

Leora Hochstein
Executive Director
Federal Regulatory



1300 I Street, NW, Suite 400 West
Washington, DC 20005

Phone 202 515-2535
Fax 202 336-7922
leora.l.hochstein@verizon.com

June 30, 2006

EX PARTE

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

Re: 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:

On June 29, 2006, Will Johnson and Leora Hochstein met with Matthew Berry, Christopher Killion, and Susan Aaron of the Office of General Counsel. We discussed our positions regarding what should happen if a franchising authority fails to grant or deny a franchise within time limits set by the Commission. We also discussed whether build out requirements may be placed on competitive providers.

In this meeting, we reiterated the positions set out in our earlier comments in this proceeding that the Commission should further the pro-competitive purposes of Section 621(a) by setting a reasonable deadline of no more than 4 months for franchising authorities to grant or deny competitive franchises. And if a franchising authority fails to act within that time, then the competitive provider should be permitted to begin offering video services immediately. This could be implemented either by recognizing that a franchise be “deemed granted” as of that time, or by the issuance (by operation of new Commission rules) of a “temporary franchise” to allow the provider to start offering competitive video services. If the temporary franchise approach were taken, the provider could be required to comply with a limited number of obligations, such as the payment of lawful franchise fees and compliance with reasonable and non-discriminatory right-of-way ordinances, while further negotiations with the local franchising authority towards a final franchise continue. The Commission has ample authority, both under section 4(i) of the Act and under the Commission’s broad authority to enforce and effectuate the purposes of the Cable Act, to implement section 621(a) by adopting either of these approaches. *See, e.g., City of Chicago*, 199 F.3d 424, 428 (7th Cir. 1999).

We also reiterated that in order to minimize the frequency with which such procedures would be used, it is important for the Commission to address the recurring problem areas that often frustrate franchise negotiations, including such issues as unlawful build-out requirements and the variety of

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unlawful and unreasonable demands for fees and regulatory authority beyond those permitted by the Cable Act.

Finally, we explained that nothing in the Act requires competitive providers to build out and provide service throughout a franchising authority's jurisdiction or throughout the incumbent's franchise area, and imposing such requirements on new entrants creates a significant barrier to competitive entry that runs afoul of section 621(a)'s pro-competitive purposes. In fact, the statute's only reference even arguably related to build out – section 621(a)(4)(A) – imposes an additional *restriction* on franchising authorities by prohibiting the imposition of unreasonable timeframes on a provider for offering service within its "franchise areas." Therefore, competitive providers should be permitted to define their own franchise areas, and local franchising authorities should be required accept any such definition that is reasonable and otherwise consistent with the Cable Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Marlene H. Dortch". The signature is written in a cursive, flowing style.

cc: Matthew Berry
Christopher Killion
Susan Aaron