

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

In the Matter of)
)
Implementation of Section 621(a)(1) of)
The Cable Communications Policy Act of 1984) MB Docket No. 05-
311)
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

COMMENTS OF THE CITY OF DEL MAR

The City of Del Mar (“Del Mar” or “the City”) respectfully submits these comments in response to the *Notice of Proposed Rulemaking* adopted by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding.¹

INTRODUCTION

Del Mar is a small governmental jurisdiction² located on the coast in North San Diego County, California. San Diego County has a population of almost three million citizens³ who are served by three major cable systems: Adelphia Communications Corporation (“Adelphia”) with approximately 75,000 subscribers, Time-Warner, Inc. (“Time-Warner”) with nearly 200,000 subscribers and Cox Communications, Inc. (“Cox”) with about 500,000 subscribers. Del Mar is served by the Adelphia system which provides video

¹ *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, FCC 05-189 (rel. November 18, 2005)(“*Notice*”).

² As defined in the *Notice*, Appendix, ¶ 8, p. 16.

³ See: <http://quickfacts.census.gov/qfd/states/06/06073.html>.

and DSL but not telephone service to its customers.⁴ Wireline telephone service in Del Mar is provided by AT&T (formerly SBC Communications, Inc. and hereinafter called “AT&T”) which is proposing to build a fiber to the node (“FTTN”) system to provide IPTV and broadband services to citizens and businesses in Del Mar.⁵ There have been no applications for a competitive cable franchise in Del Mar.

SUMMARY

The *Notice* was initiated as the result of complaints by wireline telephone companies that the local franchise requirements constitute an unreasonable barrier to the timely deployment of internet protocol (IP) based services.⁶

The *Notice* asks if local franchise authorities (LFAs) are “carrying out legitimate policy objectives” or “hindering” the Commission’s policy objectives of increased competition and accelerated broadband deployment.⁷

⁴ On June 25, 2002, Adelphia filed voluntary petitions for reorganization under Chapter 11 of the U.S. Bankruptcy Code with the Bankruptcy Court in the Southern District of New York, Case # 02-41729. The cable system that serves Del Mar is operated by Adelphia but owned by the Rigas family who are also the holders of the Del Mar franchise. Under a plea agreement with the U.S. Attorney’s office, the Rigas family agreed to transfer the franchise and system to Adelphia. The Bankruptcy Court is scheduled to hear the transfer of ownership request on January 17, 2006. Permission to transfer the system is also pending before the Commission: *In the Matter of Adelphia Communications Corporation, Debtor-in-Possession, Time Warner, Inc. and Comcast Corporation Seek Approval to Transfer Control and/or Assign FCC Authorizations and Licenses*, MB Docket No. 05-192. On October 10, 2005, Del Mar timely approved the transfer of the franchise to Time-Warner upon closing of the acquisition of the system that will take place after the Bankruptcy Court and Commission approvals are given.

⁵ Called “Project Lightspeed” by AT&T. See description of Project Lightspeed at www.sbc.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=21874.

⁶ *In the Matter of Annual Assessment of the Status of Competition in the Market for the delivery of Video Programming*, MB Docket No. 05-255 (“*Video Competition Docket*”).

⁷ *Notice* ¶ 10.

Del Mar's citizens want the benefits of competition and the City has a *strong* incentive to respond to their needs. At the same time, it should be recognized that competition for the sake of competition does not trump all other community values. Franchise rules are intended to ensure the public health, safety and welfare, prevent economic red-lining, provide for reasonable build-out requirements and ensure provision of public, educational and government channels. As the Commission has recognized, these rules promote and protect "important public policy goals."⁸ They also promote competition by providing an equitable framework for entry into the video market and reasonable compensation for the use of the public right-of-way. The time, money and effort now being spent by the wireline telephone companies to avoid franchise rules exceeds that necessary to obtain a local franchise.⁹

THE OPPORTUNITY TO COMPETE

The wireline telephone companies have had the opportunity to offer video service since 1996. Cox started offering broadband and IP telephone service in San Diego County in 1997/1998 and Time-Warner has been offering IP telephone service for a year and a half.¹⁰ In July of 2005, Time-Warner rolled out a pilot program to allow its customers to watch television over their

⁸ *Notice*. ¶ 20.

⁹ The wireline telephone companies have also been engaging in a full court press before Congress ("BITS II"), State Legislatures (Four have been persuaded to preempt local franchise authority) and courts, to escape or limit the reach of franchise requirements.

¹⁰ See: <http://www.timewarnercable.com/SanDiego/> and <http://www.cox.com/Sandiego/telephone/>

home computer's high speed cable internet connection. The same year Cox introduced a subscription service that allows customers to watch live Major League Baseball games over its internet service.

The contention that AT&T now needs to bypass local franchise requirements to provide it with an "incentive to compete" in this market rings hollow.¹¹ "There is no question that the [AT&T] intend[s] to upgrade significant portions of their networks to broadband, IP technology."¹² Being late to the market is simply not a basis for seeking a competitive advantage in the name of competition.

Local communities are authorized to "manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers" provided that the management and compensation is done on a "competitively neutral and nondiscriminatory basis."¹³ Franchise agreements promote competition by giving equitable opportunities to all companies who wish to use the public right-of-way to provide communication services to the community. By-passing franchise requirements for wireline telephone companies turns this principle on its head and creates an unnecessary competitive advantage for these companies.¹⁴

AT&T's DISCUSSIONS WITH DEL MAR

¹¹ See AT&T's *ex parte* letters of December 5, 2005 on file in this Docket.

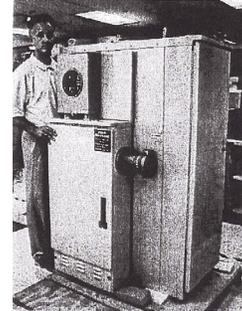
¹² Reply Comments of SBC Communications, Inc., page 20, *Video Competition Docket*.

¹³ 47 U.S.C. § 253(c).

¹⁴ Even being late to the market does not appear to have put wireline telephone companies at a disadvantage. According to a report by the Diffusion Group, by 2010 there will be 14 million households who subscribe to a telephone company's IPTV service as opposed to 6.5 million who will receive IPTV from a cable or internet service. See http://www.signonsandiego.com/uniontrib/20050713/news_1b13iptv.html

On December 12, 2005, AT&T's representatives met with officials from Del Mar for an informational meeting to discuss "Project Lightspeed," which is a Fiber to the Node ("FTTN") technology that can be deployed faster and at a lower cost than Fiber to the Premises ("FTTP").¹⁵ FTTN is a interim¹⁶ technology to extend fiber deep into neighborhoods to nodes housed in

cabinets to be placed in the public right-of-way. These cabinets are approximately 5' high, 2' deep and 4' wide [pictured]. Existing copper wires will then be used to



connect to each home located within three thousand (3,000) feet or less of the node.¹⁷ This will allow the AT&T customer to receive service at a speed of 20 Mbps or more. In new housing developments, AT&T will use fiber to the premises ("FTTP")¹⁸ which gives the user very high speed with virtually unlimited bandwidth.¹⁹

Del Mar is built on a hillside that is filled with many finger canyons that run down to a flat plateau that extends to the ocean. Most of the public rights-of-way in Del Mar were created when developers filed subdivision maps in the early 1900s. The roads on these maps wind around the canyons

¹⁵ "It takes half the time [and] it doesn't cost nearly as much." Quote from SBC's Ernie Cary, VP IP Operations & Services as reported in PCWorld "*Has Your Broadband Had Its Fiber?*", 9/6/04.

¹⁶ We conclude that FTTN is an interim strategy because it leverages the existing copper plant and achieves a speed of 20 Mbps, which is adequate for triple-play applications but may not be sufficient to handle cutting-edge broadband applications of the future. Futurist Jim Carroll is quoted as saying "[e]veryone is focusing on 100 Mbps or 300 Mbps as being the key question for the year 2010." *Communications Daily*, January 13, 2006.

¹⁷ Comments of SBC Communications, Inc., p. 8, *Video Competition Docket*.

¹⁸ *Id.*

¹⁹ See: Verizon FiOS FTTP proposal that will bring unlimited bandwidth to their customers.

and are usually narrow often with small or no shoulders. Clearly the size of the FTTN cabinets presents a potential safety problem to drivers and pedestrians under these conditions.²⁰ Del Mar's representatives asked, but have not yet received, information from AT&T concerning the proposed location of these cabinets.

The subject of "Red-lining" was also discussed at the meeting. Unlike Verizon which states that it "has no intention of limiting its video services to high-income areas,"²¹ AT&T has told investors that Project Lightspeed service "will be deployed to approximately ninety percent of its 'high-value,' seventy percent of its 'medium-value,' and less than five percent of its 'low value' customers."²² The AT&T representatives were told that this position runs contrary to the Del Mar franchise policy and the Communications Act.²³

The reason given by AT&T for its decision to install FTTP in new developments is that "the trenches are open."²⁴ Del Mar has embarked on a plan to remove all utilities from the surface of the public right-of-way and place them underground. The Ocean/Pines underground district was approved by the City on May 3, 2005 and trenches are now being dug in the streets in that district. In a meeting on April 28, 2005, the City asked that FTTP be installed at the time the

²⁰ Cf. AT&T's statement that Project Lightspeed "has no incremental effect on such rights of way." Comments of SBC Communications, Inc., p. 3, *Video Competition Docket*.

²¹ Comments of Verizon, p. 10, *Video Competition Docket*.

²² *Notice*, ¶ 6.

²³ 14 U.S.C. § 541(a)(3).

²⁴ *SBC's Project Lightspeed Prepares for Triple-play Launch*, Interview with Ralph Ballart, vice president of broadband at SBC Laboratories, 5/1/05.

<http://www.americasnetwork.com/americasnetwork/article/articleDetail.jsp?id=160512>

trenches were being dug.²⁵ AT&T declined. Refusal to consider installing FTTP in established neighborhoods when the trenches are open is not understood especially given the difficulties in placing large cabinets in Del Mar's right-of-way.

Finally, AT&T's representatives said that they were well aware of Adelphia's franchise terms and conditions and indicated that they would have no trouble complying with these provisions.

This is a good example of a situation in which city officials have the best understanding of local needs and conditions.²⁶ Del Mar is anxious to have AT&T enter the video market and make available improved broadband service to its citizens. The Commission can be assured that when AT&T, or any other competitor, submits an application for a franchise agreement it will be as expeditiously processed as possible.

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CONCLUSION

The wireline telephone companies are late to the video market by reason of their failure to timely respond to competition. Their argument that the local

²⁵ AT&T representatives indicated that a final decision had not been made but they anticipated installing a FTTP System in Del Mar. They said that a fiber optic cable could be pulled through the new conduits in the Ocean View/Pines Undergrounding District.

²⁶ See *Notice*, fn 18 discussing Congressional objectives in preserving local franchise authority.

franchise process should now be by-passed to allow them to make up for lost time is disingenuous.

Franchise rules promote and protect important community values and are best administered at the local level. The implication that local authorities do not appreciate the benefits of competition is not true. Local city officials are sensitive and responsive to the needs of their citizens, who drive the market demand, and are best situated to administer the public right-of-way.

Respectfully submitted,

\s\ Crystal Crawford

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