Town of Siler City

SILER CITY, NORTH CAROLINA 27344-0769

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Before the
FEDERAL COMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF SILER CITY

These Comments are filed by Siler City in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Siler City believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

Siler City is a Town with a population of 7,519. Our franchised cable provider is Charter Communication. Our community has negotiated cable franchises since the 1960's.

Our Current Franchise

Our current franchise began in 1998 and expires in 2008. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the Town in the amount of 5% of the cable operator's gross revenues. The revenues for franchise fee purposes are calculated based on the gross revenues (e.g., program and installation fees, advertising revenues, launch fees, late fees, etc.) of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have 6 channels (or capacity) devoted to public access; 2 channels devoted to educational access; and 2 channels devoted to government access. Although, we have not chosen to do so, our franchise allows the Grantor to direct the cable operator collect funds from subscribers to provide capital funds for PEG purposes.

With respect to I-Net, we have chosen to have the cable operator provide "*In lieu*" VPN data services at a rate that is 20% below its most favorable commercial rate. Our franchise contains the following institutional network ("I-Net") provision:

Institutional Network Provisions

Upon request of the Grantor, the Grantee shall provide capacity upon an Institutional Network in accordance with ***Exhibit B*** *of this Franchise.*

In lieu of the construction of Institutional Network ("I-Net") capacity as set forth in ***Exhibit B****, the Grantor may direct the Grantee to provide data transmission capacity on the Cable System for non-commercial, governmental purposes subject to the following conditions:*

A. In the event that I-Net capacity is being used in violation of the terms and conditions of this Franchise, the Grantee shall provide written notification to the Grantor;

B. The Grantee shall own all equipment and facilities used to provide the I-Net capacity to the Grantor;

C. The Grantee shall have the right to use any capacity not in use by the Grantor;

D. The Grantor shall not re-sell, license or otherwise assign or permit use of any of the capacity to or by a third party;

E. The capacity shall be used by the Grantor for non-commercial governmental purposes and no other purposes.

F. The Grantee shall not be required to provide more than six (6) MHz downstream and three (3) MHz upstream for government data and/or digital video transmission purposes on the Cable System. The six (6) MHz downstream for data transmission capacity shall reduce the maximum commitment to provide PEG Access channels by one (1) channel. Should the Grantor discontinue the use

of the I-Net, the six (6) MHz downstream that was used for data transmission shall be converted to a PEG Access channel; thereby, restoring the maximum commitment to six (6) PEG Access channels.

G. *Use of the data transmission capacity by the Grantor shall not interfere with the operations of the Grantee and shall not interfere with or impair the technical quality or reliability of the Cable System; and*

H. *The Grantor shall be solely responsible for the purchase, installation, quality, maintenance and operation of end user equipment connected to the Cable System. Such equipment shall not interfere with the operation of the Grantee's Cable System.*

Our franchise contains the following requirements regarding emergency alerts:

Emergency Alert System Participation

The Grantee shall install and maintain an emergency alert system [EAS] pursuant to FCC's rules and the North Carolina Emergency Alert System Plan. The Grantor's Public Safety Communication Center shall be provided with access to the system so that it can communicate emergency messages and alerts to residents consistent with the North Carolina Emergency Alert System Plan. The emergency alert system shall be activated by the Grantee pursuant to Section VI (B) of the North Carolina Emergency Alert System Plan.

These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise.

Customer Service Standards

1. *Subscriber Privacy*

In accordance with 47 U.S.C. § 551, the Grantee shall, no less than annually, provide a privacy notice in the form of a separate written statement to subscribers as required by the provisions of the Act.

2. *Employee Identification*

When calling in person on Subscribers or other residents, all employees or authorized representatives of the Grantee are required to display an employee identification card with their name, photograph and signature, and a telephone number that can be used for verification of the representative's capacity with the Grantee. The Grantee's vehicles

shall display the name of the cable company in easily distinguishable alpha-numeric characters. The Grantee shall make a reasonable effort to cause its subcontractors' vehicles to be identified in a like fashion.

3. *Office and Telephone Availability*

   A. *Knowledgeable, qualified company representatives will be available to respond to customer telephone Monday through Friday during normal business hours. Additionally, based on community needs, the Grantee will staff its telephones for supplemental hours on weekdays and/or weekends.*

   B. *Under normal operating conditions, telephone answer time by the Grantee's customer service representatives, including wait time required to transfer the call, shall not exceed thirty (30) seconds. This standard shall be met no less than ninety percent (90%) of the time measured on an annual basis.*

   C. *Under normal operating conditions, the customer shall receive a busy signal less than three percent of the total time that the Grantee's office is open for business.*

   D. *Customer service center and bill payment locations operated by the Grantee shall be open for transactions Monday through Friday during normal business hours. Additionally, based on community needs, the Grantee shall schedule supplemental hours on weekdays and/or weekends during which these centers shall be open.*

   E. *The Grantee shall be responsible for adopting and implementing Subscriber complaint procedures, and for advising Subscribers of the availability of these procedures. The procedures shall be designed to resolve Subscriber complaints in a timely and satisfactory manner; to develop sensitivity and responsiveness to subscriber needs by the Grantee and its management; and to improve the quality and dependability of services to Subscribers by the Grantee.*

   F. *Established complaint procedures shall include: specific provisions permitting Subscriber repair or service complaints to be received by telephone twenty-four (24) hours each day and seven (7) calendar days each week; permitting Subscriber repair service complaints to be received at the Grantee's business office from 8:00 A.M. until 7:00 P.M. on Monday through Friday of each week and from 9:00 A.M. until 1:00 P.M. on Saturday; and the address of the Grantee's business office.*

4. *Installations, Outage and Service Calls*

   Under normal operating conditions, each of the following standards shall be met no less than ninety-five percent (95%) of the time measured on an annual basis.

   A. *Standard installation shall be performed within seven (7) business days after an order has been placed. "Standard" installations are up to one hundred fifty (150) feet from the existing distribution system.*

B. *Excluding those situations beyond the control of the Grantee, the Grantee shall respond to service interruptions promptly and no later than twenty-four (24) hours after the interruption becomes known to the Grantee. The Grantee must begin actions to correct other service problems the next business day after notification to the Grantee of the service problem.*

C. *The "appointment window" alternatives for installations, service calls, and other installation activities shall be: 1) morning, 2) afternoon, or 3) all day during normal business hours. Additionally, based on the community needs, the Grantee shall schedule supplemental hours during which appointments can be set.*

D. *If, at any time an installer or technician is running late, an attempt to contact the customer shall be made and the appointment rescheduled as necessary at a time which is convenient for the customer.*

E. *The Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions not within the midnight to 6:00 A.M. period, insofar as possible, shall be preceded by a notice to Subscribers.*

F. *The Grantee office and technical personnel, in lieu of answering devices, shall receive customer calls during business hours and respond to all customer complaint calls until 10:00 P. M. on normal business days. After 10:00 P. M. on any day, trained technicians shall respond to calls if three (3) or more complaints are received by Subscribers served by a common distribution system.*

5. *Communication, Statements, Refunds, and Credits*

A. *The Grantee shall provide written information in each of the following areas at the time of installation and at any future time upon request:*
   * *products and services offered*
   * *prices and service options*
   * *installation and service policies*
   * *how to use the Cable Service*

B. *Subscriber billing statements shall be clear, concise and understandable. Such statements shall reflect all services and fees in an itemized fashion.*

C. *Refund checks shall be issued promptly, but no later than the earlier of thirty (30) calendar days or the customer's next billing cycle following the resolution of the request or, if service was terminated thirty (30) calendar days from the date of the return of the equipment supplied by the cable company.*

D. *Customers shall be notified in writing a minimum of thirty (30) calendar days in advance of any rate or channel change, provided the change is within the control of the Grantee.*

E. *The Grantee shall provide outage credit to Subscribers in accordance with the following policy:*

Upon notification, should the Grantee fail to correct a service outage problem - within its control - within 24 hours after having receipt of such notice, The Grantee shall credit 1/30th of the monthly charge for the affected service for each 24-hour period or fraction thereof following the first twenty-four (24) hour period during which the Subscriber experiences service outage. Subscriber must advise the Grantee of the duration of the service interruption for which credit is sought in order to receive such credit. Reasonable Notice for the purpose of this provision shall mean written, telephonic (voice), facsimile or e-mail communication to the Grantee.

F. *Late fees shall not be assessed earlier than thirty (30) calendar days past the billing cycle due date.*

6. *Complaint - Appeals*

A. *Upon notification by a Subscriber of an unresolved complaint, the Information Access Manager shall determine the facts of the complaint by obtaining information from the Subscriber and the Grantee and shall act to resolve the complaint in a manner consistent with the Grantor's authority.*

B. *The cable Subscriber may register a complaint with the Town, regarding rates or associated equipment rental, and the Town may file a formal complaint with the Federal Communications Commission as provided by FCC regulations.*

Our franchise contains the following reasonable build schedule for the cable operator:

Service Area

A. *The Grantee's service area is generally bounded by the Town limits as amended from time to time.*

B. *The Grantee shall extend its Cable System in accordance with plans submitted to the Town pursuant to the normal Town permit process.*

C. *The Grantee shall act to extend its service into annexed portions of the Town within ninety (90) days from the date of annexation or notification thereof subject to the procedures and standards set forth below.*

Extension Outside the Initial Franchise Area

The Grantee shall extend service to any residence(s) upon the written request of one or more residents who shall reside within the requested extension area and who shall agree to subscribe to the Grantee's Cable Service where the number of occupied homes, and homes for which certificates of occupancy have been issued, which would be served by the requested extension, equals thirty (30) homes per cable mile with the measurement starting from the closest existing usable point of connection to the Cable System. Unless additional time has been agreed to by the Grantor, such extensions shall be completed within ninety (90) days of submittal of a request where the above density standard is met and all additional utility permits or other Right-of-Way permits have been obtained. The Grantor and the Grantee may agree to a different time for extension in particular instances.

Our franchise contains the following letter of credit requirements:

Letter of Credit

A. Within thirty (30) calendar days following the award of the Franchise, the Grantee shall deposit with the Grantor a letter of credit from a financial institution, approved by the Grantor's Finance Director or designated representative, in the amount of $10,000 if the Grantor has up to 999 Subscribers, $25,000 if the Grantor has 1000 to 3,999 Subscribers, and $50,000 if the Grantor has over 4,000 Subscribers. The form and content of the letter shall be approved by the Grantor's attorney, which approval shall not be unreasonably withheld. The letter of credit shall be used to insure the faithful performance of the Grantee of all provisions of the Franchise, and compliance with all orders, permits and directions of any agency, commission, board, department, division or office of the Grantor exercising jurisdiction over the Grantee's acts or defaults, and payment by the Grantee of any penalties, claims, liens, liquidated damages, fees due the Grantor.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a ROW permit before it may access the public rights of way.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement

Remedies - Liquidated Damages

A. Because the Grantee's failure to comply with provisions of this Franchise will result in injury to the Grantor, and because it will be difficult to estimate the extent of such injury, the Grantor and the Grantee hereby agree to the following liquidated damages, which represent both parties' best estimate of the damages resulting from the specified injury. Damage amounts may be adjusted throughout

term of Franchise by the Grantor by resolution to take into account increases in the consumer price index.

B. *For failure to complete construction to residences within the initial service area or extend service in accordance with Section 4: five hundred dollars ($500.00) for each offense. A separate and distinct offense shall be deemed committed each calendar day on which a violation occurs or continues;*

C. *For failure to comply with material requirements of the I-Net provisions of the Franchise: five hundred dollars ($500.00) each calendar day for each offense. A separate and distinct offense shall be deemed committed each calendar day on which a violation occurs or continues;*

D. *For failure to submit reports, maintain records, provide documents or information: five hundred dollars ($500.00) for each offense. A separate and distinct offense shall be deemed committed each calendar day on which a violation occurs or continues;*

E. *For repeated, willful or continuing failure to comply with material requirements of the Customer Service Standards: five hundred dollars ($500.00) for each offense. A separate and distinct offense shall be deemed committed each calendar day on which a violation occurs or continues;*

F. *For failure to comply with transfer provisions: five hundred dollars ($500.00) for each calendar day from the date of any unlawful transfer; and*

G. *For to comply with any provision herein for which a penalty is not otherwise specifically provided: five hundred dollars ($500.00) for each offense. A separate and distinct offense shall be deemed committed each calendar day on which a violation occurs or continues.*

H. *Penalties will commence to accumulate only for days of non-compliance that occur after the final date set by the Grantor for achieving compliance.. Such date shall be set at a public hearing of which the Grantee is given at least ten (10) days notice and at which it has an opportunity to be heard. No penalties will be assessed for a violation period that has existed prior to the expiration of the period set by the Grantor herein for correcting the defect.*

I. *Consistent with Section 17, the Grantor shall stay or waive the imposition of any penalties set forth herein upon a finding that any failure or delay is the result of an act of God or due to circumstances beyond the reasonable control of the Grantee.*

The Franchising Process

The cable system(s) serving our community is a regional system that serves ~50 adjoining communities. In 1995 our community worked together with approximately 3 other communities to issue a cable franchise to Charter Communications. This allowed the company to quickly obtain franchises in these communities so as to be able to serve a large region, while also allowing for individual provisions in specific franchises in order to tailor them to meet local needs.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Franchise Modification

The Town recognized the need to accommodate changes in the laws and regulations related to the provision of cable television services by the cable operator. To accommodate such changes, the Town inserted provisions in the franchise agreement to permit either party the ability to approach the other to secure changes to the agreement that reflect changed circumstances. This language appears below:

Five - Year Review: Performance Monitoring

A. During the years which commence on the fifth anniversary of the effective date of the Franchise, the Grantor may commence a review of the Grantee's performance under the Franchise. As part of this review, the Grantor may consider:

1. whether the Grantee has complied with its obligations under the Franchise and applicable law;

2. whether Customer Service Standards, technical standards, or bond or security fund requirements are adequate or excessive; and,

3. other issues as may be raised by the Grantee, the Grantor, or the public.

B. The Grantor shall conduct public hearings to provide the Grantee and the public the opportunity to comment on the Grantee's performance and other issues considered as part of the five-year review.

C. *Any revisions to the Franchise which either the Grantor or the Grantee wishes to make as a result of these reviews shall be proposed under the procedures established herein.*

D. *Periodic Evaluation, Review and Modification.*

1. *The Grantor and the Grantee acknowledge and agree that the field of cable television is a relatively new and rapidly changing one which may see many regulatory, technical, financial, marketing and legal changes during the term of this Franchise. Therefore, in order to provide for the maximum degree of flexibility in this Franchise, and to help achieve a continued, advanced and modern Cable System, the following evaluation and review provisions will apply:*

   a) *The Grantor or the Grantee may, upon thirty (30) days notice, request evaluation and review sessions at any time during the term of this Franchise and the other party shall cooperate in such review and evaluation; provided, however, there shall not be more than one (1) evaluation and review session during any calendar year.*

   b) *Topics which may be discussed at any evaluation and review session include, but are not limited to, rates, channel capacity, the Cable System performance, PEG Access, municipal uses of cable, Subscriber complaints, judicial rulings, FCC rulings and any other topics the Grantor or the Grantee may deem relevant.*

   c) *During an evaluation and review session, the Grantee shall cooperate fully with the Grantor and shall provide without cost such reasonable information and documents as the Grantor may request to perform the evaluation and review.*

   d) *If at any time during the evaluation and review the Grantor reasonably believes evidence exists which substantiates that the technical performance of the Cable System violates the terms of this Franchise, the Grantor may require the Grantee, at the Grantee's expense, to perform appropriate tests and analyses directed toward such suspected technical inadequacies. In making such request, the Grantor shall describe and identify as specifically as possible the nature of the problem and the type of test the Grantor believes to be appropriate. The Grantee shall cooperate fully with the Grantor in performing such tests and shall report to the Grantor the results of the tests, which shall include at least:*

1. *a description of the problem in the Cable System performance which precipitated the special tests;*

2. *the Cable System component tested;*

3. *the equipment used and procedures employed in testing;*

4. *the method, if any, by which the Cable System performance problem was resolved; and*

5. *any other information pertinent to said tests and analyses.*

e) *As a result of an evaluation and review session, the Grantor or the Grantee may determine that a change to the Cable System or in the terms of the Franchise may be appropriate. In that event, either the Grantor or the Grantee may propose modifications to the Cable System or the Franchise. The Grantee and the Grantor shall, in good faith, review the terms of the proposed change or any proposed amendment to this Franchise and seek to reach agreement on such change or amendment.*

2. *The Grantor and the Grantee shall act in good faith during such negotiations and shall be obligated to agree to the reasonable requests of the other party for changes in the Cable System or amendment to the Franchise when the change or amendment is not inconsistent with the other terms of the Franchise, or with applicable law or regulations, and the change or amendment is technically feasible, economically reasonable and will not result in a material alteration of the rights and duties of the parties under the Franchise.*

Competitive Cable Systems

Our community has never been approached by a competitive provider to provide service, although it has at various times sought out competitive providers.

Conclusions

The local cable franchising process functions well in Siler City. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are considered.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local

cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

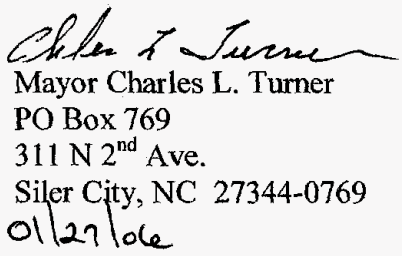
Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The Town of Siler City therefore respectfully requests that the Commission not undertake any action to subvert local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

Town of Siler City



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