

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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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

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**COMMENTS OF THE GREAT NECK/NORTH SHORE CABLE COMMISSION, AND  
THE INCORPORATED VILLAGES OF HEWLETT BAY PARK, OYSTER BAY COVE,  
ROCKVILLE CENTRE AND WOODSBURGH**

These Comments are filed by the Great Neck/North Shore Cable Commission, representing the Nassau County (New York) villages of Flower Hill, Great Neck, Great Neck Estates, Great Neck Plaza, Kensington, Kings Point, Lake Success, Munsey Park, North Hills, Plandome, Plandome Heights, Plandome Manor, Russell Gardens, Saddle Rock and Thomaston. These Comments are joined in by the Nassau County (New York) villages of Hewlett Bay Park, Oyster Bay Cove, Rockville Centre, and Woodsburgh. These Comments are filed in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the commenting municipalities believe 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**

The communities on whose behalf these comments are filed have a total population substantially in excess of 80,000 people. The sole franchised cable provider at the present time is Cablevision Systems. These communities have had various cable franchises with Cablevision, and previously with some other providers, since 1980.

**Our Current Franchise**

The current franchises in these communities began at various dates commencing in 1991. Franchises in the villages represented by the Great Neck/North Shore Cable Commission expired in 2001, and are in the renewal process. During that renewal process, the franchisee continues to operate under the terms of the prior franchise, pursuant to authority issued by the New York State Cable Commission. The franchise in the Village of Rockville Centre expires in 2007,

and the franchises in the other villages expire on various later dates. 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 the Great Neck/North Shore villages and the Village of Rockville Centre are currently negotiating a franchise renewal with the incumbent provider.

Our various franchises require the cable operator to pay a franchise fee to the village in amounts which vary from 3% to 5% of the cable operator's gross revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

Each of the franchises requires the cable operator to provide capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. These requirements vary among the community franchises, from two to eight channels (or capacity) devoted to public access, educational access, and government access. In the Great Neck/North Shore communities, there is a very active public access programming group, which fully programs one channel for public access. Various community organizations, and the local schools, park districts and public libraries, program on other channels, and the fifteen villages in the group share one common government channel.

Some of these franchises requires that PEG channels be supported by monetary grants from the incumbent provider, for support services and training, and for equipment acquisition and other capital expenses. The Great Neck/North Shore franchises require the incumbent operator to provide a studio and offices for the public access television organization. In addition, the franchising communities contribute to the support of the public access television organization. The cable provider also provide support in equipment and training on a voluntary basis, particularly with the school systems in the various communities.

The Village of Rockville Centre franchise includes an institutional network ("I-Net"), which permits the various Village facilities to communicate with each other, and which permits transmission of locally generated programming from various points in the community into the consumer cable system.

All of the franchises contain requirements regarding emergency alerts, which permit or facilitate the carriage of emergency alerts and messages, and permits local officials access to the system for those purposes. These emergency alert requirements provide an important avenue of communication with residents in the event of an emergency.

Our franchise contains customer service obligations which are governed by New York State law, which help ensure that the cable operator is treating residents in accordance with federal standards and the terms agreed to in its franchise.

All of these franchises required, from inception, that the cable operator construct its system on a community wide basis, with access to the system from all residences in the community, and the cable operator is required to provide that service to all parts of each community.

In order to ensure that our residents have access to current telecommunications technologies, these franchises contain various different rebuild or upgrade requirements, which permit the system to maintain a reasonably current technology, and meet the community needs. The incumbent operator also provides cable modem service throughout each community, but not as part of the cable television franchise.

Each franchise contains a "most-favored-nations" provision which requires the provider to match the cable services which it provides in other communities within the same county, at the same prices. At the present time, there is only one cable operator in the entire county, and it holds franchises from every franchising municipality in the county.

The franchises contain various different insurance and bonding requirements, sufficient to assure that the cable provider will be financially responsible for any personal injury or property damage, or other harm, which results from its operations, and to assure the communities that the provider will meet its obligations pursuant to the respective franchise agreements.

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 permit from the appropriate municipal office as well before it may open any streets in the public rights of way, but not for other purposes.

The franchise agreements include enforcement mechanisms by which the communities are able to ensure that the cable operator is abiding by its agreement. These mechanisms involve the assessment of fines or penalties in the case of violations. While there have from time to time been issues regarding compliance with franchise requirements, these issues have been resolved without imposition of penalties except in one instance where penalties were imposed.

### **The Franchising Process**

The cable system(s) serving these communities also serves every other community in the same county. Commencing in 1979, the fifteen Great Neck/North Shore villages worked with each other to issue common cable franchises for the cable company. The initial such franchise was granted to Cox Cable, which was later acquired by Cablevision. Since that time, all of those franchises have been with Cablevision. The other commenting villages have franchised with Cablevision since their first franchise in the early 1980s. The cable provider has been able to quickly obtain franchises in many 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.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement are incorporated into the franchise agreement, and may also be the subject of negotiation at the instance of either party.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance, public ascertainment hearings are held at an early stage of each franchise or franchise renewal process, and another public hearing is held when the franchise negotiations are completed.

### **Competitive Cable Systems**

- Most of these communities recently have been approached by a competitive provider to provide service. Fifteen of them are in the process of negotiating franchises with that competitive provider, and at least one other is about to embark upon such negotiations.
- The fifteen villages in the Great Neck/North Shore group were sued by Cablevision when they initially considered, and made, a franchise award to Cox Cable.
- None of these villages has denied any provider the opportunity to serve in the community.
- Each of these communities has mechanisms in place to offer the same or a comparable franchise to a competitor upon request.
- The period of time to negotiate cable television renewals with the incumbent provider has varied from a few months to a few years, depending upon the issues involved in the renewals.

### **Conclusions**

The local cable franchising process functions well in each of the named communities. As the above information indicates, each of these communities is 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 taken into account.

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 local community's specific needs are met and that local customers are protected.

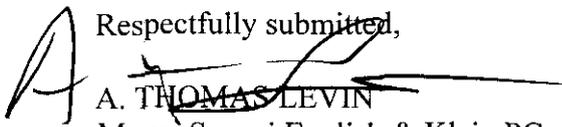
Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with

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 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 twenty commenting municipalities therefore respectfully request that the Commission do nothing to interfere with 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.

Dated: January 23, 2006

Respectfully submitted,  
  
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