

*The Borough of Kutztown, Kutztown, PA.
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Response for FCC inquiry on the state of competition in the Cable Industry.
Anticompetitive practices occurring in the market place.

Overview:

The Borough of Kutztown, Kutztown Pennsylvania built an advanced Fiber-to-the-Home (FTTH) telecommunications infrastructure and launched voice, video and data services in August, 2002. The current incumbents include Verizon (phone and Internet services), Service Electric Cablevision (cable modem and cable television services) and a number of small and national Internet Service Providers (ISP).

To our knowledge, Verizon has not participated in anticompetitive behavior. Also, to our knowledge, the local and national ISPs have not participated in anticompetitive behavior.

Service Electric has, in our opinion, embarked on a number of anticompetitive and questionable business practices. It is our opinion that Service Electric's actions are evidence of their attempt to limit and remove the Borough from the cable television and broadband Internet markets, which would allow their traditional monopolistic market control to return to the Borough of Kutztown.

Predatory Pricing

Before the Borough's launch of the FTTH system, Service Electric Cablevision pricing for television and one-way cable modem services in the Borough of Kutztown was consistent with pricing offered to residents of surrounding communities. The pricing was \$33.99 for cable television and \$39.95 for one-way cable modem service (not including the cable modem).

(All pricing listed in this document comes from: www.secv.com, www.sectv.com, Service Electric customer bills, Service Electric advertising, telephone inquiries and local media.)

After the launch of the Borough's FTTH project, Service Electric cut prices in the Borough of Kutztown, while keeping prices higher (and raising prices) in the communities surrounding the Borough. The pricing disparity has been covered by both of the region's major newspapers, The Morning Call (Allentown) and The Reading Eagle. Kutztown is within Service Electric's "Birdsboro System." Price sampling from December 2003:

Kutztown (Birdsboro System)	Maxatawny (Birdsboro System)	Birdsboro (Birdsboro System)	Lyons (Birdsboro System)
\$25.60	\$36.05	\$36.05	\$36.05
Allentown	Macungie	Reading	Orefield
\$39.49	\$33.49	\$36.05	\$41.75

Maxatawny Township surrounds the Borough of Kutztown. As detailed in a March 28, 2004 front page business story in The Morning Call, residents of Maxatawny, who literally live one foot outside of the municipal boundary of Kutztown, pay over 25% higher prices than their neighbors.

The price change in Kutztown has been labeled as an **"indefinite discount"** by **Gary Day of Service Electric, Reading Eagle, September 29, 2002.**

In a recent Morning Call story (June 6, 2004) about a law suit brought by Service Electric against another municipality, as an attempt to keep them from providing telecommunications services, Alan McAdams, a professor of managerial economics at Cornell University, in discussing the law suit in the other community and the reduced pricing in Kutztown, was quoted, "They (Service Electric) are doing it (keeping municipalities from providing cable television service) any way they can - either by predatory pricing or by taking them to court."

Targeted Rate Discrimination

The Borough of Kutztown is host to a large population of university students. Service Electric has aggressively targeted this customer base. Some of the discounts are published; others that we are aware of seem to be "informal offerings." Published student packages include the disclaimer, "This offer applies to students and faculty of KU (Kutztown University) under the Education Initiative residing within the borough of Kutztown." The Borough of Kutztown has been unable to identify what an "Education Initiative" is. The marketing pieces advertising pricing and number of channels under this "Educational Initiative" is inconsistent with other offerings in the region. In what we believe to be a clear example of Service Electric pricing below cost, a March 19, 2004 bill to a student customer lists "Student Basic Rate" for cable television as \$8.00. Using

published pricing from the National Cable Television Cooperative, we estimate that the cost for the channels offered under the “Student Basic Rate” is \$16.28.

The Borough also has evidence of Service Electric providing cable service to a student customer for four months of service without payment. We believe that is evidence of Service Electric’s willingness to go as far as giving away service to retain customers.

In addition to discounts to students, we have evidence of free service being provided to the local Chamber of Commerce and believe that free service has been provided to an apartment complex manager.

Denial of Access to Content

For about two years, Kutztown attempted to purchase and provide the “Comcast SportsNet” (CSN) channel as part of our cable television system. CSN cablecasts local (Philadelphia) professional sports. It was our opinion from the beginning of our FTTH project that this station was critical to provide to our customers.

The Borough’s first contact with CSN resulted in, “We do not sell to over-builders” and “We already have a provider carrying the channel in your town.” Other comments included, “We do not participate in existing systems, we buy them.” Ultimately, we received the answer of, “We will sell to you, but you need to find a carrier to take our signal to your location.”

Kutztown contacted D&E Communications, a local provider of telephone services, to assist us in our transport effort. Comcast originally turned down the efforts by D&E. Persistence and the offer by D&E to carry the signal to an additional market (which Comcast is not serving) proved to be successful.

Service Electric enjoyed the benefit of exclusive CSN content during our first two years of operation. It is our opinion that this advantage limited our market penetration and provided a significant advantage to Service Electric. Our opinion is based on interviews with potential customers and a petition with 166 signatures from customers wanting CSN.

Denial of Access to Customers

The Borough has been denied access to the Devonshire Apartment Complex (72 units) and Garden Apartments (66 units), both privately owned and operated. The Borough has also been denied access to Saucony Cross (80 units), a Federal Housing complex.

Garden Apartments gave the Borough permission to access the property right-of-way to serve the complex, but refused to allow the Borough access to the complex without a signed agreement to pay the owner a one-time access fee or a monthly commission. The Borough refused to pay-to-serve. The entire fiber build was the burden of the Borough, including the on-premise required equipment. Both incumbents, Verizon and Service Electric currently provide services.

Devonshire Apartment complex refused the Borough access to the property until an agreement could be reached as to a one-time access fee or continued monthly commissions. As stated by this owner, "In the past the others paid to have access to our customers." The Borough refused to pay-to-serve. Both incumbents, Verizon and Service Electric currently provide services.

The attorney representing the Saucony Cross (Federal Housing) complex refused to take the offer to the board stating, "The services are not needed." Both incumbents, Verizon and Service Electric currently provide services.

In the spring/summer of 2003, the Borough of Kutztown was contemplating participating in a bid process to provide cable television service to the Kutztown University campus. Service Electric held the contract. As the due date for the bid was approaching an attorney for Service Electric contacted the Borough's solicitor. The purpose of the Service Electric attorney's call was to threaten litigation against the Borough because of our deliverance of telecommunications services. No suit has ever been brought against the Borough. Our solicitor interpreted the call as a "shot across Kutztown's bow" during this public bidding process. The Borough ultimately did not participate in the bid process for reasons unrelated to the "threat."

Destruction of Property:

The Borough opted to place new coax cable and connection in rental property locations on numerous occasions. In our opinion, Service Electric has chosen to maliciously destroy the Borough's connection to properties. One of these properties is the Briar Cliff student apartment complex. The Borough contacted Service Electric with an offer to install "A/B" control switches to allow the Borough to reside on one side and Service Electric on the other. The offer was made as a way to cooperate with Service Electric and allow the customer an easier ability to choose their service provider. Service Electric refused. The Borough invested and deployed these units and made all necessary connections, without Service Electric's cooperation. By installing this system we hoped to improve the ease for customers to choose their service provider. On numerous occasions, Service Electric has cut and removed the A/B units from those apartments not served by the Borough. The A/B units remained in the closet areas, fully disconnected, on

the floor. A simple disconnection of the cable would have been sufficient. The removal of the unit and the cutting of the cable are totally unnecessary.

In similar situations, sporadically throughout the Borough, when Service Electric has recovered the customers' service, they have chosen to unnecessarily cut and destroy the Borough's lines and connections requiring a rebuilding of connections and in some cases the replacement of cable.

Unfortunately, we do not have firsthand evidence of the destruction, only the "aftermath" of the activity.

Misrepresenting Facts in the Media:

Numerous statements have been made by Service Electric including statements about the capability of their system, and misrepresenting services they claim to have in place. The most egregious of these misrepresentations are contained in the Progress and Freedom Foundation Report of 2003 outlining fictional offerings and price structures (including DSL offerings by Verizon which are not available).

The Borough has reports from citizens of our community of a "whisper campaign" being propagated by Service Electric field technicians and customer service representatives. Statements of the Borough system "going out of business," the Borough "selling out to Service Electric" and "the Borough system has operational flaws" have been reported to the Borough.

Service Electric's consistent corporate position (since the launch of FTTH services) has been that the Borough did not approach them about partnering with them nor did we request that they upgrade their system to meet our community's needs. This position is inaccurate and they have actually contradicted it in statements to the press. In the Reading Eagle, September 2002, quotes by Gary Day of Service Electric show clearly that Service Electric was aware of Kutztown's intent to build and labeled it as a "risky investment." Comments were also made by Mr. Day as early as March, 2002 in the Baltimore Sun that the company was well aware of Kutztown's planned project for an extended period of time prior to construction.

A Philadelphia Inquirer, February 21, 2002, article sums up what we believe to be a clear expression of Service Electric's position on the matter of our offering customers telecommunication choices in our community, "Kutztown seems to be nosing into places it did not belong." Service Electric President Hoyt Walter.

In addition to comments to the media and "whisper campaigns," Service Electric has also used direct mail to offer special discounts to customers and to be critical of the community's decision to invest in the FTTH system. In a letter to all Kutztown residents, dated August 2002, immediately prior to the Borough System launch, the following statements were made:

- “Kutztown’s local government decided to spend millions of dollars to construct another network and duplicate our services.”
- “For our mutual benefit we are examining those factors that make competing with a local government different and unfair to both the consumer and the private sector service provider.”
- “While the (Borough) rates appear arbitrary and unrealistic over the long term, we recognize that you simply are looking for the best combination of product(s), service and price. Either on your August or September bill, you will receive a special discount.”

The “special discount” continues to be offered and makes Service Electric’s pricing LESS than the Borough’s. If the Borough’s pricing is unrealistically low, as implied by Service Electric, what does that make their pricing?

In early 2004, the Borough announced and began to cablecast Council meetings, unedited, over our cable system. Prior to the Borough’s action, Service Electric had no interest in cablecasting Council meetings. Service Electric cablecasted edited content from the Council meetings and chose to include “after meeting interviews” with one elected official who has been critical of the Borough’s FTTH system.

Other Unfair Business Practices:

Service Electric has lobbied Pennsylvania State Legislators to introduce legislation that would cripple, limit and/or eliminate the ability of municipal governments to build advanced telecommunication systems.