

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 ARLINGTON INDEPENDENT MEDIA

These Comments are filed by Arlington Independent Media in support of the comments filed by the Alliance for Community Media (“Alliance”), the Alliance for Communications Democracy, the National Association of Telecommunications Officers and Advisors (“NATOA”), and other national local government organizations. Like the Alliance, Arlington Independent Media 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 benefits of cable franchising and the Public, Educational, and Government Access (“PEG”) services in our community.

Cable Franchising in Our Community

Community Information

Arlington, Virginia is a county with a population of approximately 200,000. Our franchised cable provider is Comcast. Our community has negotiated cable franchises since 1979.

Our Current Franchise

Our current franchise began on July 1, 1998 and expires on June 30, 2013.

Our franchise requires the cable operator to pay a franchise fee to the county in the amount of 4% 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.

Our franchise requires 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; 3 channels (or capacity) devoted to educational access; and 2 channels (or capacity) devoted to government access.

Our franchise requires that the cable operator support public access by contributing 1% of its annual gross revenue to Arlington Independent Media. In addition, it provides an annual capital grant of approximately \$100,000, and contributes approximately \$74,000 in in-kind payments for facility rental. The cable operator supports educational and government access by contributing an annual capital grant of approximately \$100,000 to each entity respectively.

Our franchise contains the following institutional network ("I-Net") requirements. The cable provider was required to construct an institutional network consisting of six single mode fiber counts in a sheath that connects seventy-seven I-Net sites within Arlington County. In addition, the cable provider is required to make annual payments to support the maintenance and operation of the I-Net that totaled \$390,000 per year in the first three years and have totaled \$117,000 per year in the subsequent years and continuing until the end of the franchise.

PEG Access Services

Arlington Independent Media has provided access services in our community for 23 years. We operate a single public access channel. In our most recently completed fiscal year, Arlington Independent Media provided 577.5 hours of new original local programming to Arlington's cable subscribers. The community used our equipment and facility 2,476 times. Below are the highlights of our services to the community.

- Coverage of community planning forums, town hall meetings, and neighborhood board meetings.
- Community-produced television programming for special interests including programming for seniors, non-English-speaking groups, ethnic and cultural groups, youth, people with disabilities, and the area's non-profit and service organizations.
- Staff-produced television programming on topics of interest to the local community.
- Local news coverage.
- Grants to produce community programming.

- Media literacy and production training for neighborhood based community organizations and individuals.
- Video production courses.
- Video production facilities including studio, field, editing, and, if available, remote van.
- Support to Media Training Centers in local schools, enhancing learning opportunities for students.
- Local political coverage, candidate platform statements and candidate debates during campaign season.
- Distribution of community college and university educational programming.
- Internet access at public sites.
- Computer literacy training for youth and families..
- Local election night coverage.

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.

While a franchise is negotiated by the local government as a contract, the process provides notice requirements for the public and the cable operator under state and local law. For instance: Arlington County involved the public extensively when it renegotiated and renewed the cable franchise with Prime Communications, Inc., when it transferred that franchise to Comcast and when it negotiated a competing franchise with RCN (Starpower). A series of public meetings were held where the terms of the proposed franchise requirements were discussed. In each case, the final document was distributed to the public prior to the Arlington County Board's discussion and vote.

Competitive Cable Systems

- Our community granted a competitive franchise to RCN (Starpower), a cable overbuilder, in 2000 and that provider is not currently providing service in my community today. Despite having obtained its franchise with unanimous approval by the Arlington County Board and under very favorable terms, RCN never constructed a cable system due to a lack of capital.
- Arlington County is currently in franchise negotiations with Verizon. The Arlington County Cable Administrator reports that negotiations will conclude within the next 4-6 weeks.

Conclusions

This NPRM is only looking retrospectively at one aspect of the franchising process. We believe that the Commission must look to the future of the public's interest in telecommunication's services. The existing franchising process has provided a basis for public interest services appropriately tailored to each community's local needs. We believe that those services such as PEG should be required of all broadband telecommunications providers.

The local cable franchising process has functioned well in Arlington. As the above information indicates, we are experienced at working with cable providers, the local franchise authority, and community interests 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 can also ensure that the cable operator provides the PEG Access services which are responsive to the local community needs as determined through community needs assessments and the local knowledge of educators, local elected officials and local nonprofit organizations.

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 primarily local interest.

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.

Arlington Independent Media therefore respectfully requests that the Commission take this opportunity to reaffirm the primacy of local government authority over franchising and should make clear that imposition on a new entrant of PEG Access, consumer protections and other public interest services requirements that are equivalent to those of the incumbent does not constitute an unreasonable refusal to award an additional competitive franchise within the meaning of federal law..

The PEG Access model should be strengthened and applied to new technologies, assuring that localism and community participation are not displaced by commercial interests.

The nation would be well served by a policy of “Community Reinvestment” through PEG Access that includes funds and bandwidth and/or spectrum that will be used for public purposes by:

1. Allowing the local community which owns the public rights-of-way to franchise and determine the best use of the community’s property;
2. Dedicating ten percent of the public airwaves and capacity on communication facilities that occupy public rights-of-way to PEG use for free speech, diverse points of view, local programs, community based education and political speech;
3. Mandating funding of five percent of gross revenues above and beyond any franchise fee to local authorities from all infrastructure and service providers and spectrum licensees to support PEG equipment, facilities, training and services; and,
4. Making PEG Access universally available to any consumer of advanced telecommunications services capable of full-motion video.

Respectfully submitted,

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