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December 11, 2006

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Presentation in MB Docket No. 05-311, MB Docket No. 06-189

Dear Ms. Dortch:

Pursuant to 47 C.F.R. § 1.1206, I submit this original and three copies of a letter disclosing an oral and written *ex parte* presentation in the above-captioned proceedings. On December 8, 2006, on behalf of Anne Arundel County, Maryland; the City of Flagstaff, Arizona; Montgomery County, Maryland; and the City of St. Paul, Minnesota, the following persons met with Commissioner Jonathan S. Adelstein and with Rudy N. Brioché:

John Lyons	Anne Arundel County, Maryland
Nicholas P. Miller	Miller & Van Eaton, P.L.L.C.
Frederick E. Ellrod III	Miller & Van Eaton, P.L.L.C.

During this meeting, the participants discussed issues relating to local cable franchising, including build-out requirements, particularly with regard to the experiences of Anne Arundel County and Montgomery County. Following the meeting, Mr. Ellrod sent Mr. Brioché a copy of a worksession memorandum regarding the Montgomery County-Verizon franchise agreement (copy attached).

Please contact the undersigned with any questions.

Very truly yours,
MILLER & VAN EATON, P.L.L.C.

By: Frederick E. Ellrod III

Frederick E. Ellrod III

Attachment

cc: John Lyons
Commissioner Jonathan S. Adelstein
Rudy N. Brioché

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Franchising Rulemaking, MB Docket No. 05-311

December 8, 2006

- **There is *no* "franchise problem" to fix.**
  - Verizon is getting its franchises. *See* Anne Arundel, Montgomery County, Fairfax County, Tampa, New Jersey, etc.
  - Each of those franchises treat the incumbent fairly as well.
  - There is no evidence Verizon could have rolled out service any faster.
  - AT&T is not providing much video service even with state-wide franchises in Texas, Indiana, Kansas and California.

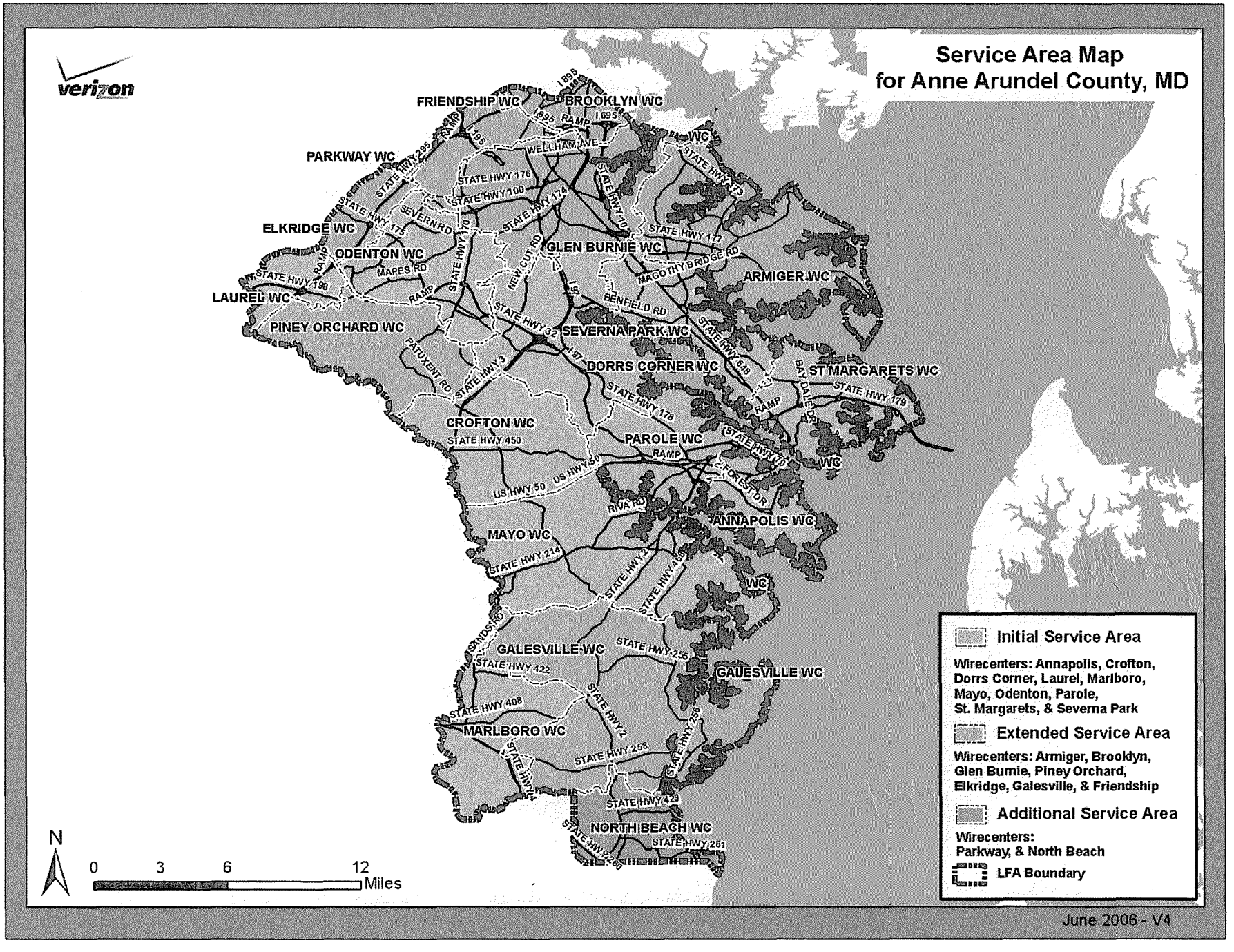
- **Local franchising furthers federal communications policy.**
  - Local governments want competition and issue competitive franchises.
    - Local communities have every incentive to negotiate quickly.
    - If the Bells were willing to accept normal cable franchises, they would have them in short order.
  - Local governments resist RBOC demands for special treatment.
    - The Bells waste time haggling for better terms for themselves, then blame the delays on local communities.
    - Even so, they are gaining franchises faster than they can build them out.
    - Examples: Anne Arundel County, Montgomery County.
  - Local negotiations are essential to reasonable build-out requirements.
    - Local economic and geographic factors determine what is fair.
    - Local facts balance opportunity against cost.
    - Examples: Anne Arundel, Montgomery County build-out language.

- **There is no evidence in the record to support the claim that local franchising delays entry.**
  - Bell company allegations against unnamed communities are improper; they deny their targets an opportunity to respond and correct the record.
  - Where the Bells' targets can be identified, the accusations are incorrect or misleading.
  - The most recent Verizon filing continues to attack anonymously the very franchise terms it agreed to in Montgomery County, such as 3% PEG support, reasonable build-out requirements.

- **Commission regulation of local franchise negotiations will not accelerate entry.**
  - Bell deployment is a function of economics and wire center layout, not franchising.
  - State laws allowing "no-frills" Bell entry have not produced significant new deployment.

- **An attempt by the Commission to regulate local franchise negotiations is illegal.**
  - The Commission lacks authority to regulate cable franchise negotiations.
  - The Commission cannot issue a franchise covering someone else's property.
  - The Commission cannot compel a state or local government to issue a franchise.
  - The Commission has no expertise in franchise negotiations.
  - The record supports local franchising and does not support federal regulation of local franchising.

- **The Cable Act explicitly authorizes local control of negotiations.**
  - Institutional networks may be required under 47 U.S.C. §§ 544(b) and 531(b).
  - Institutional networks represent accelerated deployment of advanced communications systems for the common good. Cable operators may build on I-Nets to support their own expansion of service to commercial customers.
  - Locally customized build-out requirements under 47 U.S.C. § 552(a)(2), negotiated between local communities and cable operators, assist in extending service to the maximum number of citizens.


Service Area Map
for Anne Arundel County, MD
verizon
FRIENDSHIP WC
BROOKLYN WC
PARKWAY WC
ELKRIDGE WC
ODENTON WC
LAUREL WC
PINEY ORCHARD WC
GLEN BURNIE WC
ARMIGER WC
SEVERNA PARK WC
DORRS CORNER WC
ST MARGARETS WC
CROFTON WC
PAROLE WC
ANNAPOLIS WC
MAYO WC
GALESVILLE WC
MARLBORO WC
NORTH BEACH WC
WELLHAM AVE
STATE HWY 176
STATE HWY 100
STATE HWY 174
STATE HWY 177
SEVERN RD
MAPES RD
NEW CUT RD
MAGOTHY BRIDGE RD
BENFIELD RD
PATUXENT RD
STATE HWY 450
US HWY 50
RIVA RD
FOREST DR
BAY DALE DR
STATE HWY 214
SANDS RD
STATE HWY 422
STATE HWY 255
STATE HWY 408
STATE HWY 258
STATE HWY 423
STATE HWY 261
RAMP
Initial Service Area
Wirecenters: Annapolis, Crofton, Dorrs Corner, Laurel, Marlboro, Mayo, Odenton, Parole, St. Margarets, & Severna Park
Extended Service Area
Wirecenters: Armiger, Brooklyn, Glen Burnie, Piney Orchard, Elkridge, Galesville, & Friendship
Additional Service Area
Wirecenters: Parkway, & North Beach
LFA Boundary
N
0 3 6 12 Miles

June 2006 - V4