Before the
FEDERAL COMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Annual Assessment of the Status of	)	
Competition in the Market for the Delivery	)	MB Docket No. 06-189
of Video Programming	)	
	)	

COMMENTS OF THE GREATER METRO TELECOMMUNICATIONS CONSORTIUM AND THE RAINIER COMMUNICATIONS COMMISSION

These Comments are filed by the Greater Metro Telecommunications Consortium ("GMTC") and the Rainier Communications Commission ("RCC") in support of the Comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"), the National League of Cities ("NLC"), the National Association of Counties ("NACo"), the United States Conference of Mayors ("USCM") and other national local government organizations. GMTC is an intergovernmental agency formed pursuant to Colorado law, comprising 32 cities, counties and towns in the metropolitan Denver area. The individual member jurisdictions are listed on Exhibit A. GMTC jurisdictions comprise an area of approximately 645 square miles, and represent a population of approximately 2.4 million people, 925,000 homes, and 459,000 cable subscribers. RCC is an intergovernmental agency formed pursuant to Washington law, comprising Pierce County and 15 cities and towns in Pierce County. The individual member jurisdictions are listed on Exhibit B. RCC jurisdictions comprise an area of approximately 1,680 square miles, and represent a population of approximately 755,900 people, 306,000 homes and 116,000 cable subscribers. Like the national local government organizations, GMTC and RCC believe that local governments want and encourage competition in the video-programming marketplace. In our experience, the local franchising process works and helps to ensure that all residents share in the benefits that increased competition brings to a community.

GMTC and RCC, together with the Cities of Bellevue and Olympia, Washington, Howard County, Maryland, and the Washington Association of Telecommunications Officers and Advisors, previously filed Comments and Reply Comments in the franchising proceeding, MB Docket No. 05-311, the 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. Because this Notice of Inquiry raises many of the same issues that were addressed by our earlier Comments and Reply Comments, we are attaching a copy of each as Exhibits C and D, respectively, for inclusion in this proceeding.

The Notice of Inquiry seeks comments on the impact of the local franchise process on new providers' entry into local markets (*See*, NOI at ¶12), and asks whether state or local regulatory issues impact the initial determination in whether a local exchange carrier chooses to enter the video programming market (*See*, NOI at ¶49). Since the filing of our Reply Comments in MB Docket No. 05-311, Qwest has pursued discussions regarding a cable franchise with approximately eight GMTC members. In each case, GMTC local government members have made every effort to schedule meetings and communicate with Qwest on a timely basis, in order to facilitate the franchise negotiation process. Discussions have not proceeded as quickly as some of the local governments would like, in large part due to Qwest's availability. As we stated in our Comments and Reply Comments in the franchising proceeding, this statement is not intended to be critical of Qwest in any way. It is simply a fact, and the reality we face in dealing with a large company.

Of those GMTC communities that Qwest has expressed an interest in serving, only one has informed Qwest that while it desired competition, it would not grant a franchise unless Qwest agreed to build out requirements that were comparable to those required of the incumbent cable operator. A second community indicated that it was unlikely to consider a franchise if Qwest would not commit to serving customers throughout the entire city. As Qwest has previously indicated its refusal to enter into a franchise agreement in any community that requires such a comparable build out obligation, there appears to be only two GMTC area communities where Qwest has expressed interest in a cable franchise, and has rejected the opportunity in order to avoid build out obligations. In each of the other GMTC communities which are discussing a possible video franchise with Qwest, discussions are proceeding, and Qwest has indicated that it will take some period of time for it to upgrade its network in order to deploy its chosen technology for providing competitive video programming services.

Qwest has not shown any interest in providing video services to any RCC local government. At a meeting of the Washington Association of Telecommunications Officers and Advisors in Yakima, Washington on October 20, 2006, a Qwest representative was specifically invited by RCC to seek franchises in RCC communities. Qwest has not responded with any information indicating when or even if, it is interested in serving these communities. We would note, as we did in our Comments and Reply Comments in MB Docket No. 05-311, that local regulatory practices have not stopped Click! Network from seeking competitive video franchises.

GMTC and RCC do not believe that state or local regulatory issues are a factor in Qwest's determination of whether to enter a specific market. While Qwest has not shown an interest in providing video programming in a majority of our communities, it would be welcome in most. If Qwest (or any other competitor) were willing to serve our communities under similar obligations as those agreed to by the incumbent cable operator, it could quickly obtain a cable franchise and begin deployment in any of our communities. We do believe that while other factors not related to regulatory issues are involved in Qwest's initial determination of whether to enter one of our markets, the subsequent policy issue of build out obligations comparable to those of the incumbent cable provider do play a role in Qwest's decision making process. Qwest has indicated to GMTC members on multiple occasions that it will refuse to negotiate a franchise

agreement with any jurisdiction that requires a build out obligation comparable to that obligation which binds the incumbent cable operator.

The GMTC and RCC believe that the local cable franchising process functions well in our communities. It ensures that specific needs of individual communities are met, and that local customers are protected. As we stated in the video franchising proceeding, and as the Commission noted in its NPRM in that proceeding, local governments have the authority to determine reasonable build out obligations within their communities. While we applaud efforts to increase competition in the video programming marketplace, the Commission should do nothing to impair the operation of local franchising as set forth under the existing federal regulatory scheme, or restrict the ability of local governments to determine the specific needs of local communities. The local cable franchising process should not be used as an excuse for the failure of new cable service providers to enter into the video-programming marketplace.

Respectfully submitted this 29th day of November 2006.

THE GREATER METRO TELECOMMUNICATIONS CONSORTIUM AND THE RAINIER COMMUNICATIONS COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of November 2006, I served a true and correct copy of the foregoing **COMMENTS OF THE GREATER METRO TELECOMMUNICATIONS CONSORTIUM AND THE RAINIER COMMUNICATIONS COMMISSION** addressed to the following and in the manner specified:

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EXHIBIT A

(GMTC MEMBER LISTING)

Adams County	Federal Heights
Arapahoe County	City of Glendale
City of Arvada	Greenwood Village
City of Aurora	Jefferson County
City of Brighton	City of Lafayette
City/County of Broomfield	City of Lakewood
City of Castle Rock	City of Littleton
City of Centennial	Town of Lochbuie
Cherry Hills Village	City of Lone Tree
Columbine Valley	City of Louisville
Commerce City	City of Northglenn
City and County of Denver	Town of Parker
Douglas County	City of Sheridan
City of Edgewater	City of Thornton
City of Englewood	City of Westminster
Town of Erie	City of Wheat Ridge

EXHIBIT B

(RCC MEMBER LISTING)

Bonney Lake

Carbonado

DuPont

Edgewood

Fife

Milton

Orting

Pierce County

Puyallup

Ruston

Steilacoom

Sumner

Tacoma

University Place

Wilkeson

EXHIBIT C

(COMMENTS IN MB DOCKET NO. 05-311)

Before the
FEDERAL COMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF THE GREATER METRO TELECOMMUNICATIONS CONSORTIUM, THE RAINIER COMMUNICATIONS COMMISSION, HOWARD COUNTY, MARYLAND, THE CITIES OF BELLEVUE AND OLYMPIA, WASHINGTON AND THE WASHINGTON ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS

These Comments are filed by the Greater Metro Telecommunications Consortium ("GMTC"), the Rainier Communications Commission ("RCC"), the Cities of Bellevue and Olympia, Washington, Howard County, Maryland, and the Washington Association of Telecommunications Officers and Advisors ("WATOA") (collectively referred to as the "Local Governments"). The Local Governments have carefully reviewed the questions posed by the Commission in this proceeding, and strongly believe that their experience demonstrates conclusively that local franchising authorities are not a barrier to deployment of competitive cable services. In support of this belief, the Local Governments wish to inform the Commission about the facts of video franchising in our communities.

These Comments will focus on the facts about video franchising, as we have experienced them locally – specifically in response to the Commission's stated desire to develop a broad, national fact based record. At the same time, while these Comments do not address the detail of the Commission's legal authority under existing law to act in connection with local franchising, the Local Governments are familiar with, and support the positions taken in the Comments filed by the National League of Cities, the National Association of Telecommunications Officers and Advisors, the United States Conference of Mayors, the National Association of Counties, the Government Finance Officers Association and the Alliance for Community Media.

As a preliminary procedural matter, the Local Governments are concerned that the Commission has only suggested that Commenters citing local government actions in support of their position should provide "specific examples." NPRM, MB Docket No. 05-311, at 13. The Commission does not even recommend that notice of such examples be provided directly to the local government entities that are the subject of these references. While admittedly only

applying to declaratory rulings, Note 1 to Commission Rule 1.1206(a) requires that when seeking Commission preemption of state or local regulatory authority, "the petitioner must serve the original petition on any state or local government, the actions of which are specifically cited as a basis for requesting preemption." In this Docket, some Commenters are surely going to cite local government action as a justification for Commission action to preempt traditional local authority. The Commission cannot be assured of a complete and accurate record unless it *requires* Commenters citing local government action to provide notification to the local governments named. While not required by Commission rule, in the interests of fairness, these Local Governments are providing a copy of their Comments directly to any industry entity named herein.

I. Introductory Information About Commenters

The Greater Metro Telecommunications Consortium (GMTC) is an intergovernmental agency formed pursuant to Colorado law, comprising 32 cities, counties and towns in the metropolitan Denver area. The individual member jurisdictions are listed on Exhibit A. GMTC jurisdictions comprise an area of approximately 645 square miles, and represent a population of approximately 2.4 million people, 925,000 homes and 459,000 cable subscribers.

The Rainier Communications Commission (RCC) is an intergovernmental agency formed pursuant to Washington law, comprising Pierce County and 14 cities and towns in Pierce County. The individual member jurisdictions are listed on Exhibit B. RCC jurisdictions comprise an area of approximately 1,680 square miles, and represent a population of approximately 755,900 people, 306,000 homes and 116,000 cable subscribers.

Howard County, Maryland is located west of Baltimore County and north of Montgomery County. It includes the communities of Columbia, Ellicott City and Elkridge Howard County comprises an area of approximately 251 square miles, and has a population of approximately 272,600 people, 100,030 homes and 72,030 cable subscribers.

The City of Bellevue, Washington is located east of Seattle on the shore of Lake Washington. Washington's fifth largest city, it comprises an area of approximately 31 square miles, and has a population of approximately 107,000 people, 45,600 homes and approximately 35,450 cable subscribers.

Washington's capital city, Olympia, is located at the tip of the Puget Sound about 60 miles south of Seattle and 110 miles north of Portland, Oregon. It comprises an area of 18.2 square miles, and has a population of approximately 43,330 people, 18,670 homes and 15,550 cable subscribers.

The Washington Association of Telecommunications Officers and Advisors (WATOA) is an association of 49 separate local governments in the State of Washington, representing approximately 4.5 million people, residing in a wide variety of communities ranging from small rural towns, to major metropolitan areas.

II. Current Environment

The Commission seeks information about the current environment for cable competition. NPRM, MB Docket No. 05-311, at 12. The following chart identifies the Local Governments' cable providers, franchise term and geographic coverage information. It is followed by a discussion of the existence of any competitive cable franchises, the number of times since the passage of the Telecommunications Act of 1996 that each jurisdiction has been asked to consider a competitive cable franchise, and the geographic areas covered by those requests for competitive franchises.

Jurisdiction	Incumbent and Competitive Providers Since 1996	Franchise Start	End Date	Franchise Area
GMTC (all)	Comcast	Varies between 1994 and 2004	Varies between 2006 and 2019	Entire municipality or county
GMTC (all)	WideOpenWest (now Champion Broadband)	2000 and 2001	2015 and 2016	Entire municipality or county[1]
Douglas County, CO	Qwest	2000	2015	Highlands Ranch area only
Lone Tree, CO	Qwest	2005	2020	Ridge Gate development only
RCC (all)	Comcast	Varies between 1982 and 2002	Varies between 2006 and 2012	Entire County
Pierce County	Millennium Digital Media	1989	2006	Entire County (but no build out requirement)
Pierce County	Y-Com	2004	2014	Entire County (but no build out requirement)
Pierce County	Rainier Group	1995	2015	Entire County (but no build out requirement)

[1] WideOpenWest (now Champion Broadband) has never completed the build out of its cable system in the Denver Metro area, and only serves a limited number of subscribers in portions of Denver and Lakewood, Colorado

University Place, WA	Click!	2003	2013	Entire City
Fife, WA	Click!	2006	2016	Entire City
Howard County, MD	Comcast	1995	2010	Entire County
Howard County, MD	Verizon	March 2006	March 2021	Entire County
Bellevue, WA	Comcast	2004	2009	Entire City
Bellevue, WA	Millennium Digital Media	1997	2007	Entire City (but no build out requirement)
Olympia, WA	Comcast	1985	2008	Entire City

A. GMTC

By way of background, the GMTC was formed as an intergovernmental agency in 1993 in order to provide a number of Denver metro communities the opportunity to join together and negotiate a model cable franchise renewal agreement with TCI. GMTC and TCI successfully negotiated this model agreement, with the understanding that as each individual jurisdiction went through the approval process using the model franchise, it could negotiate any specific unique issues to that community as modifications to the model. The basic format for the GMTC model agreement first negotiated in the mid-1990s and updated in 1999 has been used as the basis for the individual franchise agreements in GMTC communities' renewals with TCI, AT&T Broadband and now Comcast. This practice of negotiating model agreements to be used as a template for the individual communities has saved considerable time and money for the local governments and the cable operators. As a result, this process has also been used by competitive providers seeking entry into GMTC communities, and has been used in non-cable related telecommunications negotiations as well, such as with respect to the GMTC's model rights of way regulatory ordinance, and model agreements with various wireless providers for use of public rights of way for placement of wireless facilities.

The GMTC communities entered in competitive franchise agreements with WideOpenWest (now Champion Broadband) in 2000. While the franchise area requires construction of the cable system and offering of cable service to all households within the boundaries of each GMTC jurisdiction, Champion Broadband is only providing services to approximately 2,000 subscribers in very small sections of the Cities of Denver and Lakewood.

Douglas County entered into a franchise agreement[2] with US West (now Qwest) in January, 2000, and Qwest currently serves that portion of unincorporated Douglas County known as Highlands Ranch, with a cable system that passes approximately 30,000 homes.

The City of Brighton entered into a franchise agreement with Tess Communications in 2000. Tess Communications subsequently filed for bankruptcy.

Qwest Broadband entered into a franchise agreement with the City of Lone Tree in 2005. That franchise covers a limited geographic area of that part of the City known as the Ridge Gate development. When completely built out in approximately 40 years, Ridge Gate will comprise approximately 75% of the City of Lone Tree.

GMTC communities have been asked to grant competitive cable franchises by 6 entities since the passage of the 1996 Act. In addition to the WideOpenWest/Champion, Qwest and Tess franchises listed above, the City of Aurora was asked to grant a cable franchise by Homeport, Inc. in 2002, by Strategic Technologies, Inc., in 2001, and by US West in 2000. It was asked to grant an open video system franchise to Tess in 2001. The Homeport and Strategic Technologies proposals were to serve only a small part of the City in a particular new development. The US West franchise request was to serve the entire City. The Tess OVS request was to serve a limited geographic area. The City of Littleton was asked to negotiate a franchise with US West in 1999. *See*, Section III.C, *infra*.

In the fall of 2005, Qwest Broadband approached the GMTC and sought to negotiate a model franchise agreement for the GMTC communities. Qwest sought to avoid any uniform community build out requirement in the franchise. The model franchise is presently in negotiations.

B. RCC

The RCC community of Pierce County entered into a competitive franchise agreement with Rainier Group 1995 in the unincorporated portions of the County. Pierce County entered into a franchise with Millennium Digital Media in 1989. The franchise is for the entire County, but there are no build out requirements. Rainier Group does compete directly with Comcast in part of the area in the County where they have built out.

Click! Network is a division of Tacoma Power, and provides cable and high-speed Internet services to citizens of Tacoma, Washington, through a franchise agreement with the City of Tacoma. Click! entered into a franchise with the City of University Place in 2003 and the City of Fife in 2006. Click! is in the process of negotiating a competitive cable franchise with Pierce County.

Pierce County entered into a franchise with Y-Com in 2004. The company plans to serve an area of the unincorporated County with VDSL. This area would not be in competition with Comcast. The franchise was for the entire County, but there are no build out requirements.

[2] Douglas County refers to its agreement as a Cable Television System Lease Agreement.

C. Bellevue, Washington

Millenium Digital Media was granted a franchise in 1997, and serves approximately 450 subscribers in Bellevue. Technically, Millenium cannot be considered a competitive provider of cable services. Although it does have a franchise that would allow a build-out of the entire city, there is no explicit requirement that they do so. Millenium only serves about five multiple dwelling unit developments under exclusive service agreements with the property owners.

Bellevue has been asked to grant cable franchises by 4 entities since the passage of the 1996 Act. In addition to Millenium, Bellevue was asked to grant a cable franchise by WideOpenWest, RCN and WIN in 2000. With the exception of Millenium, all of the other franchise requests were to serve the entire City.

D. Olympia, Washington

Olympia has not been approached for a franchise by any provider of competitive cable services since the passage of the Telecommunications Act of 1996.

E. Howard County, Maryland

In 2005, Howard County was asked to grant a cable franchise by Verizon. Negotiations commenced, and a franchise agreement covering the entire County was recently adopted, and becomes effective in March 2006.

III. Regulatory Process for Franchising

The Commission has asked whether the regulatory process involved in obtaining franchises impedes its policy goals of video competition. It asks whether potential competitors have been able to obtain the authority needed from local franchising authorities to offer video programming to consumers in a timely manner. NPRM, MB Docket No. 05-311, at 12,13. This section will address those issues with examples of specific experiences of the Local Governments in the franchising process.

A. Brief Description of the Local Process

For most GMTC jurisdictions (except Denver), the process is relatively informal. A competitive provider will approach local government staff and request a franchise. Generally, there is no formal application to fill out, or fee to pay[3]. The applicant is advised of the terms of the incumbent's franchise, the regionally adopted customer service standards, and any local rights of way permitting requirements. If the applicant is interested in serving multiple metro area jurisdictions, it is encouraged to negotiate a model agreement through the GMTC. If the applicant is only interested in serving an individual community, local government staff will begin meeting with the applicant to negotiate the agreement. Agreements are recommended to the City Council, Town Board of Trustees or the Board of County Commissioners, and are adopted by ordinance or resolution.

[3] Most of the GMTC communities do charge cost-based fees for permits covering work done in public rights of way. Applicants must also pay publication costs for ordinances that adopt franchise agreements. The City of Aurora requests that a provider reimburse the City for its direct costs incurred in negotiating a competitive franchise.

In Denver, the City provides the results of its most recently completed community needs ascertainment study and its existing franchise agreements, and requests a draft from the applicant. A committee is created of City Council members, representatives from the Mayor's office, Public Works, General Services, Technology Services and the Office of Telecommunications to negotiate an agreement. The Committee's recommendations are then considered by City Council, which approves franchises by ordinance. This process of reviewing a proposed ordinance by committee, with recommendations taken up by the full City Council, is the process followed by Denver for adoption of any ordinance.

Similar to GMTC, most RCC members follow a fairly informal process. After requesting a franchise, and being advised of the incumbent's franchise terms, an applicant meets with representatives of the local government and commences informal negotiations. If agreement is reached, the document is recommended to the elected body, and approved by ordinance. RCC's largest jurisdiction, Pierce County, follows a slightly more formal process. An application is made to the County Executive's office, and it is through that office that a franchise agreement is negotiated. Once an agreement is reached, the County Executive presents the agreement to the County Council for consideration. After approval by the County Council, the County Executive signs the agreement.

In Bellevue, both potential providers and providers seeking a renewal will file an application that includes corporate or other business organization information of the applicant, a financial statement, a description of the applicant's experience providing cable services or similar services, an indication of any criminal violations or other violations of laws involving operations of cable system, a financial and proposed plan of operations, and other information reasonably requested by the City which is deemed necessary to evaluate the technical, financial and legal qualifications of the applicant or which could materially affect the granting of the franchise. The City may decide to accept less than the documentation described herein if it can establish through other sources that the applicant can meet the technical, financial and legal qualifications and that the applicant is otherwise competent to operate a cable system.

Pursuant to the Olympia Municipal Code, an applicant for a franchise must file with the City Clerk. The application must include the names and addresses of all officers, directors and associates of the applicant, and others with control of the applicant; the names and addresses of any parent or subsidiary of the applicant; a description of previous experience of the applicant in providing cable television or similar services; a financial statement of the applicant; and a statement identifying other cable television franchises awarded the applicant, or its parent or subsidiary, the status of the franchises with respect to completion thereof, the total cost of such systems, and the amount of applicant's and its parent's or subsidiary's resources committed to the completion thereof. Applicants also provide information on the area proposed to be served, a description of the technical nature of the system, indicating its conformance with federal standards adopted by the Commission, and estimate of the costs to construct the cable system, a schedule of proposed charges to subscribers, and a copy of any agreement between the applicant and any regulated utility, such as pole attachment agreements. Finally, the applicant is to submit its proposed agreement to the City. The City requires applicants to pay an application fee, as set by the City from time to time, to cover the City's actual costs of studying, investigating, and otherwise processing the application. After the application is filed, the City Council directs the

City Manager or an appointed committee, to begin negotiations. The process is to be completed with a final report for Council action within 120 days.

Howard County follows a two-step process. First, an application for the grant of a new franchise is filed with the County. The application is reviewed by the Office of Cable Administration for conformity to Code, and the applicant's financial, legal, and technical ability to perform. County Council then acts upon the application by resolution. The Council's month long legislative process includes publication of the application, and a public hearing. Second, if the Council grants a franchise application, the County Executive and the applicant have 90 days to agree on the terms of an agreement. This period can be extended for good cause. The proposed franchise (negotiated agreement) is published for three consecutive weeks, and after a public hearing, County Council approves or disapproves the proposed franchise by resolution.

B. How the Process Has Worked

At the outset, the Commission should recognize a clear distinction between the "process" for new versus renewal franchises. By definition, the renewal process set forth in the Cable Act is expected to take up to three years. 47 U.S.C. Sec. 546. We suggest modifications to this time frame in Section III.G, *infra*. The process that each of the Local Governments follows for negotiating a new, competitive franchise is significantly shorter.

For GMTC, the WideOpenWest process took approximately 3 months. Actual time spent in negotiations was approximately 15 hours. After the GMTC negotiations commenced in January 2000, the model agreement was approved in April 2000. Most GMTC jurisdictions approved their WOW franchises between the second quarter of 2000 and the first quarter of 2001. Following its described process, Denver began its process with WOW in January 2000, and the franchise was approved by City Council in April 2000.

Regarding the other competitive franchises in the GMTC jurisdictions, US West began its negotiations with Douglas County in early 1999 and the Board of County Commissioners approved the agreement approximately one year later. Tess Communications first approached Brighton regarding a franchise in late 1999, and the parties were close to an agreement a few months later, when Tess pulled back from negotiations. Later that year, Tess resumed negotiating and within a couple of months a tentative agreement was reached. Prior to City Council adoption, Tess notified the City that it could not go forward until it resolved pole attachment issues with the local electric utility. After waiting for Tess to resolve this issue, a final agreement was approved by City Council in September, 2000. Tess subsequently filed bankruptcy, and the franchise was terminated in the summer of 2001.

Qwest approached the City of Lone Tree in June of 2004 to determine the City's interest in negotiating a limited geographic area franchise. After the City expressed interest in negotiating, Qwest took no further action until October, when it expressed a desire to proceed. The City commenced negotiations, and the final franchise was approved by City Council in March 2005. During this negotiation period of approximately 6 months, approximately 2 of those months were spent waiting for feedback from Qwest. This is not intended to be a criticism of Qwest. Rather, it is intended to highlight the fact that local governments are generally responsive and available for negotiations, and often it is the local governments waiting for the

applicant (more often when the applicant is a large company) to pursue its internal review process before feedback can be provided and negotiations can continue.

In Aurora, both Homeport and Strategic Technologies requested a franchise to cover a very limited geographic area within the City, in order to provide service only to a particular new development. The City Council made the policy determination that it would only engage in negotiations for citywide franchises, and therefore, no further action was taken with respect to these applicants. Regarding the Tess OVS franchise, Tess first approached the City in the summer of 2000. Negotiations commenced in August 2000, and were almost completed in April of 2001 when Tess withdrew. During the approximately 8 months in which negotiations were conducted, approximately 3 of those months can be described as the City waiting to hear back from Tess whether and how it wished to proceed.

US West also approached the City of Aurora, Colorado for a franchise in 1999. Over a period of approximately 12 months negotiations ensued, and resulted in an agreement that was 95% complete. Approximately 25 hours were spend in actual negotiations, and almost half of the 12 month time period was waiting to hear back from US West, or rescheduling negotiating sessions at US West's request, because it was not in a position to proceed. Just prior to finalizing the negotiations (and shortly after the transaction whereby US West became Qwest), the company notified the City that it was ceasing negotiations, and would not be pursuing a cable franchise.

Littleton, Colorado sent a letter in the mid to late 1990s to the 10 largest MSO's in the country, inviting them to apply for a franchise to provide cable television service in Littleton, and explaining that the City welcomed competition. Only a couple responded but none were interested. US West contacted Littleton in 1999 and asked to meet to discuss a cable franchise. The City met with US West on several occasions. The City expressed eagerness for this competition and met with US West faithfully in attempts to achieve its goal. After mid-2000, US West withdrew from negotiations, and the City did not hear from them again.

Qwest initially approached GMTC about a model franchise in September 2005. At first, Qwest requested an expedited process, indicating that it expected to be operational in at least some GMTC jurisdictions by the end of the year. GMTC agreed, and set up a committee to negotiate a model agreement. During the negotiations, Qwest has indicated that it would not be in a position to be providing services by the end of 2005, and that it needed more time than it had initially planned to review various franchise issues internally. Again, this is a fact, not a criticism. GMTC was at the table and willing to expedite the process. At the time of this filing, the model franchise is about 90% complete. Between late November 2005 and February 1, 2006, GMTC waited for Qwest to return its proposed franchise language on a few outstanding issues that GMTC believed had been agreed to in principle. Having just received the feedback from Qwest, it appears that the parties still need to resolve one issue regarding universal coverage throughout the franchise area.

In the RCC jurisdictions, Rainier Group applied for a franchise to provide cable service in unincorporated Pierce County in 1995, and the negotiation process from start to finish took approximately 6 months.

Click! applied for a franchise with unincorporated Pierce County in 2004, and as of the filing of these Comments, negotiations are nearing completion. Click! applied for a franchise with the City of University Place in May of 2000, and the negotiation process started then stopped at the provider's request until finalized in December 2002. Click! applied for a franchise with the City of Fife in June of 2004, and the negotiation process started then stopped at the provider's request until finalized in January 2006. In all instances, Click! reports the negotiations did not take longer than desired or expected. Many of the RCC jurisdictions have encouraged the Click! network to extend service into their communities, but Click! is restricted by its own rules to remain within the boundaries of where Tacoma Power has electric customers. In those communities where Click! does compete, Comcast cable rates are lower.

Y-Com applied for a franchise with unincorporated Pierce County in November 2003, and the negotiation process from start to finish took approximately 12 months. Y-Com negotiations were not continuous, as the provider would delay the process while finalizing its business plan.

RCC and WATOA point out that the passage of state legislation to address statewide rights of way management issues, which resulted from cooperative negotiations between the industry and local government, has facilitated the franchising process for new entrants *See*, Section VI.B, *infra*.

In Bellevue, all applicants timely provided all information requested by the City's application. In each case, negotiations were completed within 5 months.

Olympia has not been approached by an applicant for a competitive cable franchise, so it cannot comment on how its application process has worked. Olympia can say that it has never had a potential competitive cable provider indicate that it would consider applying for a franchise but for the City's application process.

In Howard County, Verizon of Maryland made application to the County for a cable franchise on May 13, 2005. Following the procedures described above, County Council approved the application on July 28, 2005. After four months of negotiations, a proposed agreement was pre-filed with Council on November 23, 2005. Council conducted a public hearing on the matter on December 19, 2005, and unanimously approved the proposed franchise, with several amendments, on January 3, 2006

C. Competitive Franchises Requested, Awarded and Denied to Date

Among the GMTC jurisdictions, in addition to the model agreement that has been used as the basis for most communities' franchise with the incumbent, as described above in Section II.A, there have been 2 model agreements requested, for use in all GMTC communities. An agreement was reached with WOW, and a decision on whether an agreement can be reached with Qwest will be made in the near future. Since passage of the Telecommunications Act of 1996 individual competitive agreements have been requested by 6 separate companies, and when taken to conclusion (i.e., when the applicant did not cease negotiations), granted by GMTC communities on all but 2 occasions. The 2 times requests have been denied (Aurora, with Homeport and Strategic Technologies) were when the City decided not to pursue negotiations with entities that sought to cherry pick a service area in a very limited section of the City.

In RCC jurisdictions, 4 competitive franchises have been requested and 3 awarded, with the Click! agreement with Pierce County expected shortly. No requests for competitive franchises have been denied. In Bellevue, there have been 4 applications for competitive franchises, and 1 has been granted to Millenium. None of the requests were denied. Millenium's renewal request is pending, and while the City was prepared to grant franchises to WOW, RCN and WIN, each of those companies withdrew from negotiations due to a lack of financial resources.

As stated previously, in Olympia, no competitive franchises have been awarded or denied.

In Howard County, the only request for a competitive cable franchise has come from Verizon, and as described above, the County has granted the franchise agreement.

D. Timing Issues Involved in Negotiations

GMTC jurisdictions do not believe that any of its negotiations with competitive providers have taken an unreasonably long period of time. Typically, without a previously negotiated model agreement, renewal negotiations with the incumbent (in our experience, TCI, AT&T Broadband and Comcast) will take one to three years. The adoption of model agreements shortens the individual community process to anywhere from 2 to 9 months, depending upon the extent of unique local issues that need to be addressed. GMTC communities' experience negotiating with competitive providers have generally taken a year or less, often less than 6 months, and significant percentages of that time has been involved waiting for feedback from the franchise applicant.

RCC's experience has mirrored that of GMTC. RCC competitive franchises have taken approximately 12 months to negotiate, although over that time period there were only approximately 12 hours of active negotiations. Here again, a substantial percentage of time was the local government's waiting for feedback or responses to written franchise drafts from the applicant. RCC jurisdictions have not denied any application for a competitive cable franchise.

The Bellevue – Millenium negotiations took just over 8 months. This was not, in the City's opinion, an unreasonable period of time. The City believes that the negotiations would have been completed even sooner, had they not come so soon after passage of the 1996 Act, when both parties were trying to understand the impact of that legislation on the negotiations process. In addition, the City was concerned about level playing field language in the then existing TCI franchise and wanted to make sure that the terms of any competitive franchise were not materially different than the terms of the TCI franchise. *See*, Section IV.A below. Bellevue has not denied any application for a competitive cable franchise.

While Olympia cannot comment on timing issues in competitive franchise negotiations, it has experienced renewal negotiations of its 1985 franchise. Beginning in 1997, these negotiations took place first with TCI, AT&T Broadband, and finally with Comcast. Olympia, TCI, AT&T and Comcast engaged in franchise negotiations, ultimately agreeing to periodic 6-month extensions to the franchise agreement, through 2004. In 2004, the franchise was extended, with amendments, through June 30, 2008. Olympia attributes the inability to reach a renewal agreement during this time period to a number of reasons, including (1) staff changes at

both the City and each of the three cable operators, (2) the transfer from TCI to AT&T to Comcast (both the City and the cable operator agreed to set aside negotiations each time to give priority to transfer request), (3) withdrawal by AT&T of tentative agreements reached with TCI prior to AT&T acquisition[4], (4) notices by the City to the cable operator of franchise violations, and subsequent time to discuss/resolve issues, and (5) mutual agreement for the City to explore the possibility of joint franchise renewal discussions with other local jurisdictions Olympia and Comcast agreed there was mutual benefit in exploring a consortium approach.

In Howard County, the process covered 7 months from the time of application to the date of grant. During those seven months there was approximately 60 hours of face-to-face, active negotiations. The County does not believe that the time period to complete negotiations was unreasonable, but does believe it could have been completed sooner. Negotiations could have been expedited if the applicant would have agreed to abide by identical terms and conditions as required of the incumbent cable operator. Indeed, the County made that offer to the applicant at the outset and on other occasions throughout negotiations. In other words, Verizon could have had an agreement within several months of initial application, but would not agree to this approach. Instead it insisted on negotiating from a "one size fits all" proposal that was for all practical purposes identical to those the company had proposed in other jurisdictions throughout the country. Howard County has not denied any application for a competitive cable franchise.

E. Consistency of Franchise Terms with Requirements of Title VI

Most of the Local Governments report that in negotiations with all competitive cable providers, the terms suggested by the new entrants have been consistent with Title VI of the Cable Act. *See*, Section IV below for discussion of level playing field and universal buildout and service requirements. In Howard County, issues arose as to the applicant's need to comply with franchise requirements relating to entry into the public rights of way. Verizon proposed inconsistent terms with respect to the physical occupancy of the public-right-of-way. Verizon was in the process of upgrading its existing telecommunications facilities in the County prior to its application for a cable franchise. The authorization to upgrade its telecommunications facilities comes from the company's status as a Title II common carrier under state and federal law. Prior to commencement of construction, Verizon negotiated a Utility Agreement with the County, which addressed construction issues such as permitting, notification requirements, restoration, and similar issues. Verizon insisted that it did not need a franchise to construct and occupy public-right-of-way for the provision of cable services, because of the company's Title II status. The negotiated cable franchise with Verizon recognizes and acknowledges this distinction.

[4] The withdrawal of a tentative agreement was also experienced in the GMTC community of Erie after the AT&T transaction with Comcast The franchise renewal was almost complete, and after indicating that it would not seek to change the GMTC model agreement that was the basis for the Erie – AT&T negotiations, Comcast provided a revised document with numerous substantial changes, causing a major delay in completion of negotiations, and much consternation to a small community that thought it could rely on the commitments made by Comcast's predecessor.

F. New Entrants' Requests for Franchise Terms Compared to Incumbent's Terms

The Commission will benefit from a record that demonstrates whether new entrants have approached local franchise authorities and (i) agreed to the same terms as the incumbent; (ii) agreed to a substantially similar terms as the incumbent with some modifications; and/or (iii) proposed their own franchise terms that differed substantially from the incumbent. The Local Governments' experiences here have varied. In GMTC communities, most competitive entrants have signed franchise agreements substantially similar to the incumbent. With respect to the Qwest model agreement under negotiation, and for the limited geographic area franchises requested in Lone Tree and Aurora, the new entrants have requested substantially similar franchise terms except for the elimination of the requirement to serve the entire jurisdiction. RCC's consideration of competitive franchises all involved substantially similar terms to the incumbent, with some minor exceptions Bellevue's experience has been that each competitive entrant has been willing to agree to a franchise substantially similar to the incumbent's, with some modifications. Bellevue reports that modifications are usually at the core of the franchise agreement and not on the margins, and this is what takes the most time to negotiate. These modifications usually involve changes to the definition of Gross Revenues; reduced commitment for PEG channels and PEG fees; relief from undergrounding requirements; and relief from citywide deployment requirements.

In Howard County, Verizon's initial proposal differed substantially from the incumbent's. The County feels the negotiated agreement, when taken as a whole, is substantially similar to the incumbent's, aside from the Title II distinctions described in Section III E above. The incumbent (Comcast) disagrees with the County's position.

G. Suggested Improvements to the Existing Statutory Process for Franchise Negotiations

The Commission has asked whether there is anything in the Local Governments' experience with negotiating video franchises that suggests whether current franchising procedures or requirements are appropriate for any cable operator, including existing cable operators? NPRM, MB Docket No. 05-311, at 13. The Local Governments assert that for the most part, the process works reasonably well. For the Commission's consideration, we would offer four suggestions – two relating to the renewal process, one relating to both renewals and new franchises, and one relating to new competitors and level playing field obligations.

1. Renewal Window. In most cases, a franchise renewal should be able to be negotiated within 18 –24 months, as opposed to the 36 month window as set forth in the Cable Act. 47 U.S.C. Sec. 546.

2. Addressing Local Needs. Some of the Local Governments have encountered frustration with large incumbents claiming to be focused on the local needs of the franchising authority, but refusing to be flexible or creative in meeting those needs because "if we agree to this provision with your community, we will be under too much pressure to provide it in other places around the country." Both GMTC and RCC communities have experienced this position in negotiations with Comcast, and before that, with AT&T Broadband. While

the Cable Act is focused on determining and meeting *local* needs, the practice is for larger MSOs to refuse to meet local needs in order to avoid national precedent. While it is doubtful that the Commission has the legal authority to address this concern, the Cable Act could be strengthened to provide better enforcement in meeting local needs, and further, might provide for unilateral authority of local franchising authorities to amend franchise agreements if a cable operator refuses to address a local concern on the basis of its "national policy," and subsequently does in fact provide those franchise benefits elsewhere.

3. Use of PEG Support. Presently, the Cable Act limits the use of PEG funds for capital and equipment. 47 U.S.C. Sec. 543 (b). As more competitors enter the market, it may be that even communities with vibrant PEG operations may not need more equipment. However, PEG support might be more appropriately spent on operational expenses like programming production. Again, the Commission has no legal authority to change the statute, but as the Commission has asked for suggestions to improve the process, a broader use of PEG support funding seems appropriate in a more competitive environment.

4. Howard County has identified particular issues when a competitive entrant argues for different treatment as a result of its status as a Title II entity. The Title II versus Title VI debate became a major policy issue that the elected officials in the County had to struggle with. The incumbent's perspective of what was expected (which was lobbied heavily to the Howard County Council) was a negotiated agreement identical to its franchise in every sense. The Title II applicant insisted that the County recognize and accommodate its Title II status by modifying existing code and/or provisions in a negotiated agreement. For example, Comcast is required to provide public access facilities in Howard County. The County policy makers decided they did not need another studio facility. Verizon agreed to provide the same level of annual financial support as the incumbent based upon a per subscriber per month formula. The County determined this was reasonable. As a result, Comcast insists that it does not have to provide studio facilities, because the exact same obligations are not imposed upon Verizon. An LFA should have the right to determine what is in the community's best interest without being held hostage by an incumbent that insists that any competitive agreement needs to be identical to constitute a level playing field.

H. LFA Demands

The Commission has asked whether LFAs are demanding concessions that are not relevant to providing cable services. NPRM, MB Docket No. 05-311, at 13. None of the Local Governments have demanded concessions in franchise negotiations that are not relevant to the provision of cable services. These Local Governments would be surprised if any of the competitive providers with whom they have negotiated were to take the position that demands were made requiring the cable operator to agree to franchise provisions inconsistent with Title

VI. RCC points out that its positions in franchise negotiations have always been based upon its most recent assessment of community's cable related needs and interests. The current cable administrator for Bellevue, David Kerr, formerly negotiated cable franchises for the industry, as an employee of AT&T Broadband and RCN. He reports that he has never experienced a City demanding concessions unrelated to the provision of cable services. When an applicant has proposed to avoid certain obligations of the incumbent operator, such as universal buildout and service requirements, some of the Local Governments have attempted to maintain the level playing field by requiring the applicant to provide greater benefits in other areas authorized by the Cable Act. At the same time, these Local Governments have always provided an applicant the option to accept the same franchise requirements as the incumbent.

As an example of the kinds of "demands" a local government may make in franchise negotiations, the major issues that have involved the largest investment of time in Olympia's negotiations have been (1) utility undergrounding requirements, (2) bandwidth for public/government channel capacity, and facility/equipment support for PEG, (3) institutional network requirements, (4) a local customer service center, providing an ability for customers to make payments and resolve issues in person, (5) a requirement that the City's standard non-discrimination language be included in the franchise agreement, (6) dedicated return line pathways for live broadcasts from selected community locations, (7) rate discounts for low income customers, (8) HDTV system capability, and (9) potential future loss of franchise fees from future bundling of cable services with none cable services. Each of these issues are addressed in many of the franchises found throughout the country.

IV. Specific Issues Impacting Competitive Cable Entry and Rapid Broadband Deployment

A. Level Playing Field Requirements

The Commission has asked for comments regarding so-called "level-playing-field" statutes, or similar contractual language in franchises, which typically impose upon new entrants terms and conditions that are neither "more favorable" nor "less burdensome" that those to which existing franchises are subject, and whether level playing field provisions create unreasonable regulatory barriers to entry, or create comparability among all providers. NPRM, MB Docket No. 05-311, at 14. Regarding state law, level playing field statutes do not exist in Colorado, Washington or Maryland. However, all of the Local Governments do have variations of level playing field language in their franchise agreements, which require that the overall terms of the agreements, taken as a whole, should be no more favorable or less burdensome on the new entrant than they are on the incumbent.

With some notable exceptions, these level playing field provisions have not had a major impact on negotiations with competitive cable providers. All of the Local Governments have negotiated what they believe are comparable franchise terms and conditions with the new entrants that have requested agreements. In Pierce County, Washington, while there were concerns from the Rainier Group in its negotiations about meeting universal PEG requirements, an agreement was reached which obligates the company to carry comparable PEG programming identical to the incumbent once a threshold level of subscribers was reached. In fact, the Regional Media Center (part of the RCC) was able to provide programming from the

government access channel in a cost effective manner prior to the threshold being met, and the Rainier Group provided channel capacity to carry this programming.

In metro Denver, it is still too soon to tell whether a model franchise agreement with Qwest will result in threats of litigation over level playing field requirements. What is known at this point in time is that Comcast has engaged in an extensive lobbying campaign seeking to convince some of the metro area communities not to consider franchise agreements that do not contain substantially similar build out requirements, claiming in part that to do so would violate level playing field requirements of the incumbent's franchise. As described in Section III.G.4 above, Howard County's level playing field language resulted in major debates throughout the negotiations process, and continues thereafter. According to the County, the incumbent cable operator, Comcast, made a concerted effort to delay approval of the negotiated competitive agreement with Verizon. Comcast aggressively lobbied policy makers and raised level playing field and other issues in an effort to have the agreement tabled. The County believes that the issues raised by the incumbent were largely inaccurate and inappropriate attempts to stall the process for the competitive franchise.

B. Universal Service

The Commission tentatively concluded that it is not unreasonable for an LFA, in awarding a franchise, (a) to "assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides" (b) "allow [a] cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area" and (c) "require adequate assurance that the cable operator will provide adequate public, educational and governmental access channel capacity, facilities, or financial support." NPRM, MB Docket No. 05-311, at 20.

Within GMTC communities, universal service issues have taken the most time to address in competitive franchise negotiations, and have caused the most consternation among local officials. In some cases, applicants have been turned down because of a refusal to build a cable system that would serve an entire community[5]. In the pending negotiations with Qwest, while Qwest initially indicated that it would not agree to any buildout requirements, the GMTC communities have expended great effort in an attempt to negotiate reasonable requirements that give some degree of assurance that if the market is not successful in creating an environment for broadband deployment in an unregulated setting, that the local franchising authority will have an ability at a later date and impose requirements on universal deployment and service. To date, there is no consensus on this issue. With WideOpenWest, the new entrant immediately agreed to a full build throughout the franchise area, but as a result of financial problems, neither WideOpenWest nor its successor, Champion Broadband, has made much progress in developing its cable system.

In Pierce County, Washington, Rainier Group was granted a countywide franchise even though they at first only sought to serve a specific area. Rainier Group is a small telephone company located in Eatonville, Washington that had some plans for expansion, but have not been able to build out as rapidly as they had envisioned. They are not obligated to serve the entire

[5] *See*, discussion of Aurora actions at III B, p. 9

County, but they are free to do so.

In Bellevue, Washington, Millenium's franchise permits, but does not require a citywide build out, and Millenium does provide the City's PEG channels to its subscribers. The City is presently conducting negotiations with Millenium, and it has indicated that it will agree to the same obligations of the City's incumbent cable operator, Comcast. With the WIN franchise, WIN agreed to a five-year build out and it was not an issue in the City's discussions at all.

In Howard County, universal deployment was a major issue in negotiations with Verizon, and resolution was attained rather quickly. This issue did not delay the County's ability to negotiate an agreement. The County strongly believes that build out requirements do not create an unreasonable barrier to entry. Verizon was reluctant to agree to these requirements initially, but once it recognized and acknowledged that this was a major issue with the County, Verizon negotiated in good faith, and a mutually beneficial build out requirement was agreed to in short order.

C. Commission Authority

Universal service is at the heart of local control. Local officials are in the best position to insure that providers construct their systems in such a way as to make service available to all segments of the community. Even in a highly competitive marketplace, without some regulatory oversight, there will always be some segments of a community that will be left out, because the market simply is not as profitable in particular neighborhoods. While it would be nice to point to some provision of the Cable Act which allows for a federal mandate to provide services to everyone in a local community within a certain period of time, the Local Governments contend that the Commission lacks the legal authority to mandate specific time periods in which new entrants must meet universal service and build out requirements.

This authority and discretion lies with franchising authorities for good reason. Multiple variables need to be taken into account, and unfortunately a one size fits all minimum time period cannot adequately address specific circumstances. What is the geographic size of the LFA? What percentage of a rebuilt system is above ground versus below? What type of timelines was the incumbent required to meet during its upgrade schedule? What are the demographics of a community? Is the LFA largely urban, rural, or a combination of both? As just one example, in many counties throughout the nation, there are both densely populated and extremely rural areas within the same jurisdiction. In such cases, it may be reasonable *not* to require universal build out. Congress has wisely allowed for that decision to be made locally. That being said, the Local Governments would opine that in their collective experience, in many (but certainly not all) cases it is reasonable to request a new entrant to build out a network throughout and offer services to an entire community in three to five years, when an entity's existing network needs to be upgraded in order to provide the video services, and in five to ten years, when the network is being built from scratch.

V. <u>Commission Rules or Best Practices</u>

The Commission asks whether it should adopt specific rules or best practices to ensure that the local cable franchising process does not unreasonably impede competitive cable entry. NPRM, MB Docket No. 05-311, at 21. As with the possibility of rules delineating a specific

period of time to construct a network throughout an entire franchise area, the Local Governments assert that there is simply no legal authority in the Cable Act to support such action. In this regard, the Local Governments adopt the legal arguments set forth in the Comments filed by the National League of Cities, the National Association of Telecommunications Officers and Advisors, the United States Conference of Mayors, the National Association of Counties, the Government Finance Officers Association and the Alliance for Community Media.

The Commission should be wary of even suggesting best practices, and should at a minimum, be mindful of the fact that every negotiation involves at least two parties. Regardless of what the Commission might be told by franchise applicants in this or any other proceeding, it is rarely the case where all of the blame for perceived delays rests with only one party. Each of the Local Governments have experienced delays, at times extensive, waiting for an incumbent cable operator or an applicant for a new franchise, to respond to the LFA's latest draft of franchise language[6].

The Commission should tread lightly here, unless it first expresses a willingness to adopt rules or suggest best practices to govern cable operator behavior. Some possible questions the Commission will need to ask if it decides to go forward on this issue are how long should a cable operator have to provide feedback to an LFA after receipt of an LFA request in franchise negotiations? If the cable operator refuses a specific demand in franchise negotiations because it is company policy not to do what is being requested, and the LFA later learns that the cable operator provided the requested benefit to another jurisdiction, should the cable operator be liable to the LFA to whom it made the misrepresentation? For example, in Olympia's most recent negotiations, Comcast informed the City that it would not negotiate – per company policy – any issues related to bundling of cable and non-cable services, or bandwidth instead of channel allocation for PEG. Yet Olympia is aware that Comcast has agreed to address the bundling issues in other communities' franchises.

In many cases LFAs bring negotiators to the table with authority to make final recommendations to the elected officials, but cable operators only bring mid-level negotiators, who regularly have to run positions in negotiations through two or three higher levels of the corporate bureacracy. In such cases, deployment could be more quickly achieved if the cable operator is required to bring negotiators to the table with a comparable level of decision-making authority. As described earlier with respect to Olympia, Washington and Erie, Colorado, delays in the middle (or towards the end) of negotiations, after a merger or transfer, can cause serious problems. Is the Commission willing to adopt a rule or best practice, prohibiting a cable operator of reneging on commitments made by its predecessor?

It is not unreasonable to suggest that timing issues in negotiations probably cause the most frustration among both cable operators/video providers and LFAs. Both LFAs and cable operators can fill pages of comments with examples of delays, and the good faith justifications for them. At times, the justification can be as simple as "there is simply not enough staff to get this done in the time frame we would like, given staff's other obligations in addition to negotiating this agreement." The Local Governments do not believe that the Commission ought to get itself into the business of dictating to either the cable industry or local governments, when

[6] *See*, for example, Secs III.B and D, pp 8, 9 and 11, *supra*.

their staff must stop working on other important projects in order to focus on franchise negotiations. Despite the frustration that delays often cause, the parties are usually able to work out their differences without help from the federal government

Finally on this point, there is one suggestion that would absolutely shorten the process for new entrants to obtain competitive cable franchises, and provide the speed to market that they so often represent is essential. If the new entrant agrees to the same terms and conditions as the incumbent, that competitive franchise could be awarded promptly, in accordance with state and local legal requirements for notice and adoption by ordinance after public hearings. The parties would be free to negotiate modifications, but if speed to market is paramount, the new entrant need only agree to the terms of the incumbent's franchise. Incumbent providers have made significant investments in our communities. A competitive provider willing to make comparable investments should have easy access to commence its operations.

VI. Local Franchises Provide Local Benefits

The Local Governments wish to emphasize to the Commission that despite its flaws, the local franchising process has worked well, is not a barrier to competitive provision of services, and has resulted in many local benefits for our communities. Local authority over the cable franchising process has resulted in the widest deployment of broadband services to our citizens. The degree of deployment and the speeds of cable modem service exceed that of DSL service offered by the telephone companies in each of our communities. As new entrants appear to be finally willing to invest in providing competing services, there is no reason to expect that continuing this regime will be any less successful.

A. Greater Metro Telecommunications Consortium

In GMTC communities cable operators provide public and government access channels, allowing the free exchange of ideas amongst residents and giving customers an avenue to learn more and be more informed about their government operations and decision making. Local franchises have cross subsidization clauses that prevent cable customers from paying for costs not related to their cable service. The franchises allow customers to request parental control devices to control access to video and audio on any cable channel, giving parents control over what content their children can view.

In Denver, the Institutional Network provisions have allowed the City to save close to $300,000 per year in telecommunications costs and utilize those cost savings to hire more police officers. The franchise provisions for an Emergency Alert System (EAS) throughout all of metro Denver's communities gives each City and County's Office of Emergency Management an important tool to notify residents of pending disasters or emergency situations, helping to keep residents better informed on public safety issues.

B. Rainier Communications Commission

The RCC has established one government access channel and three educational channels through amendments to existing franchises. On the Countywide government access channel, four jurisdictions now televise their regular meetings. Pierce County residents have benefited from a vibrant and successful access programming operation. This would not have been possible

but for the capital equipment required by the franchise, and utilized in Council Chambers for Pierce County Council meeting coverage, and the connection to carry meetings into the Pierce County and specifically the Peninsula area across the Narrows Bridge outside of the City of Tacoma. Additional funding for PEG through franchise amendments created the ability to launch the additional local government and regional consortia channels and programming. Partners in this programming include the Rainier Communications Commission, Puget Sound Educational Television, Clover Park Technical College and the University of Washington. These channels have enhanced overall citizen communications, community awareness and training, educational initiatives, emergency preparedness and the promotion of events announcements and general public information.

The local government – cable industry relationships developed as a result of addressing franchise issues on a local level have also resulted in tangible benefits in other areas promoting broadband deployment. The Rainier Communications Commission worked with industry in resolving statewide rights of way management issues. The legislation is codified as RCW 35.99. After its passage the RCC hosted a statewide seminar for local governments to help them implement the new law with its master permit provisions This new legislation has been working well to facilitate deployment of telecommunications infrastructure in Washington State.

C. Bellevue, Washington

The City of Bellevue points out that there are at least two components to local franchising that provides ongoing benefits to local citizens – one relationship building and one substantive. Negotiating a franchise agreement creates a relationship between the City and the cable operator. Bellevue's cable administrator has a number of cable operator contacts with which he can address customer or City issues. He does not simply call some main complaint line – if there is a drop bury problem he knows to contact a specific person. If there is a new service need, he knows the engineer to call. If there is a franchise violation, or perhaps an elevated resident complaint, he knows which individuals to call.

Regarding substantive provisions, Bellevue has added additional customer service requirements and a physical bill-paying site in its franchise. These were two issues identified by Bellevue residents in the City's Community Needs Ascertainment. Bellevue also has an I-Net agreement that has allowed the City to connect remote government facilities. Other franchise benefits include connections at two mini-city halls so residents no longer have to come downtown to do all city business, such as applying for permits, paying water bills, and obtaining other city services Bellevue has also been able to create community police stations that are connected through an I-Net and linked to all of the latest information police records that are available for distribution. For example, citizens can now obtain records such as suspect pictures and police reports at neighborhood community police stations, rather than having to go across town and pick up printed versions at the main office. These benefits obtained through the cable franchise might be invisible to the average resident but they clearly improve Bellevue's ability to provide services.

D. Olympia, Washington

Olympia is Washington State's capital city. State government has placed a high priority on public access to information and state activities, and many of Olympia's citizens are associated with State government in some form. The State of Washington itself has a government access channel – TVW – that televises statewide. Olympia citizens value televised access to government meetings, activities, and programs, and the public's ability to develop and air programs.

In December 2004 Olympia commissioned a citizen opinion survey about various City programs and services. In a question about viewership of City Council meetings, 7 in 10 respondents (70%) indicated that they had watched a City Council meeting on the local government access channel at some point in time, with 60% of the positive respondents indicating they had watched a City Council meeting within the last month. Preservation and enhancement of this local programming through the franchise process provides substantial benefits to Olympia's citizens.

Through customer service provisions in the City's cable franchise, Comcast has maintained a customer service center in Olympia so that people may order service, request repairs, resolve problems, and pay bills in person, if they wish. Without strong customer service provisions, Comcast may well have centralized this function at a location outside Thurston County, probably in King County (Seattle).

E. Howard County, Maryland

A recent internal needs study concluded that Howard County government could benefit greatly from a fiber optic institutional network to connect various government owned facilities throughout the County. Identified benefits of the study included: reducing annual County network expenditures; providing greater reliability in emergency situations, while supporting Homeland Security applications; and providing a much needed increase of current network capacity. There are no provisions for such a network in the incumbent cable operator's franchise agreement. A recently negotiated franchise with a competitive provider identifies and requires funding for such a network contingent on comparable funding from the incumbent operator through modification or the renewal process.

VII. Conclusions

The Local Governments filing these Comments represent diverse communities on both coasts and in between – large and small, urban, suburban and rural. While it is not without its challenges, the local cable franchising process works well. The evidence and the experience of each of these Local Governments demonstrates that it is not just possible, but it is common practice for local franchising authorities to manage the rights of way in a fair and equitable manner for all users, preserve public health and safety concerns relating to the use of those rights of way, address important local, community specific needs with regards to access channels and programming, institutional networks, consumer protection and emergency alert capabilities, while at the same time encouraging the broadband deployment that benefits local residents, students and businesses.

The cable industry has been remarkably successful, not just in the development of a wide variety of diverse cable programming, but in the innovations that have led to the offerings of other broadband services as well. That success has come within the framework of local franchising as set forth in Title VI of the Communications Act. There is nothing to suggest that the local role in this framework will inhibit the deployment of competitive cable services. Local Governments will continue to grant franchise agreements to entities that negotiate in good faith, and make an honest effort to meet local needs, consistent with Federal law. Indeed, the Local Governments expect that a serious, good faith effort on the part of competitive cable providers will lead to similar successes as have been experienced by incumbent cable operators. As such, the Local Governments strongly urge the Commission to take no action that would limit or restrict the local role in franchising as set forth under existing Federal law with regard to either existing cable operators or new entrants.

Respectfully submitted,

THE GREATER METRO TELECOMMUNICATIONS CONSORTIUM, THE RAINIER COMMUNICATIONS COMMISSION, HOWARD COUNTY, MARYLAND, THE CITIES OF BELLEVUE AND OLYMPIA, WASHINGTON, AND THE WASHINGTON ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of February 2006, I served a true and correct copy of the foregoing **COMMENTS OF THE GREATER METRO TELECOMMUNICATIONS CONSORTIUM, THE RAINIER COMMUNICATIONS COMMISSION, HOWARD COUNTY, MARYLAND, THE CITIES OF BELLEVUE AND OLYMPIA, WASHINGTON AND THE WASHINGTON ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS** addressed to the following and in the manner specified:

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EXHIBIT A

(GMTC MEMBER LISTING)

Adams County	Federal Heights
Arapahoe County	City of Glendale
City of Arvada	Greenwood Village
City of Aurora	Jefferson County
City of Brighton	City of Lafayette
City/County of Broomfield	City of Lakewood
City of Castle Rock	City of Littleton
City of Centennial	Town of Lochbuie
Cherry Hills Village	City of Lone Tree
Columbine Valley	City of Louisville
Commerce City	City of Northglenn
City and County of Denver	Town of Parker
Douglas County	City of Sheridan
City of Edgewater	City of Thornton
City of Englewood	City of Westminster
Town of Erie	City of Wheat Ridge

EXHIBIT B

(RCC MEMBER LISTING)

Bonney Lake

Carbonado

DuPont

Edgewood

Fife

Milton

Orting

Pierce County

Puyallup

Ruston

Steilacoom

Sumner

University Place

Wilkeson

EXHIBIT D

(REPLY COMMENTS IN MB DOCKET NO. 05-311)

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March 31, 2006

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 Twelfth Street, SW
Washington, D.C. 20554

Re: In re 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:

On March 28, 2006, the Greater Metro Telecommunications Consortium, the Rainier Communications Commission, Howard County, Maryland, the Cities of Bellevue and Olympia, Washington, and the Washington Association of Telecommunications Officers and Advisors (the "Local Governments") filed their Reply Comments in the referenced matter. However, Exhibit A to the Reply Comments was inadvertently left off of that filing.

Enclosed is a copy of the Reply Comments with Exhibit A attached. Please accept this for filing. Thank you.

Very truly yours,
KISSINGER & FELLMAN, P.C.

Elizabeth A. Jackson
Legal Assistant to Kenneth S. Fellman
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/eaj
Enclosure

Before the
FEDERAL COMUNICATIONS COMMISSION
Washington, DC 20554

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

REPLY COMMENTS OF THE GREATER METRO TELECOMMUNICATIONS CONSORTIUM, THE RAINIER COMMUNICATIONS COMMISSION, HOWARD COUNTY, MARYLAND, THE CITIES OF BELLEVUE AND OLYMPIA, WASHINGTON AND THE WASHINGTON ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS

These Reply Comments are filed by the Greater Metro Telecommunications Consortium ("GMTC"), the Rainier Communications Commission ("RCC"), the Cities of Bellevue and Olympia, Washington, Howard County, Maryland, and the Washington Association of Telecommunications Officers and Advisors ("WATOA") (collectively referred to as the "Local Governments").

I. INTRODUCTION

These Reply Comments will address three topics First, we will respond to specific comments made by others in this docket, relating directly to individual members of the Local Governments. Second, we will address issues raised by other commenters about other local franchising authorities, either specifically or generally. Third, we will explain why the evidence submitted in this docket does not suggest or compel any Commission action other than the adoption of a requirement that any commenter in Commission proceedings alleging that the actions of any entity supports federal preemption of traditional state or local authority, must provide a copy of its filing directly to the entity so named, in order to satisfy the basic tenets of due process.

II. COMMENTS RELATING TO ACTIONS OF THESE LOCAL GOVERNMENTS

In our Comments, the Local Governments provided multiple examples of individual experiences negotiating franchise agreements both with incumbent cable operators and with prospective competitors It is our position that none of the actions of these Local Governments could support a good faith argument that franchising authorities act inappropriately or create a barrier to competitive entry.

Upon review of the comments filed by industry representatives and consumer groups in this docket, of all the local franchising authorities ("LFAs") represented in this filing, only the Denver metro region was mentioned by any other commenters as an example where local practices have created hurdles to competitive provision of video services. Problematically, the commenters citing evidence of metro Denver's alleged bad practices based their "evidence" on false information previously filed with the Commission in another docket.

Qwest's filing in this docket makes no reference to any problems or bad practices with respect to any metro Denver jurisdiction.[1] However, in a separate docket, Qwest represented to the Commission that it was only able to renegotiate seven Phoenix area franchises and obtain eight new franchise agreements after "intensive effort" undertaken over a three-year period in the Phoenix metropolitan area, the Salt Lake City metropolitan area and the Denver metropolitan area.[2] Other commenters in this docket have cited the Qwest filing in the video competition docket as evidence supporting the claim that communities in these three metropolitan areas, including Denver, are engaging in anti-competitive practices.[3]

Problematically, Qwest's statements in the video competition docket about its "intensive efforts" to obtain franchises in the metro Denver area over a three-year period, and its lack of success were not true.[4] Moreover, Qwest never provided a copy of its comments in the video competition docket to the local governments that it cited as bad actors. And of course, none of the industry commenters who cited Qwest's comments in MB 05-255 as evidence of Denver's anti-competitive practices notified these Denver metro communities that they were being cited as examples of barriers to entry in this docket. Were it not for GMTC's participation in this docket, we never would have known of these allegations, and would not have had an opportunity to respond with the accurate information. Most importantly, the Commission might have relied upon what it may have believed to be uncontroverted "facts" in making an important public policy decision affecting every local government in this nation.

Once we became aware of the inaccurate portrayal of the practices of metro Denver communities vis-à-vis Qwest's attempt at obtaining competitive franchises, and brought those concerns to Qwest's attention, we were assured by Qwest's Denver area representatives that it would make a supplemental filing in the video competition docket to correct the record. And while Qwest did file an *ex parte* letter in MB Docket No. 05-255[5], it has not completely corrected the prior misrepresentations. In its *ex parte* filing, Qwest repeated the paragraph in

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[1] *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, Comments of Qwest Communications (Qwest Comments)

[2] *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 05-255, Comments of Qwest Communications, p. 12

[3] *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, AT&T Comments, p. 18, fn. 17; Comments of the Telecommunications Industry Association, p. 8, fn. 22

[4] While we do not have first hand knowledge of Qwest's allegations about Salt Lake City, based upon conversations with Qwest's local counsel in Denver, we believe that the statements in MB 05-255 were also inaccurate as they related to the Salt Lake City metropolitan area.

[5] *Ex Parte* letter from Robert B. McKenna of Qwest to Marlene H. Dortch, March 2, 2006, MB Docket No. 05-255

question, and asserted, "This statement is true ..." As it relates to Qwest's efforts to obtain franchises throughout the entire Denver metro area over the past three years, and the results of those efforts, the statement is most decidedly *false*. Qwest acknowledges in its *ex parte* filing that it did not mean for its allegations to apply to each individual franchising authority within each of the three named metro areas, and that it had actually been pursuing "various franchises in the Phoenix and Denver areas for the last several years with mixed success." It then noted that it had recently pursued a franchise in Salt Lake City, and that the Salt Lake City process was successful, and was an example of how the process should be conducted. So again, by comparison, Qwest suggests that its unnamed activities in metro Denver have been problematic.

Here are the facts. Over the past three years, Qwest has only applied for one competitive franchise in any metro Denver jurisdiction. That jurisdiction is the City of Lone Tree, Colorado. As we described in our Comments, franchise negotiations took approximately 6 months, and for approximately 2 months, the City was prepared to proceed while it awaited a response from Qwest.[7] Qwest's only other attempt during the past three years to obtain franchises in metro Denver began in September of 2005, when it commenced negotiating a model franchise agreement for the region with GMTC. Again as we described in more detail in our Comments, this process has gone smoothly, negotiations have occurred timely, and the timing expectations of both parties have generally been met.[8]

While Qwest has made a supplemental filing in the video competition docket, we do not yet know whether it will seek to correct the record that its inaccurate representations have caused when those statements have been repeated multiple times in this docket. The Local Governments want the record to be clear – the misstatement made in MB Docket No. 05-255 and repeated multiple times in this docket is wrong, and does not support Commission action to restrict local franchising. To the contrary, the facts in metro Denver, and Qwest's acknowledgment that its recent experience in Salt Lake City has been positive, suggest that the local franchising process is not a barrier to entry.

In its Comments, Verizon states that it commenced franchise "discussions" with Howard County, Maryland on May 5, 2005 and that the franchise was awarded 8 months later on January 3, 2006.[9] A minor correction is warranted. Howard County received Verizon's written application on May 13, 2005, and discussions commenced shortly thereafter. Actual time spent in negotiations was approximately four months.

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[7] *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, Comments of the Greater Metro Telecommunications Consortium, the Rainier Communications Commission, Howard County, Maryland, the Cities of Bellevue and Olympia, Washington and the Washington Association of Telecommunications Officers and Advisors; pp. 5, 8 (the "Local Government Comments").

[8] *Id.*, p. 9

[9] *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, Comments of Verizon, Exhibit 1 to Attachment A, Declaration of Marilyn O'Connell ("Verizon Comments")

The Local Governments reiterate the foundational position expressed in our Comments – we welcome competition, we encourage it, and we have always been willing and able to facilitate a reasonable process for approval of competitive franchises when a competitive provider seriously wishes to enter our communities.

III. COMMENTS REGARDING OTHER LFAs

A number of competitive providers made both general and specific comments about a handful of LFAs, and alleged that but for these actions, competitive provision of video service would be more prevalent. The Commission should consider all of these comments in light of its request that commenters provide the Commission with a specific, fact-based record.[10]

Much of the "evidence" AT&T cites includes allegations made previously by Qwest and BellSouth in the video competition docket[11], allegations against unnamed LFAs based upon experiences of the former Ameritech New Media[12], and allegations against both named and unnamed LFAs cited in a Wall Street Journal article about Verizon's experiences[13]. AT&T cannot, of course, cite any evidence of which it has personal corporate knowledge, because it has yet to apply for a franchise under Title VI. In essence, AT&T asks the Commission to change longstanding federal policy as a result of problems that it read about in the newspaper, or heard about from other telephone companies.

Some of AT&T's other comments should also be addressed. Citing no specific examples, and no evidence whatsoever, AT&T claims that when LFAs combine resources and work together as coalitions, the franchising process is even worse.[14] This claim is without merit, and in direct contrast to the evidence we provided in our Comments about the effectiveness of communities working together, which specifically lessens the time and reduces the costs of completing multiple franchises. GMTC and RCC representatives speak with specific knowledge of these benefits. We believe that the video providers with whom we have worked (for example, Comcast, Champion Broadband, Qwest) would agree with our position on this point.

BellSouth cites its experiences in franchise negotiations, indicating that the average time to gain franchise approval is ten months.[15] To its credit, BellSouth identifies multiple LFAs in Georgia, Florida and Tennessee in which franchise negotiations took between 1½ and 3½ months.[16] BellSouth also names multiple jurisdictions in those same states (and Alabama) alleging delays and inappropriate requests causing barriers to deployment of competitive

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[10] NPRM, para. 13; Statement of Commissioner Kathleen Q. Abernathy; Statement of Commissioner Michael J. Copps; Statement of Commissioner Jonathan S. Adelstein

[11] *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, Comments of AT&T, p. 18, fn. 17 ("AT&T Comments")

[12] *Id.*, at p. 24

[13] *Id.*, at 26-27

[14] *Id.*, at 29

[15] *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, Comments of BellSouth, pp. 2,11 ("BellSouth Comments")

[16] *Id.*, Rawls Declaration, Exhibit A.

services.[17] While BellSouth names 20 separate LFAs as bad actors, it provides specifics for 5 communities – Miami-Dade, St. John's County and Coral Springs, Florida; DeKalb County, Georgia and Germantown, Tennessee.[18] BellSouth does not indicate that it gave notice of its allegations to any of the named communities, and the Commission would be wise not to rely on the allegations as fact, unless and until it hears the other side of the story.

Verizon makes a number of claims that cannot pass without a response. For a company of Verizon's size that purportedly is devoting considerable resources to deploying competitive video services in the thousands of communities it serves, it is laughable for Verizon to support its claim by saying there "are more than 50 Verizon employees or contractors that are dedicated to obtaining local franchises, and many more Verizon employees who also support this effort."[19] If Verizon had spent the past two years with as many employees "dedicated to obtaining local franchises" as it has lawyers and lobbyists dedicated to eliminating local franchising in multiple states, in Congress and at the Commission, it would have many more franchise agreements in place and would be in a position to offer competitive services in many more locations than it presently serves.

There is an additional experience from Bellevue, Washington that merits consideration, for it shows that often it is the LFA seeking to expedite the process, and sheds light on Verizon's claim that it has dedicated necessary resources to obtain franchises. Verizon met with Bellevue on November 11, 2005 to announce that it was going to be bringing its FiOS project to those portions of Bellevue serviced by Verizon. At that meeting, the City's representative offered to begin negotiating a cable franchise with Verizon to insure that the franchise process would be completed when the company was ready to roll out the new services. Verizon responded that it was proceeding with system upgrades under its Title II authority, but would be seeking a cable franchise before they offered video services.

The City met again with Verizon on January 18, 2006 and again offered to begin the cable franchise negotiations. Verizon declined. A copy of the January 2006 email correspondence from David Kerr in Bellevue to John Gustafson of Verizon, and Mr. Gustafson's response, is attached as Exhibit A. As of the date of this filing (March 28, 2006), Verizon is proceeding with permitting for the FiOS project, and Bellevue is frustrated that Verizon has wasted over four months that could have been used for franchise negotiations.

In seeking federal preemption over the Cable Act's provisions allowing LFAs to seek PEG support to meet local needs, Verizon claims "[I]n *the vast majority of cases*, the facilities and equipment needed to develop and transmit PEG programming have already been deployed, and are not even being used to their capacity."[20] Not in a few cases; not in some cases; but in "the vast majority of cases." Verizon provides no evidence of this allegation, so the Commission should disregard it completely. In the experience of these Local Governments, access channel operations often run on a shoestring budget. Equipment is often kept in use long after its useful life has expired. Rapid changes in technology affect access programming operations as well as

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[17] *Id.*, Rawls Declaration, para. 4

[18] *Id.*, at 12-19, 35, 37-44, fn. 75 and Rawls Declaration, paras. 12-27

[19] Verizon Comments, Attachment A, Declaration of Marilyn O'Connell, p. 5, para. 12.

[20] *Id.*, at p. 12, para. 29; Emphasis added

other segments of the video programming industry. Access channel operators are, in our experience, usually behind the curve in being able to keep up with technology in their capital budgets. While these Local Governments have popular, effective, and in many cases, award winning government access operations, we never have all of the financial resources we would like to have in order to keep up with changing technology in the production and delivery of access programming.

In its recent negotiations with Howard County, Verizon was asked to provide an up front payment to support access capital needs, similar to that paid by the incumbent cable operator. Verizon indicated that it would prefer not to do so, in that it was coming into the County with no customers. Verizon requested the ability to make access capital support payments in increments of an amount per subscriber, per month. The County agreed. Verizon neglected to describe this example of the franchising process when it asserted that access capital demands are a barrier to entry.

Verizon creatively argues that local franchising is a barrier to entry, by placing the blame for improper actions not just on the local governments themselves, but also on their lawyers.[21] Without naming names, or providing even one specific example, Verizon suggests that the Commission should preempt traditional local authority because local government lawyers are *routinely* and *intentionally* seeking to "extract" as much as they can from competitive entrants, with no regard for their clients' ability to gain the benefits of real video competition. While it is always convenient to blame the legal profession for society's problems, the Commission should reject Verizon's attempt to use this docket for that purpose.

IV. THE COMMISSION SHOULD ADOPT A RULE MANDATING THAT THOSE WHO ALLEGE ANOTHER ENTITY'S ACTIONS SUPPORT THE FEDERAL PREEMPTION OF TRADITIONAL STATE OR LOCAL AUTHORITY MUST PROVIDE NOTICE OF THOSE ALLEGATIONS TO THE PARTY NAMED

A review of the Comments filed in this docket discloses many supporters of the benefits that local franchising has brought to communities throughout this nation. It discloses numerous specific examples from LFAs of all sizes, indicating that local governments exercise their authority reasonably, and while that sometimes takes time, the time spent is generally reasonable, and does not create a barrier to the deployment of competitive video services. The record further indicates that in many communities, the local process, whatever it may be, makes no difference. For most of this nation's local governments, competitive providers have shown no interest in offering the benefits of competitive services. And admittedly, the record also discloses industry allegations of a handful of communities where the attempt to gain a local franchise to provide competitive services has not been successful. In many cases, commenters simply repeated the same examples about the same communities. With specific respect to the comments filed by those who suggest that the Commission adopt rules to eliminate local authority, this is not the kind of record that the Commission asked for and it cannot be the foundation of preemptory rules. As Commissioner Copps stated, the Commission's actions "will be significantly

[21] "Other LFAs, however, have brought in outside firms whose main purpose and expertise is to extract as much value from the franchise applicant as possible, without regard to the costs such practices have on the viability of competitive entry or the delays that result." *Id.*, at p. 15, para. 37

influenced by the record this notice elicits..."[22] The "evidence" in the record from those seeking to eliminate local franchising is not anywhere near sufficient to base federal preemptory rules.

Exacerbating the problem of the shallow record offered by opponents to local franchising is the failure of the Commission's rules to ensure basic requirements of due process when considering preemptory rules of this nature. The Commission's rules must require that all interested parties have a fair and equitable opportunity to be heard, before the Commission acts to preempt an area of traditional state or local governmental authority. None of the commenters citing specific local governments as bad actors indicated in their comments that they had sent a copy of their allegations to the LFAs they were naming. Some of those communities named may have heard through others participating in this docket that their actions were claimed to be the basis supporting federal preemption rules, but the Commission can not be sure of this. Unless and until the Commission can be satisfied that basic concepts of due process are in play, the Commission cannot and should not act on these anti-local government allegations.

This is not the first time this defect in the Commission's rules has been brought to its attention. In 1997, the Commission's Local and State Government Advisory Committee (LSGAC) recommended that the Commission adopt a rule requiring notification of any governmental entity whose actions were cited as a basis for federal preemption of traditional state or local authority.[23] As noted in our Comments, the Commission addressed part of the problem, adopting a rule requiring such notice in declaratory proceedings.[24] It is clear from this rulemaking proceeding that the due process protections the Commission has extended to state and local governments in declaratory proceedings should be extended to *all* proceedings in which preemption is a possible result. Evidence cannot be relied upon as credible when an opposing party does not have a fair opportunity to respond.

V. CONCLUSION

The Local Governments have provided the Commission with solid evidence indicating that we treat all providers of video services in a fair and timely manner. In some cases, competitors have no standing to complain about our communities, because they have never indicated an interest to offer services to our citizens. Through local franchising, we have been able to focus on and address local community needs and interests, providing both benefits to our communities and an opportunity for our video providers to be successful in their business ventures. The franchising process is not perfect. We have suggested some modifications and are willing to consider others, but only to the extent that they recognize the important role local governments must continue to play.

We have not addressed the legal arguments raised by the commenters who have suggested that the Commission has the legal authority to adopt rules to restrict or eliminate a local role in the franchising process. Again, we are aware of and adopt as our own, the legal positions cited by NATOA, the National League of Cities, the National Association of Counties and the United States Conference of Mayors in this regard. In sum, with respect to any

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[22] NPRM, Statement of Commissioner Michael J. Copps

[23] LSGAC Advisory Recommendation No. 2, June 27, 1997, www.fcc.gov/statelocal/recommendation2.html

[24] Local Government Comments, p. 2

legislative or regulatory changes in the framework that governs video franchising, we believe that any changes must first be authorized by the Congress.

Based upon the record before this Commission, these Local Governments strongly encourage the Commission to take no action that would have the effect of limiting the local role in the video franchising process.

Respectfully submitted this 28th day of March, 2006

THE GREATER METRO TELECOMMUNICATIONS CONSORTIUM, THE RAINIER COMMUNICATIONS COMMISSION, HOWARD COUNTY, MARYLAND, THE CITIES OF BELLEVUE AND OLYMPIA, WASHINGTON, AND THE WASHINGTON ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS

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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of March 2006, I served a true and correct copy of the foregoing **REPLY COMMENTS OF THE GREATER METRO TELECOMMUNICATIONS CONSORTIUM, THE RAINIER COMMUNICATIONS COMMISSION, HOWARD COUNTY, MARYLAND, THE CITIES OF BELLEVUE AND OLYMPIA, WASHINGTON AND THE WASHINGTON ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS** addressed to the following and in the manner specified:

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EXHIBIT A TO REPLY COMMENTS

From: john gustafson@verizon com [mailto:john.gustafson@verizon.com]

Sent: Friday, January 20, 2006 2:39 PM

To: Kerr, David

Cc: Roache, Jerome; Kessack, Ron

Subject: Re: Verizon Video franchise

David: I agree with you that the meeting was productive It helps to talk face to face, and thanks again to all who participated. I will pass your comments on to our internal group that is handling franchise negotiations for the company - we appreciate the offer to assist. At this point, we aren't scheduled to begin talks, but I know the franchising group allows enough time to negotiate I will keep in touch regarding this issue and the other action items we discussed.

John

****

From: DKerr@ci.bellevue.wa.us

To John A. Gustafson/EMPL/WA/Verizon@VZNotes

cc JRoache@ci.bellevue.wa.us, RKessack@ci.bellevue.wa.us

Subject: Verizon Video franchise

John:

I enjoyed the meeting with all of the Verizon folks on January 18th. I thought it was a frank and helpful discussion. I want to reiterate that the City of Bellevue stands ready to begin negotiating a video franchise with Verizon right now so that we can have that in place before Verizon is actually ready to offer video services to customers As I mentioned in our initial meeting back on November 11, 2005 , by doing this work in advance, there won't be any delays when the construction is done and Verizon is anxious to begin providing services

My experience is that this shouldn't take very long If you could send a draft of an franchise for video that Verizon has agreed to in another jurisdiction I could mark it up and have it back to your franchise people in a matter of a few days.

David P Kerr

ITD Manager

City of Bellevue

(425) 452-6139