

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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 VILLAGE OF GLENVIEW

These Comments are filed by Village of Glenview in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Village of Glenview 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.

In our community a cable "franchise" is termed a franchise agreement. The Federal Cable Act refers to this as a "franchise" so we will use that term in these comments. Also, many communities have a cable ordinance which operates in conjunction with the franchise agreement, the terms of which are often negotiated with the cable company in conjunction with the franchise agreement. These documents collectively referred to as the "franchise" below.

Cable Franchising in Our Village

Community Information

The Village of Glenview is a Village with a population of 44,500 over 13.27. Our franchised cable provider(s) is/are Comcast Cable and Wide Open West. Our community has negotiated cable franchises since 1989.

Current Franchises

Our current franchise with Comcast Cable began on January 18, 2000 and expires on January 18, 2014. Our franchise with Wide Open West began on February 16, 1999 and expires on February 16, 2014. 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 either cable provider.

Both franchise agreements require the cable operators to pay a franchise fee to the Village of Glenview 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 of the operator, in accordance with the Federal Cable Act.

The definition of the cable gross revenues in Village franchises follows: "Gross Revenues" means unless otherwise stated herein all amounts received or accrued by Grantee in whatever form and from Subscribers in connection with the operation of Grantee's Cable System within the Franchise Area to provide cable services. "Gross revenues" shall include, without limitation, all amounts for all Cable Services, including, but not limited to, basic, expanded basic, premium, and pay-per-view services, installation fees and charges and leased channel fees. "Gross Revenues" shall also include any revenue received by any Affiliate of Grantee where such revenue in the ordinary course of business should have been paid to Grantee in connection with the operation of its Cable System within the Franchise Area. "Gross revenues" shall not include advertising revenues ("infomercials" are not classified as advertising revenue), home shopping revenues, copyright fees, bad debt, franchise fees, sales taxes, or other taxes which are collected by Grantee on behalf of and for payment to the local, state or federal government. Grantor reserves the right to charge the Grantee any franchise fee, tax or assessment for revenues derived from interactive services provided by Grantee over the Cable System; provided that such franchise fee, tax or other assessment is collected from all other providers of the same or similar service whether offered on a wire-line or wireless basis.

Both franchises agreements require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system.

Comcast Cable PEG Channels:

Comcast provides 4 channels to be allocated among public, educational and government access (PEG) usage. After Grantee is utilizing digital compression commercial public, educational, or governmental programming in the event the Village requests such additional channel and provided the four PEG channels are then currently fully utilized.

Wide Open West PEG Channels:

Comcast provides 4 channels to be allocated among public, educational and government access (PEG) usage. After Grantee is utilizing digital compression technology in its Cable System, it will consider providing an additional channel for non-commercial public, educational, or governmental programming in the event the Village requests such additional channel and provided the four PEG channels are then currently fully utilized.

Both franchise agreements require that our PEG channels be supported in the following ways by the cable operator:

Comcast Cable:

Comcast provides a staffed regional studio within 5 miles of the corporate limits of Glenview. The studio is fully and permanently equipped with the equipment necessary to produce a three camera program. Residents can use the studio to produce a wide variety of programs.

Wide Open West:

In lieu of providing an PEG equipment or services duplicative of those being provided by the incumbent cable franchisee to the Village, Wide Open West has offered to pay the Village \$20,000 within thirty (30) days of the Effective Date and additionally will pay quarterly within forty-five (45) days of the last day of each calendar quarter an amount equal to one percent (1.0%) of adjusted Gross Revenues.

Neither franchise agreement contains institutional network ("I-Net") requirements.

Our franchises contain the following requirements regarding emergency alerts:

Comcast Cable:

Provides the capabilities to transmit an emergency alert signal in the event of a disaster.

Wide Open West: shall comply with applicable FCC Rule and Regulations regarding Emergency Alerts System (EAS) by providing the system capabilities to transmit an emergency alert system.

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

Both franchise agreements contain 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 Requirements

Both companies agree to meet or exceed any customer service standards adopted by the FCC. Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its customers 24 hours a day, seven days a week. Trained representatives will be available to respond to customer telephone inquiries during normal business hours. After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained representative on the next business day.

Our franchises do not contain the a build schedule for either cable operator but the cable system must be activated within forty-two (42) months of commencements of construction.

Our franchise requires that the cable operator currently provide service to the following areas of our community:

Both franchises require that the cable operator provide services to all areas of the community. No line extension will be changed to those areas of the Village having a density of at least thirty-five (35) homes per linear mile. All residential dwelling units in the franchise area have equivalent availability of Cable Services under nondiscriminatory rates and reasonable terms and conditions. They shall not arbitrarily refuse to provide Cable services to any person within its franchise area.

Neither franchise contains rebuild or upgrade requirements

Comcast Cable has upgraded their system in the past 10 years, while operating as AT&T. The rebuild has allowed our residents to subscribe to cable, phone and broadband internet services. There is no redlining. All residents have access to equal services.

Wide Open West has constructed their system within the past ten years. They are also able to provide cable, phone and broadband internet services.

Competitive Cable Systems

Our Village to committed to the provision of competitive cable television to its residents under "level playing field provisions and has granted a competitive franchise to Wide Open West in 1999 and has not denied any provided the opportunity to serve the Village. "whereas, the Grantor is authorized to grant one or more non exclusive franchises to construct, operate, and maintain a cable television system within the municipal boundaries of the Village."

Insurance and Bonding Requirements:

In addition to standard insurance and construction bond requirements, the franchises contain a security fund requirement. Both providers shall establish and provide as security for the faithful performance of all provisions of their Agreements, a letter of credit in the amount of fifty thousand dollars (\$50,000). Thirty (30) days after the effective date of the agreements both providers must post a performance bond in the amount of one hundred thousand dollars (\$100,000). The bond shall be maintained until completion of construction.

Use of Public Streets and Ways

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 access the public rights of way.

Use of Public Streets and Ways subject to grantor's supervision and control, Grantee may erect, own, install, construct, repair, replace, reconstruct, and retain in, on, over,

under, upon, across, and along the public Streets and Public Ways, including rights-of-way and public easements within the Franchise Area such wires, cables, conductors, ducts, conduits, vaults, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System for the provision of Cable Services within the Franchise Area. Grantee shall comply with all applicable construction codes, laws, ordinances, regulations and procedures, now in effect or enacted hereafter; and must obtain any and all necessary permits from the Village of Glenview prior to commencing any construction activities. Grantee, through this Agreement, is granted extensive rights to operate its Cable System for profit using Grantor's public rights-of-way and public utility easements within the Franchise Area in compliance with all applicable Grantor construction codes and procedures.

Enforcement Mechanisms

Franchisee fees: each payment shall be accompanied a written report, verified by an officer of Grantee, containing an accurate statement in summarized form, of Grantee's Gross Revenues and the computation of the payment amount. Grantee shall, within one hundred twenty (120) days after the end of each calendar year, furnish to the Village a detailed statement stating the total amount of Gross Revenues and all payments, deductions and computations for the preceding calendar year. Such statement shall be certified by the chief financial officer or controller of grantee prior to submission to Grantor.

Audits

On an annual basis, upon thirty (30) days' prior written notice and following the due date of the annual franchise fee report, the Village shall have the right to conduct at its expense an independent audit of Grantee's records reasonably related to the administration or enforcement of this Agreement with respect to franchise fees, in accordance with generally accepted accounting principles. If the audit shows that franchisee fees have been underpaid by five percent (5%) or more, Grantee shall pay the reasonable cost of the audit (unless such audit result is disputed by Grantee) and Grantee may then conduct an audit of the two next preceding calendar years of Grantee (if no audit was conducted of either or both of such prior calendar years) to re-compute any amounts determined to be payable to the Village pursuant to this Agreement. Under no circumstances shall the Village be permitted to conduct an audit of any fiscal year more than three (3) calendar years prior to the calendar year during which an audit takes place.

Liquidated Damages

Amounts: because the Grantee's failure to comply with provisions of the Agreement will result in injury to the Village, and because it will be difficult to estimate the extent of such injury, the Village and the Grantee agree to the following liquidated damages for the following violations. These damages represent both parties' best estimate of the damages resulting from the specified injury and said amounts are liquidated damages and not a penalty.

The liquidated damages amounts are in 2000 dollars and shall be increased every three years by the increase in the U.S. Consumer Price Index for the Chicago metropolitan region.

- (1) For failure to construct and activate its Cable System within forty-two (42) months of commencement of construction: \$500 per day.
- (2) For failure to extend a service line as applicable in Section 13.2 of this Agreement: \$100 per day.
- (3) For all other material violations of this Agreement for which actual damages may not be ascertainable: \$1 00 per day for each violation.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government and the cable operator. 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. The franchisees reserve the right to charge and or amend sections of the franchise to comply with changes in state, local and federal regulations.

While a franchise is negotiated by the local government as a contract, however the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. The rights include notice provisions, opportunity to cure an appeal process before the Village Board.

Competitive Cable Systems

- The Village of Glenview granted a competitive franchise to Ameritech New Media, now Wide Open West, a cable over builder, February 19, 1999 and that provider is providing limited service in my community today.

Wide Open West: In lieu of providing an PEG equipment or services duplicative of those being provided by the incumbent cable franchisee to the Village, Wide Open West has offered to pay the Village \$20,000 within thirty (30) days of the Effective Date and additionally will pay quarterly within forty-five (45) days of the last day of each calendar quarter an amount equal to one percent (1.0%) of adjusted Gross Revenues.

- Has not denied any provider the opportunity to serve in our community.

The Village conducted franchise negotiations with Ameritech New Media (now Wide Open West) with the understanding that the village was also in franchise renewal negotiations with the understanding that the Village was also in franchise renewal negotiations with the incumbent provided AT&T (now Comcast Cable) on January 4, 2000.

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Franchise negotiations with both providers were held at the village hall at the suggestion of their representatives. All negotiations were done in a timely, fair and equitable manner resulting in a healthy and competitive market.

Conclusions

The local cable franchising process functions well in the Village of Glenview and we are pleased to have two providers in our community. 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 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 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 Village of Glenview therefore respectfully requests 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.

Respectfully submitted,

The Village of Glenview

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