

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, D.C. 20007-5108

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

NEW YORK, NY
TYSONS CORNER, VA
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES
JAKARTA, INDONESIA
MUMBAI, INDIA

DIRECT LINE: (202) 342-8518

EMAIL: tcohen@kelleydrye.com

July 20, 2006

VIA ECFS

Sherille Ismail
Senior Counsel
Office of Strategic Planning and Policy Analysis
445 12th Street SW
Washington, DC 20554

Re: Ex Parte Letter – MB Docket 05-311

Dear Sherille:

On May 18, 2005, the Fiber-to-the-Home (FTTH) Council met with you to discuss its comments in MB Docket 05-311, the Section 621 Video Franchising proceeding. At that time, you raised a question about the key factors driving construction of advanced broadband networks and the role of resident income in the prospective construction area in that calculus.

As we explained in our May 19, 2006 ex parte letter to the Media Bureau staff, network deployment is driven primarily by two factors: density and the cost of construction. An overbuilder, Knology, for instance, has found that many high-income residential areas, in particular, suburbs of metropolitan areas, are characterized by very large lot sizes, often 1 acre or greater, and by aesthetic requirements to place all utilities underground. As a result, in such areas, network deployment is much more expensive than in more urban areas or other areas where construction costs are less.

In contrast to “density and dirt,” the income of potential subscribers is not a determining factor driving network construction. That is not surprising, since, as Knology and other overbuilders have explained, income has not been shown to be a significant factor in determining cable subscribership. This conclusion is supported by the attached 1998 study by FCC

July 20, 2006

Page Two

employees Robert Kieschnick and B.D. McCullough.¹ The authors concluded that “even for households in the lowest income bracket, the decision not to subscribe to cable television is more often the result of a preference than an inability to afford services.”² As they explained,

“...as household income increases, expenditures on community and cable TV services increase. However, the percentage change is rather small...a 1% increase in household income is associated with a 0.16% increase in cable expenditures which suggests that cable expenditures are rather insensitive to changes in household income. Further consumer expenditures on cable television appear less sensitive to income changes than a number of other consumer expenditures...For example, similarly calculated income elasticities for food (0.23), housing (0.24), or clothing (0.32) suggest that consumer expenditures on cable television are less sensitive to changes in household income than many other goods or services that are traditionally thought of as insensitive to household income.”³

The authors also found that “households typically spend substantially more on other forms of entertainment than they do on cable television.”⁴

During our meeting, we also discussed the question of whether broadband “take rates” affect the construction of advanced (next-generation) broadband networks. There are several responses to this question. First, the major telephone companies are providing voice and Internet access services over their current network infrastructure which contains large amounts of copper last-mile plant with long loop lengths.⁵ This plant, however, has limited capabilities and cannot be used to provide a cable television product or other types of video products requiring very high-speed delivery.⁶ Thus, the ability to offer a full-suite of video services and the expected

¹ *Why do people not subscribe to cable television? A Review of the Evidence*, Robert Kieschnick, Federal Communications Commission, and B.D. McCullough, Federal Communications Commission, September, 1998. This paper was delivered at the Telecommunications Policy Research Conference, and the opinions expressed are solely those of the authors and not of the FCC. <http://www.tprc.org/abstracts98/kieschnick.pdf>

² *Id.* at 3.

³ *Id.* at 3.

⁴ *Id.* at 3.

⁵ The downstream and upstream speeds of Internet access services provided over copper plant vary greatly depending on the length of the loop.

⁶ The current copper telephone plant also is limited in being able to support higher speed Internet access products, which are increasingly being demanded by customers. Only with the deployment of advanced networks can these products be delivered.

July 20, 2006

Page Three

subscriber “take rates” for those services are the most important factors driving deployment of advanced networks. This is the case because the revenues from video services are necessary to support the economics of investment.

Second, the major telephone and cable companies are offering today “first-generation” broadband services – with “always-on” capabilities at varying access speeds – throughout most of their operating territory at prices comparable to, if not below, dial-up access prices. Therefore, today’s “take rates” for this generation of broadband already reflect widespread deployment of broadband Internet access at affordable prices. If people are not subscribing to this generation of broadband, factors other than price and availability are driving decisions about whether to subscribe.⁷

Finally, the just issued report by the Pew Internet & American Life Project provides very encouraging findings about the increase in broadband “take rates” throughout the residential market regardless of the demographics:

The number of Americans who have broadband at home has jumped from 60 million in March 2005 to 84 million in March 2006 – a leap of 40%. This is a substantial increase in the rate of broadband adoption compared with the previous year.

Broadband adoption grew by 68% since March 2005 among people living in households with incomes between \$40,000 and \$50,000.⁸

These results are not unexpected. Demand for higher speeds continues to grow as more people seek to access a greater array of applications; availability of broadband has increased; and, the price of broadband continues to decline – down 8% over the past year. In short, broadband has become an even more attractive option for all potential subscribers regardless of income.

As noted in its February 13, 2006 comments in this proceeding,⁹ the FTTH Council strongly believes the Commission has the responsibility and authority to establish a national policy driving investment in and competitive deployment of advanced broadband networks which enable access to important video applications. Streamlining the video franchising process to allow competition as envisioned in section 621 of the Act is crucial to achieving that

⁷ The fact that most Americans can access today’s generation of broadband services in no way should be seen as sufficient for the Commission to meet its mandate under section 706 of the Telecommunications Act of 1996.

⁸ *Home Broadband Adoption 2006*, John B. Horrigan, Associate Director of Research, Pew Internet & American Life Project, May 28, 2006, p. i.

⁹ Pp. 40-43.

KELLEY DRYE & WARREN LLP

July 20, 2006

Page Four

objective. Such a policy will result in the accelerated deployment of advanced broadband networks to the greatest extent throughout the country consistent with the objective of ensuring that cable service is not denied to any group because of income.

An original and one copy of this ex parte letter is being filed with the Secretary's office pursuant to 47 C.F.R. 1.1206.

Respectfully submitted,



Thomas Cohen
Edward A. Yorkgitis, Jr.
Kelley Drye & Warren LLP
Suite 400
3050 K Street NW
Washington, DC 20007
Tel. (202) 342-8518
Fax. (202) 342-8451

Counsel for the Fiber-to-the-Home Council

cc: Marlene H. Dortch
Rosemary Harold
Andrew Long
Mary Beth Murphy
Natalie Roisman
Brendan Murray
Holly Saurer
John Norton
Mike Lance
Leslie Marx
Diego Ruiz
Jonathan Levy
Julie Veach
Marcus Maher
Susan Aaron