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April 28, 2006

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VIA Hand Delivery

ORIGINAL

Federal Communications Commission
 Office of Secretary

Ms. Marlene H. Dortch
 Secretary
 Federal Communications Commission
 445 12th Street SW
 Washington DC 20554

Re: Implementation of Section 621(a) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Protection and Competition Act of 1992, MB Docket No. 05-311
Notice of Ex Parte Presentation

Dear Ms. Dortch:

On behalf of AT&T Inc. (AT&T), Tom Hughes, Jim Smith, and Jim Lamoureux met with Donna Gregg, John Kiefer, Andrew Long, Mary Beth Murphy, Brendan Murray, John Norton, Natalie Roisman, and Holly Saurer of the Media Bureau on April 27, 2006. At the meeting, AT&T reiterated its position that its IP-video service is not a cable service subject to Title VI of the Act. Nonetheless, in light of efforts by cable operators and municipalities to require AT&T and other new entrants to obtain Title VI cable franchises prior to offering any competing wireline video services, consistent with the attached presentation and with AT&T's comments in this proceeding, AT&T urged the Commission to adopt a streamlined competitive franchising process pursuant to its authority to adopt rules implementing Section 621(a) of the Act.

If you have any questions, please do not hesitate to contact me at (202) 326-8895.

Sincerely,

/s/ Jim Lamoureux
 General Attorney
 AT&T Services, Inc.

Attachment

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Ms. Dertch
April 28, 2006
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cc: Donna Gregg
John Kiefer
Andrew Long
Mary Beth Murphy
Brendan Murray
John Norton
Holly Saurer
Natalie Roisman

**FEDERAL FRAMEWORK FOR WIRELINE
COMPETITIVE FRANCHISES**

MB Docket 05-311



Overview

- Radical technology evolution and service integration will drive fundamental changes in the consumer video experience far beyond traditional "cable service."
 - Network based IP video offerings will increasingly impact national policy for IP-based services.
 - Technology is allowing and customers are demanding interactive integrated service offerings.
- LFAs are no longer dealing with single purpose networks—franchise process/requirements have impact far beyond "cable service."
- FCC ability to effectuate national policies for broadband deployment and video competition compels adoption of a uniform national framework that includes targeted preemption.
- Cities are protected under national framework.
 - Adopt streamlined process with national franchise fee structure
 - Prohibit LFA demands that are unreasonable

Competitive Franchise Framework Should Benefit Consumers

- The need for an efficient and economic competitive franchise process is fundamentally a consumer issue.
 - Broadband is enabling myriad new and innovative mass market services.
 - Consumers benefit from the availability of higher speed Internet access services
 - irrespective of “cable service” offerings.
 - Impact of video franchise framework will determine whether consumers win.
- Consumers want:
 - Choice of provider that can deliver integrated products
 - Control over their video experience
 - Lower prices
- Consumers benefit as the market drives cable operators to “put more on the table” when a real choice exists for integrated offerings.

Inherent Structural Problems With Incumbent Franchise Model

- LFA view of competition is distorted by incumbent franchise model
- Economics of entry underlying new market entrant are significantly different than that of an incumbent
 - Entering market as 4th+ provider of video services
 - Smaller potential revenue stream to recover costs of entry
 - Lack incumbent's benefit of high video subscribership and first mover advantage
- Radical fragmentation of authority
 - Local control of franchise process is usurping federal authority over national policies affecting broadband deployment and video competition
 - Interstate telecommunications, information, and Internet access services and applications are affected by LFA actions



Uniform Federal Framework Required For Wireline Provision of Competitive "Cable Service"

- Establish a streamlined franchise process
 - Description of service area footprint, place of business, and officers
 - Applicant commits to:
 - Comply with all federal and state statutes and regulations
 - Pay franchise fee pursuant to national formula
 - Provide PEG channel capacity similar to incumbent
 - Comply with all local permitting regulations for use and occupation of ROW
 - Provide EAS / public safety emergency information
 - Comply with non discrimination laws, audits, and indemnification for any negligence while installing and maintaining facilities in ROW.

- Establish time frame for LFA action and market entry

National Framework: Franchise Fee

- Adopt uniform franchise fee formula
- Federal rules should preclude LFA "in-kind" demands for payments or obligations to provide anything of value that exceeds 5% fee cap, such as:
 - Franchise application fees that exceed reasonable costs
 - Free or discounted voice, data, or video services, facilities and equipment provided to LFA
 - Requirement to purchase services or equipment from LFA
 - Costs of lawsuit indemnification
 - Franchise "acceptance" fees
 - Fees assessed by LFA to hire attorneys
 - In-kind contributions in lieu of I-Net or PEG studio space

National Framework Prohibit Anti-Competitive Conditions

- ◆ Prohibit certain franchise conditions that are inherently anti-competitive when imposed on 4^{th+} entrant:
 - Buildout requirements or construction schedules as a condition of entry
 - Construction of institutional networks
 - Provision of redundant PEG facilities
 - PEG channel capacity beyond that of incumbent
 - Customer service and data collection requirements that go beyond federal requirements, e.g., city-specific customer service requirements
 - Conditions inconsistent with network architecture or technology
 - Payment of fees greater than 5% as calculated by the national formula
- ◆ Preempt LFAs from imposing video franchise conditions on traditional wireline ROW permitting process for upgrading existing networks
- ◆ Preempt state “level playing field statutes” inconsistent with federal scheme

The Commission Has the Authority to Implement a Streamlined Competitive Franchising Process

- 47 U.S.C. § 541(a) prohibits a franchising authority from unreasonably “refus[ing] to award an additional competitive franchise.”
- The Commission clearly has authority to issue rules to implement the prohibition in § 541(a):
 - 47 U.S.C. § 154(i) provides the Commission authority to “make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions.”
 - 47 U.S.C. § 201(b) provides the Commission authority to “prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter.”
 - 47 U.S.C. § 303(r) provides the Commission authority to “[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter[.]”

The Commission Has the Authority to Implement a Streamlined Competitive Franchising Process

- The Supreme Court has held:
 - The Act confers upon the Commission “broad rulemaking authority” to implement the provisions of the Cable Act. *City of New York v. FCC*, 486 U.S. 57, 70 n.6 (1988).
 - The Commission’s authority to issue regulations encompasses all amendments to the Communications Act. *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 378 (1999); *NCTA v. Brand X Internet Services*, 125 S.Ct. 2688, 2699 (2005).
- The mandate in Section 706 to use any “regulating methods” to “remove barriers to infrastructure investment” and “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans” compels the Commission to exercise its rulemaking authority to give content to Section 541(a).