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Melissa E. Newman
Vice President – Federal Regulatory

EX PARTE

<u>*Filed electronically via ECFS*</u>

June 13, 2006

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ***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**

Dear Ms. Dortch:

Qwest Communications International Inc. on behalf of Qwest Broadband Services, Inc. ("Qwest") submits this *ex parte* communication with respect to the above-referenced proceeding.

On June 7, 2006 Gary Lytle and Steve Davis of Qwest, met with Chairman Martin and Heather Dixon to discuss cable franchising issues. The attached letter provides additional detail regarding Qwest's recent experience with its efforts to obtain a cable franchise in Colorado Springs, Colorado. Also, attached is a matrix that lists the ownership of the top 20 cable program networks.

This submission is made pursuant to 47 C.F.R. Sections 1.49(f) and 1.1206(b).

Sincerely,

/s/ Melissa E. Newman

Attachment

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Gary R. Lytle
Vice President – Federal Relations

EX PARTE

June 13, 2006

Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ***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**

Dear Chairman Martin:

Qwest Communications International Inc. on behalf of Qwest Broadband Services, Inc. ("Qwest") submits this *ex parte* communication with respect to the above-referenced proceeding.

On June 7, 2006 Steve Davis and I of Qwest, met with yourself and Heather Dixon to discuss cable franchising issues. This letter provides additional detail regarding Qwest's recent experience with its efforts to obtain a cable franchise in Colorado Springs, Colorado.

Background: Colorado Springs is Colorado's second largest metropolitan area with a population of over 500,000 and over 150,000 households. It is home to large, and growing, military installations at Cheyenne Mountain and Fort Carson and is attracting business and development at a substantial rate. Banning Lewis Ranch is a proposed new community which includes housing, schools and businesses within Colorado Springs, Colorado. It is being built on a 24,000 acre land parcel and will include approximately 70,000 homes. The new charter school will open this fall and first home occupancy is targeted for first quarter 2007. The developer is seeking a partner to build a fiber infrastructure and provide a "triple play" of cable television, telephone and high speed Internet. Qwest would like to provide these services to this new community.

Currently, however, Qwest cannot offer cable television services in Colorado Springs because it has no cable franchise agreement. Right now, only the incumbent, Adelphia Communications ("Adelphia"), has an active cable franchise in Colorado Springs and, therefore, is the only entity that can offer cable television there. Adelphia is going through bankruptcy, but its Colorado Springs franchise and assets are to be purchased by Comcast Corporation.

As detailed more fully below, after multiple discussions over several months with city officials and staff, Qwest's efforts to obtain a cable franchise in Colorado Springs have not been successful. In fact, the issues that Qwest would have to surmount to obtain a franchise, including city charter language mandating a popular vote to approve a franchise, and level playing field requirements in the incumbent's franchise agreement, make the process for obtaining a competitive franchise in Colorado Springs at best an excessively lengthy and expensive process and at worst impossible. Nor is this situation specific to Qwest, but it applies to any wire-based provider seeking to enter the Colorado Springs cable market. As a result, the citizens of Colorado Springs will be denied the benefits of cable competition for years to come, if not indefinitely, without some action to alter this process.

Discussions with City of Colorado Springs on Cable Franchise Acquisition: While Qwest had some preliminary discussions with the City of Colorado Springs in 2005, more formal contacts and meetings began in earnest in 2006. At a meeting on April 17, 2006 with some city officials, including a representative from the City Attorney's office, Qwest identified the key benefits of facilities-based cable competition and stated that it wished to bring these benefits to the citizens of Colorado Springs by obtaining a competitive cable franchise from the City of Colorado Springs. Qwest also stated that, given lessons it had learned from earlier experiences, it could not agree to any mandatory build-out requirements. While Qwest hopes eventually to serve citizens throughout the City, as a second entrant, Qwest's build out in a community needs to be driven by its success in winning new customers and not by an arbitrary build-out schedule coupled with penalties.

The City identified two threshold issues. First, it stated that any franchise had to be approved by a vote of the people. Qwest noted that in the case, Qwest Broadband Services, Inc. v. City of Boulder, 151 F. Supp. 2d 1236 (D. Colo. 2001), a federal district court determined that federal law preempts any requirement for a popular vote. The City, however, stated that it would not back down from a vote requirement until its own name appeared in a case caption and then invited Qwest to file a "friendly lawsuit" to resolve this issue. The City also noted that the incumbent's franchise contained a level playing field requirement and, therefore, it could not grant Qwest a franchise which did not mirror the incumbent's agreement.

Following that meeting, Qwest sent a formal, written request dated May 8, 2006 to negotiate a cable franchise with the City of Colorado Springs and provided the City with a proposed franchise for its consideration as well as legal arguments regarding the vote and level playing field arguments. Qwest also reiterated its offer to indemnify the City in the event anyone challenged the legality of any franchise issued to Qwest. In response, by letter dated May 25, 2006, the City stated that while it appreciated Qwest's offer of an indemnification, it believed that a non-adversarial complaint filed by Qwest against the incumbent cable provider and the City addressing the level playing field and popular vote issues would be in the best interests of all the parties. Qwest also received a letter dated June 5, 2006 from the City's Director of Internal Support Services advising Qwest that the Colorado Springs City Council had agreed during a recent session that Qwest must not only build out its cable system to the entire city, but also receive approval through a vote of its citizenry.

Consequences of Colorado Springs' Actions: Thus, in order for Qwest to obtain a competitive cable franchise agreement in Colorado Springs it will need to sue the city and the incumbent cable provider. This would be an expensive, lengthy process that still may not result in the award of a franchise.

The developer of Banning Lewis Ranch is looking for a partner to provide video, telephony and high-speed Internet services when the first homeowner moves in and not at some unknown point in the distant future contingent on the vagaries of the legal system. The developer is currently in discussions with Qwest and another provider also capable of providing a triple play (not the incumbent) and it is Qwest's understanding that the City has raised the same issues and offered the same unpalatable options for obtaining a cable franchise to that provider. The net effect of the City's position is that the developer of the property will not have any competitive options. Rather, by barring entry of each competitive cable provider, who can, in turn, also offer high-speed Internet service and telephony, to the residents of Banning Lewis Ranch, the City has, in effect, left the developer no choice and driven new business into the hands of the incumbent.

The City's position is antithetical to one of the primary goals of federal communications policy of achieving greater competition in the market for the delivery of multichannel video programming. It is simply not reasonable that an entity seeking to enter the city's cable market to offer a competitive choice for cable services should have to sue the city and the incumbent cable provider to gain entry. FCC action that precludes such unreasonable conduct in refusing to grant a franchise is needed.

Sincerely,

/s/ Gary R. Lytle

Copy via email to:
Michael Copps
Jonathan Adelstein
Deborah Taylor Tate
Robert McDowell
Heather Dixon
Rudy Brioche
Jessica Rosenworcel
Aaron Goldberger
Cristina Pauze
Thomas Navin
Donna Gregg

Ownership of Top 20 Cable Program Networks (As of Dec. 2005)

June 8, 2006

Rank [1]	Program Network [1]	Cox [2]	Disney [2]	Time Warner [2]	Viacom [2]	Other [2]
1	Discovery	X				
2	ESPN		X			
3	CNN (Cable News Network)			X		
4	TNT (Turner Network Television)			X		
4	QVC					X
6	USA Network					X
6	C-SPAN (Cable Satellite Public Access Network)					X
8	Spike TV				X	
9	Lifetime Television (LIFE)		X			
9	Nickelodeon				X	
9	TBS			X		
13	A&E Networks		X			
13	ESPN2		X			
15	The Learning Channel (TLC)	X				
16	Home Shopping Network (HSN)					X
16	CNN Headline News			X		
19	MTV				X	
20	ABC Family Channel		X			
	TOTAL	2	5	4	3	4
	Percent Ownership of Top 20 [3]	10%	25%	20%	15%	
	Total % of Top 20 Owned by Above Entities	70%				

Source:

[1] National Cable & Telecommunications Association (www.ncta.com)

[2] FCC Twelfth Annual Report In the Matter of the Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming (Released March 3, 2006) MB Docket No. 05-255, Tables C-1 and C-2

[3] The information on the NCTA web site is labeled "Top 20 Program Networks", even though there are only 18 Program Networks listed. "20" was used as the denominator in the calculations.

Ownership of Top 20 Cable Program Networks (As of Dec. 2005)

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2	ESPN		X			
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4	TNT (Turner Network Television)			X		
4	QVC					X
6	USA Network					X
6	C-SPAN (Cable Satellite Public Access Network)					X
8	Spike TV				X	
9	Lifetime Television (LIFE)		X			
9	Nickelodeon				X	
9	TBS			X		
13	A&E Networks		X			
13	ESPN2		X			
15	The Learning Channel (TLC)	X				
16	Home Shopping Network (HSN)					X
16	CNN Headline News			X		
19	MTV				X	
20	ABC Family Channel		X			
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