

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)
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

MB Docket No. 05-311

**COMMENTS OF THE SACRAMENTO METROPOLITAN CABLE TELEVISION
COMMISSION, A JOINT POWERS AGENCY WHOSE MEMBERS ARE THE
COUNTY OF SACRAMENTO, AND THE CITIES OF SACRAMENTO, CITRUS
HEIGHTS, ELK GROVE, FOLSOM, GALT AND RANCHO CORDOVA, CALIFORNIA**

These Comments are filed by the Sacramento Metropolitan Cable Television Commission ("SMCTC"), a joint powers agency whose members are the County of Sacramento, and the cities of Sacramento, Citrus Heights, Elk Grove, Folsom, Galt, and Rancho Cordova in California in support of the comments filed by the National League of Cities ("NLC") and the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NLC and NATOA, SMCTC believes that local governments can issue appropriate local franchises or licenses 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, the cities listed above and the county formed one governmental entity, SMCTC. SMCTC issues both cable television franchises and cable television licenses, a ministerial, expedited approval process that provides access to the public right of way for cable/video operators. SMCTC's Cable Television Licensing Ordinance ("Licensing Ordinance") provides a straightforward process, because it specifies in advance the 4 requirements for a license, including Applicant Name, Bond, Insurance, Area to be Served and PEG participation. This licensing process absolutely promotes competition and entry into the market while providing for community needs and for effective supervision of cable services within SMCTC's jurisdiction.

In addition to the original cable franchise, which is currently held by Comcast, SMCTC has two (2) competitive overbuilders currently providing competitive video and data services to approximately 25% of the homes with the jurisdiction of the SMCTC.

Cable Franchising in Our Community

Community Information

Sacramento County and the cities of Sacramento, Citrus Heights, Elk Grove, Folsom, Galt and Rancho Cordova have a combined population of approximately 1.4 million people. Our franchised cable provider is Comcast. SureWest TeleVideo and Strategic Technologies, Inc. currently hold licenses.

Our Current Franchise and Licenses: Similarly Treated

Our current franchise with Comcast's predecessors in interest began in 1982 and expires in 2024. The cable license with SureWest was granted in 2002 and expires in 2022. The Strategic Technologies license was granted in 1998 and expires in 2018. At this time we are not currently negotiating a franchise renewal with the incumbent provider or any other provider.

Our license agreements require the cable operators to pay a license fee to the SMCTC in the amount of five percent (5%) of the cable operator's revenues. The revenues for franchise and/or license fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act and the Licensing Ordinance. Comcast, under its franchise, pays a settlement fee in the amount of 2.65% of gross revenues and a franchise fee in the amount of 2.35% for a total of 5%. These amounts are also calculated in accordance with the Federal Cable Act and Comcast's franchise and the Licensing Ordinance.

We require the cable operators to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have seven (7) channels devoted to PEG; three (3) channels devoted for public access; three (3) channels devoted to educational access; and one channel devoted to government access.

Our Licensing Ordinance also requires participation in an institutional network ("I-Net") for use by the regional educational institutions, K-Graduate school. This I-Net is operational in its first phase. The second phase will connect 81 additional sites, including all high schools and middle schools in the franchise and license areas to the existing multi-GigE backbone. The cost of the first phase was paid primarily by the franchisee and licensees. The second phase costs, estimated at \$10 million will be shared by the cable operators, SMCTC and the educational sector.

Our franchise and licensing Ordinances contain 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 or license. These customer service requirements are similar to, but more stringent than, the current FCC customer service regulations. SMCTC's customer service regulations pre-date the FCC regulations. The customer service regulations, and the remedies for breach of these rules, has proved an effective means of addressing customer complaints that remain unresolved between the operators and the subscribers.

The original franchise was built out many years ago. It was rebuilt in the late 1990's. The rebuild was required in the entire service area and, as it progressed, it was balanced on a socio-economic basis. New licensees are also required to build in a non-discriminatory manner based on a balance of socio-economic areas to avoid red-lining or discrimination on economic or other bases. In addition, all services must be available on a universal, non-discriminatory basis within the service areas of the particular operator.

All of the current operators provide cable video services, digital cable services, pay for view and similar services. In addition, they all provide cable modem services or Internet based services. SureWest also provides telephone services, under a state telephone authorization and voice services by Comcast are expected in 2007.

Our Franchise and Licensing Ordinances require bonds and insurance as set forth in the Ordinances. The insurance covers general liability, and workers' compensation. Each operator is required to have a bond guarantying faithful performance of its obligations under the Franchise or License. We have found that the bonding requirements are especially important if an operator has financial difficulties during its build and stops short of completion, leaving unsafe conditions in the public rights of way.

The cable franchise or license 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 or license, the cable provider is required to obtain an encroachment permit from the appropriate municipal office before it may begin construction activities. The encroachment permit authorizes construction work in the rights of way, sets the construction and locational requirements (such as worker and public safety standards, placement to avoid interference with other facilities in the rights of way, and appropriate placement of facilities to avoid dangerous conditions) and requires inspection of completed work. Encroachment permits are required for all work in the rights of way regardless of who is performing the work and function like building permits. SMCTC staff act as liaison to expedite permit processing and standardizing construction protocols among the local government entities.

The franchise and Licensing Ordinances provide for enforcement mechanisms by which we are able to ensure that the cable operator(s) is/are abiding by their agreements and obligations: Typical enforcement mechanisms include informal resolution, administrative hearings and orders. If resolution and correction is not obtained, remedies include damages, injunctive relief, and termination of the franchise/license.

The Franchising and Licensing Process: Efficient Competitive Cable System Authorizations

By joining together in SMCTC, the jurisdictions in Sacramento have established a single entity who grants franchises and cable licenses for the county and the member cities.

Under the Licensing Ordinance, the grant of a cable license can be requested, processed and approved in 30 to 45 days. All Licensees are required to meet the requirements of the Licensing Ordinance including, PEG channels; insurance and bonds, and PEG interconnection, etc. The Ordinance establishes the community needs and has worked very well, establishing an open and accessible process. Since the Licensing Ordinance was adopted in 1987, 30 licenses have been granted to 13 different companies. Six of these companies have built cable systems and provided service to customers. There are currently two overbuilders. A third operator has acquired a license and intends to offer video services over telephone plant. This new service is pending activation. Overbuilders are not required to build the entire footprint of the incumbent cable franchisee. Overbuilders are, however, required to build an area which upon service activation does not discriminate on any socio-economic basis. The balance of the licensed operators were either acquired by other operators or never implemented.

Thus, our community has established mechanisms in place to offer the same or a comparable license to operators upon request. We have not denied access to any operator and provide all operators with the opportunity to provide service in our community. Rather all operators provide for the community's needs and meet the community's expectations.

We anticipate that a Bell System operator will also want to provide video services in our community; and we believe that it should be permitted to do so under the same rules and requirements as the current cable or video providers. Namely, we believe that a Bell or Telco System who desires to provide video services using the public rights of way is required to obtain a video or cable License from SMCTC and abide by the requirements of the Licensing Ordinance. We believe this will provide expedited and equal access to our marketplace and equal responsibilities and obligations.

Conclusions

The Sacramento cable franchising and licensing process functions well. 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 fairly equally present for new entrants as for existing users.

SMCTC, 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,

Sacramento Metropolitan Cable Television
Commission

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