



ADVANCING GLOBAL COMMUNICATIONS

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December 11, 2006

The Honorable Jonathan Adelstein
Commissioner
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

In re: Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, MB Docket No. 05-311.

Dear Commissioner Adelstein:

On December 7, 2006 you kindly met with TIA members Tim Regan, Corning; Stan Fendley, Corning; Paul Kenefick, Alcatel-Lucent; and Suzanne Yelen, Wiley, Rein & Fielding; Danielle Jafari, TIA; Rebecca Schwartz, TIA; and myself, the undersigned, in regard to the above-captioned proceeding. During the meeting we discussed the extraneous obligations that are demanded of video service providers by local franchise authorities (LFA's) in negotiating franchise agreements.

The following are some recent examples of overly-burdensome, and what we believe to be "unreasonable," extraneous obligations demanded of video service providers before they are able to serve a given franchise area. First, Merton Group was interested in deploying a broadband network in the town of Hanover, New Hampshire and thus attempted to negotiate a franchise agreement – a process that began in January 2003 through December 2004. In December of 2004, after two years of conducting a study required by the LFA as to the economic and technical feasibility of its plans, as well as promises that the franchise agreement "would be completed shortly," Merton Group believed the negotiating process to be close to completion. However, prior to execution, the LFA demanded that Merton add terminal locations and install 96-stands of optical fiber to a public safety antenna. Hanover also demanded that Merton build-out to 98 street miles of coverage as opposed to 46 street miles of coverage for the incumbent. Merton withdrew from the franchise negotiation, as these demands were cost prohibitive. A declaration of these events is attached as *Declaration No. 1, Merton Group*, which was previously filed with the FCC in this docket.

Admittedly less recent, but still relevant to behavior that is at risk of being repeated – in the year 2000 Knology negotiated entry with Louisville, Kentucky whereby the latter demanded that Knology match a \$500,000 payment the incumbent was making to settle customer overcharges. It was also demanded that Knology build its new network in 15 months. As a result of these overly-burdensome extraneous demands, despite approval of the franchise agreement, Knology's market opportunity evaporated and it never entered the Louisville market. A similar situation occurred in Davidson County (Nashville), Tennessee, where Knology was required to submit an

initial PEG payment of \$266,000. The total PEG requirement over the 15-year franchise term totaled \$1.9 million in financial burden. A declaration of these events is attached as *Declaration No. 2, Knology*, which was previously filed with the FCC in this docket.

Another example with less emphasis on the time of occurrence, and more emphasis on the financial burden it imposed, Grande Communications negotiated a franchise agreement with San Antonio, Texas and was required to submit a \$1 million prepayment of franchise fees. San Antonio also required a one-time \$50,000 scholarship, with an additional \$7,200 annual contribution to the scholarship fund. In addition, Grande was demanded by Corpus Christi required an upfront PEG payment of \$200,000. A declaration of these events is attached as *Declaration No. 3, Grande*, which was previously filed with the FCC in this docket.

We hope that this information is helpful for you in determining what amounts to an “unreasonable refusal” under section 621 of the Telecom Act. [Insert citation] Unreasonable, extraneous obligations are a barrier to entry that our industry believes could be addressed by the FCC.

Thank you for meeting with us on the 7th and again for considering our perspective on this important matter. Please contact me or Danielle Jafari, Senior Director and General Counsel of Government Affairs, if you have any questions or if we can be of assistance in this matter.

Sincerely,

A handwritten signature in black ink that reads "Grant Seiffert". The signature is written in a cursive style with a small flourish at the end.

Grant Seiffert

cc:

Rudy Brioche, Legal Advisor for Media Issues, Office of Commissioner Adelstein