

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 THE BIRMINGHAM AREA CABLE AUTHORITY

These Comments are filed by the Birmingham Area Cable Authority, in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the Birmingham Area Cable Authority 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

The Birmingham Area Cable Authority (the BACB) is a consortium of four (4) municipalities, consisting of the City of Birmingham, Village of Bingham Farms, Village of Beverly Hills and the Village of Franklin, Michigan. The BACB is a creation of the Cable Act found at 47 USC §521 et seq. and is authorized by Article VII, Section 28 of the Michigan Constitution of 1963 and the Urban Cooperation Act of 1967, M.C.L.A. §124.501 et seq.; MSA §5.4088. Our franchised cable provider is Comcast Cablevision of the South, Inc. Our community has negotiated cable franchises since March 8, 1982.

Our Current Franchise

Our current franchise began on March 27, 2000 and expires on March 27, 2015. 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 BACB in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues 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 1 channel (or capacity) devoted to public access; 1 channel (or capacity) devoted to educational access; and 1 channel (or capacity) devoted to government access.

Our franchise requires that our PEG channels be supported by the cable operator through an annual grant to the BACB in an amount equivalent to three (3%) Percent of its annual Gross Revenues. Additionally, the Cable Operator offered to voluntarily provide a one-time grant of Four Hundred Thousand (\$400,000.00) Dollars as additional support for PEG channels. This grant money has been used, in part, to make improvements to the council chambers of the Village of Beverly Hills, and the commission chambers of the City of Birmingham, so that their respective municipal meetings can be broadcast to their constituents. The grant money has also been used to make improvements to the Birmingham Public Schools public access studio. Through the grant money, improvements have been made to the studio of the Cable Access Management Service Provider, and made improvements to our mobile production van.

The cable operator also voluntarily offered, and the BACB accepted the conveyance of the cable operator's 1992 mobile van and existing equipment in the van, as additional support of the PEG channels.

Our franchise provides for the construction of an institutional network ("I-Net"). The franchise required the cable operator to build the I-Net as soon as thirty (30) days after the franchise agreement was executed. The franchise required that the I-Net consist of a fiber optic loop connecting nine (9) locations, including:

- City Hall,
- Public Safety,
- Two (2) fire stations,
- The Baldwin Public Library,
- The Department of Public Services,
- The Ice Arena, and,
- Two (2) municipal golf courses.

We use our I-Net facilities seven days a week, twenty-four hours a day. The cable operator is required to provide all regular maintenance and repair to the Network components. The I-Net is used by the city to communicate with its various departments.

Our franchise contains requirements regarding emergency alerts. Specifically, the franchise required the cable operator to install as a part of its Cable System, and to operate throughout the term of the franchise, an Emergency Alert System (AES), in accordance with all requirements imposed by the FCC. The franchise requires the cable provider to cooperate with the member communities on the use and operation of the AES. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

Our franchise contains 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.

- The cable operator is required to adhere to the most stringent customer service and consumer protection standards of the franchise, local ordinance and the FCC.
- The franchise requires the operator, for new installations, if the subscriber requests underground installation of the drop to the subscriber, to charge the differential between the cost of aerial and underground installation.
- The franchise requires the operator to provide all subscribers with the option of obtaining a device by which the subscriber can prohibit the viewing of a particular cable service during periods selected by the subscriber.
- The franchise requires that the operator shall give the subscriber the option of either having or not having pay-per-view programming available.
- The franchise also requires the operator, upon the request of the subscriber, to scramble the audio and video portion of a pay-per-view channel, at no charge to the subscriber.
- The operator is also required to provide written notice at the time of installation and/or reinstallation regarding products and services offered, prices (rates) and options for cable services, installation and service maintenance policies as well as instructions on how to use the cable service.
- The operator is also required to provide written notice to the subscribers regarding channel positions and billing and complaint procedures, including the address and phone number of the person at the BACB responsible for receiving billing and other complaints.
- The operator is required under the franchise to provide written notice to the subscribers and the BACB of any changes in rates, cable services or channel positions as soon as possible.

The franchise agreement contains several requirements for the operator related to telephone service standards. The standards that the operator agreed to are as follows:

- That the operator shall have a local or toll-free telephone number available for use by subscribers toll-free 24 hours a day, 7 days a week.
- That the telephone number for the operator shall be listed, with appropriate explanations, in the directory published by the local telephone company.
- That the operator shall have representatives available to respond to subscriber telephone inquiries 24 hours per day, 7 days per week.
- Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds from when the connection is made. This standard shall be met no less than ninety (90%) percent of the time under normal operating conditions.
- Under normal operating conditions, subscribers shall not receive a busy signal more than three percent (3%) of the time.

The franchise contains customer service standards related to the operator's local office. These requirements that the BACB was able to negotiate with the operator include:

- That the operator shall either:
 - Maintain a location in the Authorized Area which is available for customers to pay their bills and/or exchange equipment, or
 - Establish conveniently-located payment drop boxes in the Authorized Area and shall, upon customers request and at no charge, exchange equipment by visiting the home of the customer within an appointment window designated by the customer.

The franchise contains customer service standards related to the operator's installation and service call standards. These standards include:

- Under normal operating conditions, installations located up to 175 aerial feet from the existing distribution cable system shall be performed within seven (7) business days after an order has been placed no less than 95% of the time.
- Installation and service calls shall be available at minimum 9 a.m. to 5 p.m. Monday through Saturday. Company shall establish an appointment window of no more than 4 hours with the subscriber.

- Company shall not cancel an appointment with a subscriber after the close of business on the business day prior to the scheduled appointment.
- If company's technician is running late for an appointment with a subscriber and will not be able to keep the appointment as scheduled, the subscriber shall promptly be contacted.
- If the subscriber's premises is not made available to Company's technician when the technician arrives during the established appointment window, the technician shall leave written notification stating the time of arrival and requesting that company be contacted again to establish a new appointment window.
- Under normal operating conditions, company shall meet these standards no less than 95% of the time.

The franchise agreement contains requirements that were negotiated at the local level regarding interruptions of service. A service interruption is defined in the franchise as a loss of picture or sound on more than one cable channel, affecting more than one subscriber. In such events, the operator is required to:

- Begin working on a service interruption promptly and in no event later than 24 hours after the interruption becomes known to the operator.
- Begin working on subscriber complaints involving impairment or degradation of signal quality on the next business day after notification.
- If the service interruption lasts for greater than 24 hours, the subscriber shall receive one day's free service for each day or portion thereof of interruption.

In order to provide a greater degree of protection for our citizens, the franchise requires that all field employees and service personnel of the operator, including its contractors and subcontractors to wear on their clothing a clearly visible identification card bearing their name and photograph.

The BACB was also able to negotiate language in the franchise agreement that protects the subscriber's bill from the operator, and the information and format of the bill that they receive. The franchise requires as follows:

- Bills shall be issued to the subscribers on a monthly basis.
- The Bill shall be clear, concise and understandable. The bill shall be fully itemized, with itemizations including basic and premium service charges, equipment charges, and all activity during the billing period, including optional charges, rebates, credits and late charges.

Our franchise requires that the cable operator currently provide service to the entire area of our communities represented by the BACB. The franchise states that the operator shall provide cable services to any and all persons requesting same at any residential location within the Authorized Area, subject to any applicable line extension charge and the ability, after diligent effort, to access private property not owned by the person requesting the service.

Our franchise contains the following insurance and bonding requirements:

- That the member communities shall not be liable for injury or damage from any cause whatsoever arising out of the operator's construction, maintenance, repair, use, operation, condition or dismantling of the cable system.
- That the operator shall, at its sole cost and expense, indemnify and hold harmless the municipalities from:
 - Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses, including reasonable attorney, expert witnesses and consultant fees and costs, incurred by reason of any act or omission of the operator or its employees and agents.
 - That in the event of any action shall be brought against the BACB or a member community, the operator, upon receiving notice from one of the indemnitees, shall, at its sole cost and expense, defend the same on behalf of the indemnitee.
 - That the indemnitee shall provide prompt notice of any action resulting from the franchise, and shall cooperate with the operator in the defense thereof.
 - That during the term of the franchise, the operator shall maintain in full force and effect, and at its sole cost and expense, insurance in the following form:
 - Worker's Compensation within statutory limits,
 - Comprehensive commercial general liability insurance with minimum limits of \$10,000,000.00,
 - Broadcasters liability coverage with minimum limits at \$10,000,000.00,
 - Automobile liability insurance with minimum limits of \$2,000,000.00,
 - That the BACB and the member communities shall be named as additional insureds.
 - That the operator shall provide a certificate of insurance as proof of coverage,
 - That the operator provide 60-day prior notice of any cancellation or replacement of the insurance,

- That the operator shall obtain the insurance coverage required by the franchise from insurers licensed to do business in the state of Michigan and rated A+ or better by A.M. Best Company.

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. The operator is not relieved of the obligation to obtain permits, licenses and other approvals which are required for the construction, repair, or maintenance of the cable system or provision of cable services, including municipal codes and ordinances, zoning ordinances, pavement cut ordinances, curb cut permits and building permits and the like.

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:

- The municipalities have the right to inspect all construction or installation work and to make such tests as it deems necessary to ensure compliance with the terms of the franchise, municipal code or other pertinent provisions of law.
- The BACB or the municipalities may audit the operator to verify the accuracy of franchise fees paid.
- In the event of a default in the terms and conditions of the agreement by the operator, the franchise provides for various remedies to the BACB and the member communities. The remedies include, but are not limited to the following:
 - Civil suit for damages;
 - Injunctive relief or specific performance;
 - The imposition of liquidated damages of up to \$100.00 per day for each day or partial day of default;
 - For a material violation, termination of the franchise.
 - Complaints from subscribers are directed to the BACB, and the BACB works to resolve any problems on an ongoing basis.

The Franchising Process

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 if any section, paragraph, or provision of the franchise shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provision shall not affect any of the remaining provisions of the franchise.

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, the City of Birmingham Revised Cable Ordinance requires that there be minimum public notice of any public hearing relating to the franchise. The public notice must be by publication, at least once per week, in a local newspaper of general circulation beginning 15 days prior to the meeting. Additionally, publication of the public meeting must be by announcement on at least two channels of the cable communications system between the hours of 7:00 p.m. and 9:00 p.m. for five consecutive days prior to the hearing.

Competitive Cable Systems

Our community:

- was approached once, but the provider chose not to enter into any formal discussions.

Conclusions

The local cable franchising process functions well for the Birmingham Area Cable Board. 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

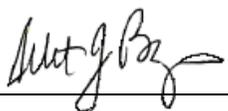
ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

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 Birmingham Area Cable Board 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,

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