FTTH COUNCIL PRESENTATION: SECTION 621 NPRM (MB 05-311)

MAY 23, 2006

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BACKGROUND ON THE FTTH COUNCIL

- Non-profit organization established in 2001
- Mission: to educate, promote, and accelerate FTTH and the resulting quality of life enhancements
- Members: approximately 130, 2/3 of whom are equipment related firms and the remainder are primarily representatives of cities and small telcos.

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Importance of 621 Proceeding

- Broadband Deployment
  - Bad News: U.S. lags in broadband deployment; Good news: Deployment is at the Tipping Point, and deployments can be accelerated by 621 relief.
    - State of FTTH Deployments
    - Video critical to FTTH deployment
    - UBS Report on Video Franchising Barriers to FTTH
      - Delay in application processing gives incumbent a “triple-play” head-start
      - Build-out harms economics for new entrant

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Importance of 621 Proceeding

- Consumer Impact
  - Increased competition will result in lower rates, more services, greater innovation, and increased responsiveness

Comparison of Rates in Keller, TX

	Verizon		Charter		DirecTV		DISH	
	Channels	**Monthly rate**	**Channels**	**Monthly rate**	**Channels**	**Monthly rate**	**Channels**	**Monthly rate**
Basic package	15-35	$12.95	30	$17.05			60	$26.99
Expanded basic	180	$39.95	70	$46.99	135	$41.99	120	$37.99
Value package			120	$52.99	155	$45.99	180	$47.99
Everything	**266**	**$79.85**	**200**	**$91.99**	**215**	**$93.99**	**230**	**$86.99**

Notes: Verizon – Everything includes 180 channels in expanded basic, 15 sports channels, 45 movie channels, 14 HBO channels and 12 Cinemax channels
Source: Company websites
UBS Investment Research, Wireline Telecommunications, *"TelcoTV Update – Full Steam Ahead"*, 22 September 2005, p.2

A Uniform National Policy: Critical for Accelerating Entry

- Today, Differing Policies in the MVPD and Converged Services Market are Skewing Investment Decisions and Deterring Entry

  - MVPD Market
    - Wireline – LFA/SFA (Title VI), FCC/PUC (Title II)
    - Wireless – FCC (Title III)
    - Satellite – FCC (Title III)

  - Converged Services Market
    - Voice – FCC/PUC (Title II)
    - Data – FCC (Title I/II (Deregulated))
    - Video – LFA/SFA (Title VI), FCC/PUC (Title II & III)

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A Uniform National Policy: Critical for Accelerating Entry

The FCC should adopt a national policy for video franchising that:

(1) Removes barriers to entry;

(2) Deregulates incumbents when competition takes hold;

(3) Preserve state and local government interests related directly to management and use of the public right-of-way and reasonable administration of the franchising process.

FCC's Legal Authority to Streamline the Video Franchising Process

- **General Policy**
  - In Title VI, Congress explicitly seeks (1) to establish a uniform national policy and (2) to promote competition in the cable communications and minimize regulation.
- **Standard**
  - Section 621(a) provides that a LFA cannot unreasonably refuse to grant a franchise.
  - Section 621(a) not only facilitates entry but it enumerates restrictions on LFA authority.

FCC's Legal Authority to Streamline the Video Franchising Process

- **Rulemaking Authority**
  - Section 201(b) – along with sections 4(i) and 706 – provide sufficient authority for the Commission to adopt implementing regulations for section 621.
- **Enforcement**
  - Regulations will be enforceable under the Supremacy Clause, sections 624, 635 and 636, and section 1331 of Title 28.

Barriers to Entry: Lengthy Consideration of Application

- **Problem:** While some LFAs expedite entry, far too often the franchising process can take 6 months or often longer. This delays consumer benefits, uses up valuable resources of the new entrant, and provides a head start for the incumbent.

- **Examples of Barrier**
  - Knology in Louisville – 10 months
  - Grande – About 9 months in major markets
  - Merton – Well over a year in Hanover

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Barriers to Entry: Lengthy Consideration of Application

- **FTTH Council Proposal**
  - FCC Rule: Optimum timing would be less than 30 days, but absolute limit should be no more than 4 months.
    - Consistent with limit imposed in section 626 on incumbent operator in renewing franchise.
  - FCC should require that a failure to act by this deadline constitutes a "final decision" allowing the applicant to seek relief under sections 635(a) and (b) and section 635A.
    - Consistent with structure in sections 621(a)(1), 625 and 626.

Barriers to Entry: Level Playing Field Laws/Provisions

- **Problem:** Though superficially competitively neutral, Level Playing Field Laws/Provisions in fact are anti-competitive.
  - Incumbents raise their bids to deter entry.
  - New entrants must take share from well-entrenched incumbents with market power.
- **Examples of Barrier**
  - Knology in Louisville – Too onerous to build
  - Grande in various Texas cities
  - Merton in Hanover – Requirements in addition to those imposed on the incumbent

Barriers to Entry: Level Playing Field Laws/Provisions

- **FTTH Council Proposal**
  - FCC Rule: Preempt LPF provisions, whether in contracts, local ordinances, or states statutes or rules.
    - Such provisions are inconsistent with the Communications Act because they stifle competitive entry and therefore violate section 636.
  - Enforce the Commission’s regulation by going to federal or state court and obtaining an injunction.

Barriers to Entry: Build-Out Requirements

- **Problem:** Build-out requirements are apt for cable providers with exclusive franchises but deter new entrants that must incur enormous upfront sunk, capital costs and take share from incumbents.
- **Examples of Barrier**
  - Guadalupe Valley Telecom Coop – Bulverde
  - Grande – Various TX areas
  - Knology – Various areas

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Barriers to Entry: Build-Out Requirements

- **FTTH Council Proposal**
  - FCC Rule: New entrant can designate video service area; LFA may not impose build-out requirements for first 5 years post-entry; after that, only requirements consistent with economic feasibility are deemed reasonable and requirements needed to remedy any proven occurrence of redlining.
    - In designating a service area, the new entrant cannot avoid areas "because of the income of the residents in which such group resides."
  - New entrant can enforce the FCC's rule by seeking injunctive relief under sections 621(a)(1) and 635(a) based on the LFA's refusal to award a competitive franchise.

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Barriers to Entry: PEG/I-Net Requirements

- **Problem:** Too often LFAs require new entrants to provide facilities, services, and equipment not directly related to legitimate PEG/I-Net requirements, imposing substantial additional entry costs on competitors.

- **Examples of Barrier**
  - Grande – $200k upfront payment in Corpus Christi
  - Knology – $1.9M obligation in Louisville
  - Verizon – $100k/year for already built studio facilities in Sudbury, MA; $13M “wish list” for facilities in Tampa

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Barriers to Entry: PEG/I-Net Requirements

- **FTTH Council Proposal**
  - New entrant should carry at most the same number of PEG channels as incumbent.
    - Incumbent operator must permit new entrant to connect with pre-existing channel feeds at actual cost.
  - New entrant should not be required to build duplicative PEG facilities but, for facilities directly related to PEG channels, it should pay pro rata share based on number of subscribers.
    - Upfront/advance payments should be prohibited.
  - New entrant should make available to LFA same I-Net capacity as incumbent at actual cost but only if its existing facilities have such capacity. (LFA cannot require construction.)
  - New entrant can enforce the FCC's rule by seeking injunctive relief.

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Barriers to Entry: Extraneous Requirements

- **Problem:** Many LFAs require concessions from new entrants that are not related to the provision of video services – once again raising the cost of entry.

- **Examples of Barrier**
  - Grande – Scholarship in San Antonio
  - Verizon – Seed money for wildflowers in Massapequa Park, NY; free television for every house of worship in Holliston, MA; acceptance fee in Fairfax, VA

Barriers to Entry: Extraneous Requirements

- **FTTH Council Proposal**
  - FCC Rule: All LFA requirements must be strictly related to requirements in the Communications Act.
  - New entrant can enforce the FCC’s rule by seeking injunctive relief.

Barriers to Entry: Franchise Fees

- **Problem:** Section 622 provides for a 5% ceiling on franchise fees, and the actual fee amount is subject to the requirements of section 621(a)(1). LFAs, however, treat the 5% amount as a floor or automatic entitlement, rather than demonstrating their fees are reasonable or related to legitimate circumstances.

- **FTTH Council Recommendation**
  - Franchise fees should be reasonable and related to purposes permitted under the Act. Except for items excluded under section 622(g), all payments, whether in money or in kind must be subject to the twin constraints of reasonableness and the overall 5% ceiling.

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