Before the
**FEDERAL COMUNICATIONS 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 | ) | MB Docket No. 05-311 |
| as amended by the Cable Television Consumer | ) | |
| Protection and Competition Act of 1992 | ) | |

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## COMMENTS OF THE CITY OF BLUE LAKE, CALIFORNIA

These Comments are filed by the City of Blue Lake, California in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, we 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 City of Blue Lake is a rural community of approximately 1,150. Our franchised cable provider is CoxCom, Inc ("Cox"). We have been partners with our cable operator through a franchise (license) dating back to 1990.

#### Our Current Franchise

Our current franchise began in 1990 and has been extended until later this year by Council action. At this time we are negotiating a franchise renewal with the incumbent provider and expect to finalize our new agreement in the next few months.

Our franchise requires the cable operator to pay a franchise fee to the City 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 two (2) channels devoted to public, educational and government (PEG) access. No additional PEG support is required in the franchise.

We have agreed with Cox to include in our new franchise agreement the following "level playing field" provision:

> "If at any time during the term of this Franchise Agreement the City grants a franchise or other operating authority to another Person to provide cable service or operate a cable system, the material terms and conditions of such additional franchise or operating authority shall be reasonably comparable to the terms and conditions of this Franchise Agreement, taking into account any applicable legal limitations on the City's authority."

## The Franchising Process

The cable system serving the City also serves many adjoining communities. We have joined with Humboldt County and the Cities of Arcata, Eureka, Ferndale, Fortuna, and Rio Dell to negotiate and issue a cable franchise for Cox. This allowed the company to quickly obtain seven franchises with uniform provisions and allows the jurisdictions to more easily enforce those provisions.

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.

We have agreed with Cox to include in our new franchise agreement the following provision regarding changes in law which may affect the rights or responsibilities of either party:

> "The Grantee must comply with all applicable provisions of federal and state law, except to the extent those provisions are lawfully superseded by a provision of the Enabling Ordinance. If the City's ability to enforce any Franchise provision is finally and conclusively preempted, then the provision shall be deemed preempted but only to the extent and for the period the preemption is required by law. If, as a result of a change in law, the provision would again be enforceable, it shall be enforceable and the Grantee will comply with all obligations thereunder after receipt of notice from the City. Nothing in this section shall be construed as limiting or waiving in any way either party's right to assert or claim that a change in federal or state law made after the Effective Date interferes with or takes without compensation any contractual or property right held by either party pursuant to this Franchise Agreement."

## Competitive Cable Systems

Our City:

- has never been approached by a competitive provider to provide service.
- has not denied any provider the opportunity to serve in our community.
- has mechanisms in place to offer the same or a comparable franchise to a competitor upon request.

## Conclusions

The local cable franchising process functions well in the City of Blue Lake. As the above information indicates, we are experienced at working with our cable provider to 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.

The City of Blue Lake 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 City of Blue Lake

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