of the extent to which they can burden telecommunications providers (including video distributors) with fees, conditions, charges, taxes or contingent liabilities. In other words, the Commission should construe sections 653 and 253

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[45] *Promotion of Competitive Networks in Local Telecommunications Markets*, FCC 99-141, *rel.* July 7th, 1999.

[46] *See, e.g., TCI Cablevision of Oakland County,* 12 FCC Rcd. 21396, 9 CR 730 (1997), citing section 621 (b)(3)(B) of the Act, 47 U.S.C. section 541(b)(3)(B) ("franchising authority may not impose any requirement under this title that has the purpose or effect of prohibiting, limiting, restricting, or conditioning the provision of a telecommunications service by a cable operator or an affiliate thereof"). Citing the Conference Report that accompanied this language, the Commission noted that its intent is to "preserve the powers of local governments to manage the use of the public rights-of-way and to receive compensation for [their use] consistent with the stated standards that such actions be nondiscriminatory, competitively neutral and that fees be fair and reasonable." *Id.* at ¶ 65.

[47] In *Implementation of Section 302 of the Telecommunications Act of 1996, (Second Report and Order*), 11 FCC Rcd 18,223 (1996), *reversed and remanded, in part, on other grounds sub nom. City of Dallas v. FCC*, 165 F.3rd 341 (5th Cir., 1999), the Commission notes that state and local authorities may impose conditions on an OVS operator for use of the rights-of-way, "so long as such conditions are applied equally to all users of the rights-of-way (i.e., are nondiscriminatory and competitively neutral)." (footnote omitted). "Conversely, state and local authorities may not impose specific conditions on use of the rights-of-way that are unrelated to their management function or that apply to an open video system operator differently than they apply to other users of the rights-of-way." *Id.* at 18,330.

of the Act,[48] and related provisions and doctrines of federal preemption, so as to provide guidance to local authorities, and, if necessary, follow-up in instances where the overriding federal purposes expressed in the Communications Act are being thwarted by local authorities.

F. Adverse Judicial Action

In *City of Dallas v. Federal Communications Commission*, 165 F.3d 341 (5th Cir. 1999), *recon. den.* May 28, 1999, the Court reviewed the Commission's OVS rules and affirmed in part and remanded and vacated in part, certain of those rules. Among the rules vacated was § 76.1502[49] which preempts local OVS franchising. By doing so, the Court's opinion undermines the very core of the Congress' and Commission's scheme for stimulating investment in the OVS mode of MVPD competition, with OVS operators now subjected to the possibility of multitudinous, inconsistent, uncertain, and delayed regulatory restrictions and obligations.[50] In other words, one of the major trade-offs for an OVS operator's obligation to open up to one-third of its system to legitimate, unaffiliated VPPs[51] – namely, freedom from the burdens of local franchising – no longer exists. It was for this very reason that both the Commission, and RCN sought reconsideration of *City of Dallas* from the 5th Circuit Court of Appeals. Both the Commission and RCN argued that the Court's decision was erroneous as a matter of statutory construction and would undermine Congressional intent in adopting § 653 of the

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[48] 47 U.S.C. § 573 and § 253.

[49] 47 C.F.R. § 76.1502.

[50] RCN has already been subjected in one community to the possibility of having to secure an OVS franchise in a process which could take 15 months or longer and involve numerous impedimentia which are not applicable to traditional cable franchising.

[51] 47 C.F.R. § 76.1503(c).

Communications Act of 1996. Unfortunately, the Court denied such reconsideration, and as a result, the viability of OVS, which already was uncertain even with the federal preemption of local OVS franchising in place, has been even further eroded.[52]

Although Congress anticipated that the OVS model would be of particular interest to incumbent local exchange telephone companies, it is by now apparent that the OVS model has not been attractive to them. RCN is the only entity of any significant size and financial depth to adopt the OVS approach. The damage done to the commercial appeal of the OVS model by the 5th Circuit's decision compounds the commercial uncertainty of the OVS approach. It therefore becomes even more urgent than it was previously that the Cable Bureau interpret its own rules in a way which maximizes the commercial attraction of OVS, rather than, as it has done heretofore, compel RCN to disclose sensitive system and corporate data to its immediate local MVPD competitors. It is also crucial to the success of the OVS model that the Commission seek a writ of *Certiorari* in the Supreme Court to review and reverse the decision of the 5th Circuit.

IV. CONCLUSIONS

In these Initial Comments RCN has demonstrated that it is progressing steadily in its plan to enter the MVPD market, both as an OVS operator and as a traditional Title VI cable franchisee. It is doing so, however, as part of its overall plan to provide four principal categories of service to the residential market. If RCN's only commercial interest were in the provision of competitive MVPD services it is questionable whether the company would have committed so

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[52] In its Petition for En Banc Rehearing in the 5th Circuit, the Commission itself alluded to the severe impact the Court's ruling would have on OVS: "It is difficult – if not impossible – to imagine why any company would choose to provide OVS service if it is required both to obtain a local franchise and to share its channel capacity with other programmers." Petition, at 4 (emphasis in original).

much financial and human capital to the penetration of such a monopolistic industry. As an entrepreneurial enterprise RCN of course expects to take risks and to be rewarded (or punished) for having done so. But one of those risks should not be the indifference or even resistance of regulators. Congress has made plain its desire – indeed its expectation – that the Commission will use the statutory tools it has been given to facilitate the entry of competition, not for the sake of competitors but in the long-term interest of the public in having a competitive industry.

The wisdom of Congresses' views is apparent in the effects RCN's entry has had on the entrenched monopolists and in the universal enthusiasm of local franchising officials to have a competitive provider of MVPD services. But more is necessary: the Commission must, itself and through its Cable Services Bureau, adopt an active, pro-competitive stand, and, consistent with that orientation, adopt decisions which foster rather than impede competition. Indeed, in respect both to inside wiring and program access, both of which are crucial for successful competitive entry, the Commission must overcome its reluctance to aggressively interpret its broadly written enabling statute. It must acknowledge and act upon the commercial reality that incumbents resort to every conceivable tactic to delay, burden, or postpone competitive entry. Similarly, interpretations of OVS rules which strain their plain language to protect the incumbent, dominant cable industry make no sense and can only have the effect of curtailing or delaying the development of a competitive environment in the MVPD marketplace.

If the Commission concludes, notwithstanding RCN's contentions in its various submissions that sections 4(i) and 303(r) of the Act, together with various provisions of Title VI give the Commission all the authority it needs to promote MVPD competition, that it simply lacks adequate statutory authority, RCN urges it to make every effort to formally advise the

Congress of such views and to seek remedial legislation. The purpose, after all, of the Commission's extensive annual gathering of data and the presentation of its analysis in response to section 628(g) of the Act is not to discharge an abstract obligation but is to keep the Congress informed about this important subject matter, and to advise the Congress when, in the Commission's expert opinion, new or additional legislation is required to properly serve the public interest.[53] RCN recognizes that it is only one player among many in the MVPD marketplace. It is, however, symbolic of the kind of entry the Congress and the Commission have desired: adequately funded, dynamic, technologically sophisticated and forward-looking. Simply put, if the regulatory environment were more reliably and affirmatively pro-competitive, RCN has no doubt that it could have made substantially more progress than it has so far been able to achieve.

Respectfully submitted,

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August 6, 1999

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[53] In the previously cited hearings before the House Telecom Subcommittee a senior Commission official noted, with respect to the Commission's authority to address inside wiring issues, that "it would save a lot of time, effort, and sleepless nights for us if the Congress were so inclined to tell us FCC go this far, don't go any further than this and just what the standards would be." Transcript at 39.

APPENDIX A

RCN SERVICE CONNECTIONS

Advanced Fiber On-Net	Fourth Quarter, 1998	First Quarter, 1998
Voice	30,868	4,473
Video	86,349	15,599
Data	6,176	267
Subtotal On Net	123,393	20,339
Off-Net		
Voice	65,022	40,447
Video	175,313	227,558
Data	491,633	370,271
Subtotal Off Net	731,968	638,276
Total Service Connections	855,361	658,615
Advanced Fiber Homes Passed	304,505	63,386
Marketable Homes	270,406	N/A

APPENDIX B

BOSTON AREA NEWSPAPER ARTICLES

City hopes cable pact means rate war

By Bruce Mohl
GLOBE STAFF

With Cablevision already laying the groundwork for another price increase next year, the city of Boston yesterday tried to spur a rate war by signing a 15-year franchise agreement with RCN Corp. that will eventually give residents a choice for cable television, local phone, and high-speed Internet service.

The deal calls for RCN to build a $250 million network capable of serving all residents of the city within four years. Services will be rolled out neighborhood by neighborhood as construction is completed.

The Princeton, N.J., company also agreed to pay 5 percent of its gross revenues to the city, to build and manage a $10 million private data network linking all city buildings, and to provide an estimated $1 million in equipment and services.

Mayor Thomas M. Menino, showing frustration with Cablevision, predicted that competition will eventually pay dividends for Boston residents in the form of lower prices and better service.

Cablevision last year signed a 10-year franchise extension with the city, agreeing to upgrade its system within three years to offer more channels, as well as local phone and high-speed Internet service.

"That's over a year ago, and we still haven't seen Cablevision step up to the plate," Menino said. "Cablevision over the years has promised a lot, and I'm still waiting for delivery of some of those promises."

RCN | Page A6

Boston Globe
7/28

City hopes cable pact means a rate war

■ RCN

Continued from Page A1

A Cablevision spokesman declined to respond to the mayor's comments, other than to note that an Internet service announcement would be forthcoming this fall. The company also issued a statement saying: "RCN's history is littered with broken promises and multiple government investigations. We're not the least bit afraid of competition, and we will not be outhustled or outmarketed by anyone."

Cablevision executives recently approached city officials about raising cable TV rates again next year. The city's corporate counsel, Merita Hopkins, confirmed that the discussions had taken place but said no specific numbers have been discussed.

In a filing with state regulators, Cablevision has indicated it legally could raise basic cable rates $2.89 a month, or 27 percent, next year. Cablevision's popular Optimum service, which increased in price 6.5 percent this year, is no longer subject to regulatory controls. Company officials say no decisions have been made about rate hikes for next year.

Officials in Boston and other municipalities are counting on competition to keep cable TV rates in check, now that price regulations covering the bulk of the average customer's cable bill have expired.

RCN, which is 49 percent owned by Boston Edison, eventually plans to challenge cable TV providers in 65 Greater Boston communities. RCN offers low-cost cable TV rates and competitive phone and Internet prices. It has systems operating in Somerville, Arlington, Newton, and Waltham, and is constructing more than a dozen others.

GLOBE STAFF PHOTO / GEORGE RIZER

Michael J. Mahoney, president of RCN, took questions yesterday as Mayor Thomas M. Menino looked on.

The company has already wired 10 percent of Boston, under an interim deal with the city that allowed the company to cherry-pick service areas while building a network that could be rented to competitors. The new franchise agreement commits RCN to wire the entire city and drops the renting requirement.

Competition from RCN and satellite broadcasters like DirecTV has forced cable TV companies to moderate rate increases. The exception has been Time Warner, which froze rates in Somerville two years ago in response to RCN. MediaOne, which competes against RCN in Arlington and Newton and is in the process of acquiring Time Warner's systems in Massachusetts, hiked its rates 5 percent this year.

While municipalities have generally welcomed RCN, the company has had growing pains. Municipal officials have grumbled about the company's lack of response, and analysts have criticized the company's customer service response, particularly for high-speed Internet service.

RCN in the past has been tight-lipped about its customer base in Massachusetts, and yesterday officials gave conflicting numbers. A company spokesman said RCN had 27,500 connections in Boston, with a connection being a hookup for any type of phone, cable, or Internet service. A customer with all three services would represent three connections. The spokesman declined to provide more detailed information.

Herald
7/28

HERALD F

NEW DEAL: RCN Corp., headed by David McCourt, above, yesterday signed a 15-year deal with Boston, enabling it to offer cable, and Internet service in Boston.

Boston strikes deal with RC

By JOE BARTOLOTTA

Mayor Thomas Menino slammed Cablevision yesterday while inking a 15-year deal enabling its rival, RCN Corp., to also offer cable, phone and Internet service to Boston's 280,000 households.

Menino hopes the head-to-head showdown will cut the cost of those services and force Cablevision Systems Corp. to make good on its promised network upgrades.

"Cablevision has promised a lot, but I'm still waiting for some of these promises made 25 years ago," Menino said.

The RCN deal replaces a tentative one the city signed in 1997. It expired yesterday.

Cablevision executives declined to respond to Menino but issued a general statement.

"The people of Boston are too smart to be fooled by another version of the same RCN press release we've seen over the past several years," said Cablevision spokesman John Urban. "RCN's history is littered with broken promises. We're not the least bit afraid of competition and we will not be outhustled or outmarketed by anyone."

Under yesterday's deal, RCN of Princeton, N.J., in a joint venture with BEC Energy, the parent company of Boston Edison Co., will install a $250 million broadband network across the city over the next four years.

RCN will share 5 percent of its revenue with the city — the same amount Cablevision pays.

RCN also agreed to install a $10 million fiber-optic network in all city offices and schools.

Cablevision had made the same pledge last year and says the work is under way.

The mayor, however, said the company's not moving fast enough on that project — or on posed upgrade of city-own ing for the elderly.

RCN says it plans to off phone and Net services i and 64 surrounding comm

When RCN entered So Time Warner dropped its 11 percent. Boston hopes f lar response.

Critics in communities Hudson, though, have RCN makes big promis slow to deliver.

RCN can't say how m

Turn to Page 32

Boston strikes deal with RCN

From Page 29

tomers it has signed up since entering the region four years ago. It began in Boston by targting easy-to-wire locations like big apartment buildings. It now has 27,500 connections in the city, which could be either phone, cable or Internet service, a spokesman said. No further breakdown was available.

Cablevision is challenging RCN's joint venture with BEC Energy.

In May, Cablevision won the support of Attorney General Thomas Reilly, who urged the state Department of Telecommunications and Energy to fine BEC, nullify the deal and force the company to sell a venture he says is wrongly funded by electric customers.

Thomas May, chairman of BEC Energy, said he's confident the DTE will support the joint venture. It will make the company stronger, he said, ultimately resulting in lower cable, Internet and electric rates.

If the agency rules against BEC Energy, May said, RCN could restructure its 15-year deal with the city to include another corporation, he said.

ISSUE OF THURSDAY, DECEMBER 17, 1998

The Arlington Advocate

www.townonline.com/arlington SERVING THE RESIDENTS OF ARLINGTON SINCE 1872

What cable competition can buy

FRONT PAGE

BY SUSAN DANSEYAR
STAFF WRITER

If Town Hall's experience is any indication, residents will benefit from the competitive market created by two cable providers.

That's the opinion of Al Minervini, Arlington's comptroller and coordinator of the data processing department. Minervini was on the team that negotiated a contract last summer with Residential Communications Network Inc. (RCN) of Boston and Boston Edison.

CHANNEL LINEUP PAGE 13

In August, the Board of Selectmen approved the joint venture of Residential Communications Network Inc. of Boston and Boston Edison, commonly referred to as RCN, to take advantage of the competition that the Telecommunications Act of 1996 encourages.

Arlington is one of the first communities in the country to be serviced by RCN and to have a competitor going head-to-head with its traditional cable provider, MediaOne. So far, in the state, RCN is contracted to service only Arlington, Somerville and Boston.

The town has already benefited from the competitive marketplace, just in terms of negotiating contracts, Minervini said. "We could say to them, 'MediaOne gave me this, or RCN gave me that,' and the town was able to get as good or even a better offer from MediaOne and RCN at different times," he said.

Selectmen do not endorse one provider over the other but negotiated a contract with RCN to promote a competitive marketplace so Arlington residents might shop for the best service and rates, according to Town Counsel John Mahr.

Mahr said the major benefits for Arlington, as dictated by MediaOne's contract, are an Institutional Network (I-Net) permitting transmission from all municipal buildings at no cost, saving the town a substantial amount of money; an educational grant of $150,000

RCN PAGE 17

BEARS WATCHING

STAFF PHOTO BY ELLEN BULLOCK

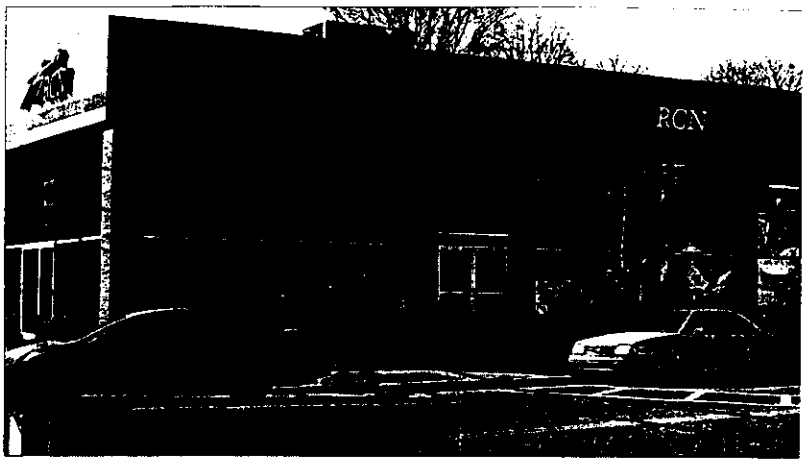
Ethan Wong, 21 months, appears uncertain what to make of the collection of finely dressed teddy bears at Sunday's 'Get Teddy Ready... for Christmas' parade held at the Arlington DeWolfe of New England. The bears will be donated to needy children by the Salvation Army.

Town benefits from cable competition

RCN, FROM PAGE 1

for the schools for technology equipment; free Internet access for all public schools and libraries and the Community Safety Building for four years; 50 cents per subscriber at this time and 5 percent of gross revenue if federal law changes and lifts the limit towns can receive from cable providers which the town puts into its General Fund; and a commitment to convert the former Dallin Library into a local access station, saving the town substantial costs for renovation.

The major benefits RCN provides, according to the contract signed on Aug. 25, 1998, are: fiber wiring to 27 public buildings at no cost; savings of approximately $250,000 in wiring costs; a brand new phone system for the town, also using fiber wiring, which reduces Arlington's phone budget by some $30,000; and 5 percent of gross revenue on March 15 of each year.



STAFF PHOTO BY SUSAN DANSEY

RCN has established a local presence in Arlington, with its Massachusetts Avenue customer service center.

In addition, the town's contract with RCN requires that it offer service to all residents despite the fact that RCN, an open video system (OVS), is not required by law to do so because it is a franchise.

RCN will provide a video distribution center at the high school, valued at some $60,000; 40 IBM-compatible computers, worth approximately $40,000; $30,000 in books and information materials for the school media centers; and money for landscaping and fencing for RCN boxes at the middle school.

The competition for customers that is emerging in the Boston area is unlike anything going on in the rest of the country, said Richard D. Jenkinson, director of communications and public affairs for MediaOne's northeast region. Although people can expect the competition allowed by the Telecommunications Act to bring better service and pricing eventually, the change is not going to happen overnight, he said.

"Billions of dollars have to be spent to upgrade systems before a lot of customers will see the benefits of competing providers," he said. "Here in the Boston area, however, it's already happening."

Minervini said he has been told by RCN executives that Arlington, because it is the first town to negotiate a contract with RCN, is receiving benefits no other community will be able to get.

What residents get

According to James Maiella Jr., director of public relations for the company, RCN has almost completed its wiring for the entire town. The first customer received service in October.

Currently, Maiella said, 80 percent of the town is wired for service, a percentage he feels is an excellent start.

"Very shortly, we expect the entire town to be wired," he said. "There's always a small percentage of households in every community that take longer, so it's difficult to say exactly when the whole town will be set up."

RCN's policy does not allow releasing the number of subscribers in a given area, Maiella said. Each quarter, however, RCN releases the number of subscribers for the entire company as part of its earnings statement.

"RCN has seen a strong response to our services here in Arlington," he said. "We feel things are going quite well."

RCN provides customers with multiple services and the convenience of dealing with one company, Maiella said. Services include phone, long distance, cable television and Internet access.

RCN's basic cable lineup includes 81 channels, including such special channels as Disney, for which other cable providers charge extra, Maiella said. The entire cable lineup includes more than 110 channels, which Maiella describes as a "broad" lineup th includes channels other provide cannot get.

MediaOne, according to Jenki son, is providing the new servic offered by other companies, no that it has upgraded to a broa band network. Currently, he sai MediaOne provides three tiers basic cable as well as high-spee Internet access. Soon, he adde MediaOne will offer customers local telephone service as well.

Prices

According to Maiella, RCN prices are 5 percent below Be Atlantic for local telephone se vice: 9.9 cents a minute anywhe at any time of day or night f long distance service; $27.95 p month for basic cable servic $19.95 per month for dial-u Internet access; and $39.95 p month for high-speed Intern access.

Basic cable monthly charg drop to $24.95 when packag with local telephone service; an dial-up Internet access can be low as $13.95 per month whe customers sign up for a multi-ye deal, Maiella said.

MediaOne's prices, according the listings sheet, will inclu Digital Telephone Services early 1999. In direct competition wit Bell Atlantic, the local telephor service will be provided ov MediaOne's network and inclu 17 different features such as ca waiting and voice mail. The pri when included in a package, Jen inson said, will be $26.95 p month compared with Be Atlantic's price of approximate $50 and RCN's of approximately percent less than that.

In addition, customers pa $49.95 per month for MediaOr Express which provides hig speed Internet service; and $30.9 per month for basic cable, whic includes three packages, and a additional amount per month f special channels, depending o services.

MediaOne Express month rate drops to $39.95 for custome who have the standard cab package. There are multiple pr

SEE RCN, PAGE

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RCN, MediaOne head-to-head in bid for town's cable customers

RCN, FROM PAGE 12

mium service packages offering substantially lower rates, Jenkinson said, when customers sign up for several cable packages called NexTV.

What's the difference?

Jenkinson said it's too early to tell what kind of competition RCN poses for MediaOne.

MediaOne has not altered its marketing efforts since RCN began wiring in Arlington, Jenkinson said. A few years ago MediaOne started upgrading all cable networks to fiber optic systems, spending approximately $1 billion in New England alone, he said.

"Arlington was upgraded to a broadband network a few years ago to prepare for the competition," he said.

RCN and MediaOne provide comparable cable services, he said, with a few differences. According to the listings, RCN has a few more stations but MediaOne carries more local broadcasters, such as New England Cable News.

Admittedly, Jenkinson said, MediaOne owns a large percentage of New England Cable News and has exclusive rights to offer it to customers.

According to Maiella, Congress has "cracked down" on exclusivity, and RCN has access to most things customers want, with a few minor exceptions.

When customers compare entire packages — which include telephone, Internet and cable service — they'll begin seeing MediaOne has the better discounts, Jenkinson said.

For example, early in 1999, MediaOne will begin offering its customers a new phone service

Ultimately, Jenkinson said, the choice customers make between MediaOne and RCN will come down to pricing and customer service. "Some customers may be willing to pay an extra dollar or two a month in exchange for better service," he said. "We feel MediaOne will provide customers with better service and experience in the marketplace."

MediaOne provides customers with excellent service, including a service center in Chelmsford where local employees provide assistance, Jenkinson said.

MediaOne decided to close its Arlington office a year ago and build a local cable station in town instead, Jenkinson said. The customer service office in Chelmsford handles calls 24 hours a day, seven days a week, he said.

"We've been doing business in Arlington for years," Jenkinson said. "We feel we are well positioned and offer a very competitive package."

Maiella, however, claims customers will find RCN offers more.

"Our basic plan is to provide better services over a better network for a better price," he said. "That's true for one of our services and it's true for multiple services."

The robust network, Maiella said, is what allows RCN to provide customers with superior service. The fiber optic network, he said, offers the highest communications system that exists.

In addition, Maiella said, RCN establishes a local presence in its communities, which it has done in Arlington with the Massachusetts Avenue customer service center. "Our goal is to establish the largest customer base possible," he said. "And the way we do that is by offering the customer a choice."

Dedham and RCN to meet over cable

By Shawn Michael Smith
STAFF WRITER

DEDHAM — The Residential Communications Network may not be quite the white knight in Dedham that it was in Norwood, but Cable Renewal Advisory Committee members see the benefits of competition in the arrival of the new cable provider.

Committee members Tuesday night scheduled a face-to-face negotiation session for June 9 after finding some confusing passages in RCN's license application. But committee Chairman Nancy Moloney expects the completion of negotiations within a matter of months. She said RCN representatives hope to have the town wired with a new cable network within a year.

RCN made waves in Norwood this month when its representatives clinched a 10-year contract that promises subscribers 100 channels for $24.95 a month. Norwood Cablevision currently supplies 50 channels for $60, according to Gordon Smith, a former cable commission chairman in Norwood.

Committee Chairman Nancy Moloney said RCN still has not settled on specific rates and service packages, but she said the newcomer's product will be similar to that provided in Dedham by Media One. Unlike Cablevision in Norwood, Media One in Dedham upgraded to fiber optic cable in late 1996.

Media One's most basic package offers 17 channels for $6.04 per month. These are broadcast television and local access channels.

Media One subscribers can also receive 60 channels for $29.68 a month and 100 channels for $71.63 per month.

Media One also provides high-speed Internet service and is preparing to come in with telephone service. Moloney said both RCN and Media One will offer more discounts to subscribers who take all three services. She said the committee is trying to negotiate a free Internet channel for each classroom in Dedham's seven schools. Currently, Media One routes Internet only to school auditoriums.

But several committee members said RCN's presence at the table has already brought improvements from Media One.

"As soon as we started negotiating with RCN, Media One put the Disney Channel in their basic package," Moloney said. "And Media One just picked up the Travel Channel, which is also on basic and cost free. RCN has the Food Channel and Media One does not."

"Media One has much improved their window of service," said committee member Susan O'Leary. "Now, they offer a two-hour window. Previously, you had to stay home from 8:30 a.m. to 1 p.m. (to wait for a service man). Can you afford to take an entire morning off in your business?"

Committee member Marie-Louise Kehoe said Media One has also improved customer service, which has been a problem in the past.

"That wasn't the result of RCN," said Media One spokesman Rick Jenkinson. "What happened is we moved the Disney Channel back to the basic tier on a region wide basis, because customers wanted more family packaging. This is not a response to competition, necessarily, but a preparation for competition. We have to add value to our product in the telephone and Internet market place. This is a continuous improvement effort."

RCN's contract requires the company to provide a publicly listed phone number with wait and transfer times of no more than 30 seconds. It also requires the company to "maintain sufficient customer service representatives to answer all subscriber calls."

Moloney said Dedham's location next to Norwood gives the company incentive to complete negotiations quickly so they can rewire the entire region all at once.

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Thursday, June 10, 1999

Competition for local cable customers begins

RCN lays cable, MediaOne enters telephone arena

By Brian Boyd
TAB & PRESS STAFF

As the town's first cable competitor builds its network, the established cable franchise will take on the telephone industry.

MediaOne announced that starting this week it will offer local telephone service, challenging Bell Atlantic's monopoly in the town. Meanwhile, RCN won approval from the Town Council Tuesday night to begin underground wiring so it can complete its network by the early fall.

The expansion of MediaOne's digital telephone service fulfills the potential of the federal Telecommunications Act of 1996, which was intended to encourage competition between telecommunications companies for telephone, cable and Internet customers, MediaOne spokesman Rick Jenkinson said.

When RCN becomes an effective competitor of MediaOne, the franchise's cable rates will be deregulated, Jenkinson said.

"Congress wanted telecommunications companies to let the marketplace dictate prices and programming and give consumers more choices," he said.

Residential Communications Network is a Princeton, N.J., company offering cable, telephone and Internet services in the Boston area in a joint venture with Boston Edison. Town Manager Michael Driscoll approved an Open Video System contract with RCN in January.

The telecommunications act created the OVS option to create competition in cable markets quickly. An OVS does not have to go through the process of negotiating a franchise, which can take years, before it enters a community.

"Every time you dig someone's street, it is a hassle. No one is happy about it. But the alternative is to ask the town to place more poles. No one wants to see that."

Barry Maffini,
manager of public ways for RCN

RCN will offer 80 channels for a basic rate of $27.95. Customers can receive greater savings by purchasing a package of two or more services. RCN "bundles" cable, Internet and telephone services for consumers. MediaOne has a basic rate of $28.92 for 70 channels, and it also offers Internet service.

Progress comes with a price. In order to meet its construction goals, RCN will have to dig up residential streets to lay its wires. RCN's underground wiring in Somerville and Brookline have created traffic headaches.

However, Barry Maffini, manager of public ways for RCN, said Watertown's project will involve less street work than other communities, because most of the wiring will be strung from telephone poles. The firm has already started overhead wiring throughout the town. It will dig up streets where no telephone poles are present, he said.

"Every time you dig someone's street, it is a hassle," Maffini said. "No one is happy about it. But the alternative is to ask the town to place more poles. No one wants to see that."

The choice between overhead and underground wiring depends on the past practice of the community. Somerville had more underground infrastructure, so RCN focused on cutting into streets and placing conduits underground, Maffini said.

RCN laid 4,025 feet of fiber optic cable on North Beacon Street when the town reconstructed the street. It merely asked the council for permission to use that cable Tuesday night. The company will place wires on residential streets off North Beacon Street, from North Beacon Court to Bay Street. Those construction projects involve the installation of between 85 and 429 feet of conduit.

RCN also won approval to place 776 feet of wire on Mount Auburn Street and 160 feet on Summer Street. It will install 85 feet and 45 feet at Patten and Garfield streets. Maffini said the wiring of Mount Auburn Street will be at two locations, one near Summer Street and the other close to Walnut Street.

Councilor Paul Denning said he has received a couple of complaints about RCN placing wiring on telephone poles without informing residents.

Maffini could not say when construction will begin, except that it will be soon. Public Works Superintendent Gerald Mee said his department will drop fliers in the neighborhoods where construction will take place, notifying residents when the projects will start. He said RCN will be responsible for filling in trenches after it excavates streets for wiring.

The real competition may not be between MediaOne and RCN, but between MediaOne and Bell Atlantic. MediaOne merged with AT&T six weeks ago and is offering telephone service to an increasing number of communities. And Bell Atlantic is going after MediaOne's customers. It is working with Direct TV to provide residents with satellite television, Jenkinson said.

RCN will also go after Bell Atlantic customers. The firm has sought telephone and Internet business in the communities where it is already established, because those services offer the most profit, Jenkinson said.

A billion-dollar investment in fiber optics allows MediaOne to offer telephone service. Watertown residents can buy their local service for a monthly rate of $26.95. "Bundling" the services creates savings for the customers. They can also buy Internet service for $29.95, $20 less than what it would cost alone, Jenkinson said.

SUDBURY
TOWN CRIER & TAB
SUDBURY, MA
Thursday, June 10, 1999

Town poised to license both RCN, Cablevision

FRONT PAGE

By Clay Gollobin
STAFF WRITER

SUDBURY — Although two competing cable providers promised residents a year ago they would soon be able to surf the Internet at close to light speeds, negotiations between Sudbury's Cable Television Committee and the two companies have slowed to a crawl.

Cablevision and Residential Communications Network (RCN) made their pitches to the committee last June: Cablevision trying to get its contract renewed, and RCN hoping to be allowed into town.

The committee expects to issue licenses to both providers.

Committee member Hans Lopater said he has been disappointed with the committee's lack of progress.

"It's moving very slowly," he said.

RCN was sent a contract proposal, to which it responded, Lopater said. The town hasn't gotten back to the company since then.

Cablevision's contract expires in April 2000 and renewal of its license is virtually assured, barring any "egregious act" on its part, Lopater said.

Committee Chairman Jacob Kuykendall said the town is close to movement on both fronts.

"We are in the process of issuing a draft license to RCN," Kuykendall said. "That should be ready to issue within the next 10 days."

A draft license for Cablevision

CABLE, see page 10

Competing cable could arrive in two years

CABLE, from page 1

could be issued in 45 to 60 days.

Even if RCN's license is issued quickly, it will be nearly two years before Sudbury residents actually have a choice between cable providers.

"Assuming we get a contract with RCN within the next two and a half to three months, they would start building and the process is expected to take from a year to a year and a half," Kuykendall said.

Messages left for RCN spokesmen this week were not returned by press time.

David Green, Cablevision's director of community and public affairs, said his company met with the Cable Television Committee in early March and the ball is now in their court.

"I'm waiting to hear from the town of Sudbury," Green said. "We're ready to go. We're rebuilding the system regardless of the contract."

Over the next year, he said, the system will be expanded to 110 channels and high-speed cable modem access.

Sudbury needs to decide what it wants and how much it's willing to pay, Green said.

"In Framingham and Hudson, where we've just concluded negotiations and have a new contract," he said, "the focus is on education."

Green said Cablevision could provide the town such services as Internet access in the schools, television production education, and an institutional network.

"These all cost various amounts of money," he said. "What we need to hear from Sudbury is what its priorities are."

While the cable committee has been exploring several options, he said it hasn't given Cablevision any specific direction.

"There are some people in Sudbury that want the whole town wired," Green said.

Cablevision has wired 98 percent of the town and the remaining two percent is rural and so far away from the provider's plants that to extend service to them would drive up everyone else's rates, according to Green.

Kuykendall said the town would reap benefits from both companies.

From Cablevision, he expects an upgrade of the public access studio at Lincoln-Sudbury Regional High School. RCN may build an "I-Net" a network of fiber optic cables connecting town buildings, allowing the town has high-speed communications at a lower cost than it is currently paying.

"What the I-Net would do would carry all the official traffic between the buildings, so there wouldn't be a need to pay a monthly fee," Kuykendall said. "Right now, the connection is a very low speed and very expensive for the bandwidth that they're getting."

The town currently uses data lines leased from Bell Atlantic, according to Mark Thompson, the town's technology administrator.

"We're looking to have that upgraded, right now, because the connection is so slow," he said.

He estimated the town could save as much as $1,000 a month as well as upgrade the Internet speed by more than 10 times by switching to the fiber optic lines.

The perks that come with signing a contract with RCN isn't the only reason for bringing in a second provider, however. Introducing RCN would provide Cablevision with competition, which Kuykendall said would help keep Cablevision's rates down.

"Since we don't have any effect over what they charge, the only way we can effectively keep down rates is to introduce competition," Kuykendall said.

"It appears we're not moving very fast, but the whole thing is gauged on the Cablevision contract."