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December 11, 2006

VIA ECFS

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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

Dear Ms. Dortch:

On December 8, 2006, Tom Nathan and Jim Coltharp of Comcast, and Jonathan Friedman and the undersigned, of Willkie Farr & Gallagher LLP, met with Rudy Brioché, Chris Robbins, and Heather Dixon, Legal Advisors to Commissioner Adelstein, Commissioner Tate, and Chairman Martin, and e-mailed Bruce Gottlieb, Legal Advisor to Commissioner Copps, regarding the lack of any evidence in the record of a problem with the franchising process and the Commission's lack of authority to implement Section 621(a)(1). David Rudd, principal of The Palmetto Group, participated in the meeting with Mr. Brioché.

Specifically, Mr. Nathan spoke about his experiences with the franchising process, both as a former representative of a local franchise authority ("LFA") and, for the past 23 years, through his roles at Comcast. He explained that the record reflects his own experience -- LFAs are very open to even more multichannel video competition, but they are not willing to abdicate the duties and responsibilities they owe to their constituents. Mr. Nathan noted that the record reflected that LFAs have reached out to the Bells with offers of very favorable franchise terms, only to be rebuffed or ignored in many cases. Mr. Nathan and counsel argued that the Commission should be particularly skeptical of complaints about the franchising process coming from parties who choose not to participate, such as AT&T, Qwest, and BellSouth, or who are so successful that they actually have more franchises than they can serve, such as Verizon. Mr. Nathan and counsel also cited public

statements by senior Verizon executives to the effect that franchising is not posing a barrier to their efforts.[1]

Further, Comcast's representatives spoke about the reports in the trade press that the Commission is currently considering adopting rules that would establish a different definition of franchise fees only for new entrants, and would place a "shot clock" on action by local franchise authorities. Consistent with its previous filings in this proceeding, Comcast's representatives argued that the Commission does not have the authority to undertake such significant revision of the local franchising process. Comcast's representatives also pointed out that establishing disparate regulatory treatment for the same service contravenes common sense notions of fairness, as well as the Commission's previously stated objective to "treat like services alike." In addition, Mr. Coltharp and Mr. Nathan questioned the legal and factual basis for imposition of a "shot clock" on a negotiated matter such as a cable franchise agreement, noting that sometimes the Commission itself has taken longer to process straightforward applications and other petitions, even where deadlines exist. For instance:

- Comcast has several petitions for determinations of effective competition pending at the Commission, at least 5 of which have been pending for over two years. The newest of these is two years and two months old (Miami/Dade County; filed 9/20/04). Four others are three years and seven months old (Framingham, MA, Wakefield, MA, Brookline, MA, and Burlington, Natick, Waltham, and Watertown, MA; all filed 4/11/03 and all supplemented 5/31/06).

- Comcast filed a low-end set-top box waiver that has been under review for more than seven months (since 4/19/06), even though it is subject to a 90-day statutory deadline (see § 629(c) of the Communications Act).

Comcast also argued that the Commission does not have the authority to issue interim franchises. Comcast pointed out that franchise authority is ultimately about control over the rights-of-way, and that the definition of "franchise authority" in the statute includes federal agencies because there are some instances where federal agencies control rights-of-way (most notably in the case of military installations). The Commission does not control any rights-of-way, to Comcast's knowledge, and, as such, cannot issue franchises.

Finally, subsequent to these meetings, the undersigned e-mailed to Mr. Bioché and Mr. Robbins brief responses to several questions posed during the meetings, and pointing them to those sections of Comcast's filings that discuss their questions. In addition, Comcast provided Mr. Brioché, Mr. Robbins, and Mr. Gottlieb three documents that summarize Comcast's position on the state of the factual record in this proceeding, the lack of statutory authority for the Commission to adopt the

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[1] As noted in the attached e-mails to Mr. Brioché and Mr. Robbins, statements by two Verizon executives have already been placed on the record in filings submitted by NCTA and Comcast. The third Verizon executive to offer an opinion on the franchising question, Verizon's CFO Doreen Tobin, said at an investor conference call that "[W]e have become very successful now in getting franchising. So we don't see that as an issue certainly going forward." *Verizon at UBS 34th Annual Global Media Conference*, Thomson StreetEvents, Conference Call Transcript, at 7 (Dec 6, 2006), available at http://investor.verizon.com/news/20061206/20061206_transcript.pdf.

proposals being made, and the reality that cable franchising is not a barrier to broadband deployment. The e-mails and the summary documents are attached.

Kindly direct any questions regarding this matter to my attention.

Respectfully submitted,

/s/ Daniel K. Alvarez
Daniel K. Alvarez
Counsel for Comcast Corporation

Attachments

cc: Rudy Brioché
Chris Robbins
Heather Dixon
Bruce Gottleib

THERE IS NO FACTUAL OR LEGAL BASIS FOR FCC INTERFERENCE IN THE LOCAL CABLE FRANCHISING PROCESS

The Bell Companies have failed to establish a need for FCC regulation of local cable franchising.

- The Commission explicitly solicited "empirical data" and "concrete examples" regarding the state of the local franchise process. The Bells and their allies failed to provide any credible data or examples showing any genuine problem, much less a pervasive one, that requires Commission intervention. The credible evidence comes from over 250 LFAs from across the country, which demonstrated that local governments welcome additional competition and that the franchising process not a "barrier to entry" to those who wish to enter the cable business.
- The record clearly demonstrates that the Bells' difficulties in obtaining franchises are primarily of their own making. There is no evidence that AT&T, for example, has even applied for a single local cable franchise, despite the fact that some LFAs have been proactively offering AT&T favorable franchises. Those that are seeking franchises are obtaining them *faster* than they can deploy service: Verizon, for example, has acquired over 200 franchise covering approximately *4 million* households, but it offers its cable TV service to only about *1 million* households.

Reasonable build-out requirements are not an impediment to competitive entry.

- Build-out cannot be an impediment to entry, because *the Bells have been able to obtain cable franchises with very favorable build-out provisions*. They have even *supported* state-level franchising legislation that imposes build-out requirements, such as in Virginia and New Jersey. The record shows that LFAs typically provide significant flexibility in meeting build-out requirements, and they have demonstrated their willingness to work with franchisees to ensure that the build-out is both attainable *and* meets the needs of the community.
- Further, the record shows that reasonable build-out requirements are critical to effective anti-redlining enforcement. The Bells make no bones about their interest in serving "high-value" customers first. Record evidence of Bell construction patterns provides abundant reason for concern that, in the absence of build-out requirements, they will bypass low-income residents.
- There is no merit to Bell arguments that they should be exempt from build-out because build-out does not apply to phone as well. When Comcast provides voice services, it has taken on the core social obligations associated with that business, including E911, CALEA, and universal service support. Furthermore, Comcast does *not* deny its phone service within any community where it has been rolled out to any group of customers, despite the fact that it does not receive any governmental subsidies to provide service.

The Commission lacks statutory authority to regulate local cable franchising.

- An assertion of broad rulemaking authority would conflict with both the plain meaning of the statute and the legislative history. Congress unambiguously gave the courts, not the Commission, reviewing authority over LFA franchising decisions. There is *no ambiguity in the statute* regarding the Commission's authority, or, in this case, lack thereof. Furthermore, neither Section 201(b) nor Section 706 provides a basis for Commission action in this area.
- The Commission also lacks the authority to preempt state and local franchising laws, including "level-playing-field" statutes. The law is clear that, if Congress intends to preempt a power traditionally exercised by a state or local government, it must make its intention "unmistakably clear." There is no such statement of congressional intent here.
- The legislative history of the relevant provisions reflects a clear congressional intent to preclude the Commission from writing and rewriting the rules governing cable franchising, as the Commission had been prone to do before passage of the 1984 Act.

Thus, Bell company proposals to change, curtail, or interfere with the local cable franchising process are unsupported by facts and contrary to law. The FCC has no basis for interfering with this process.

THE COMMISSION HAS NO AUTHORITY OVER LOCAL CABLE FRANCHISING.

Congress gave the Commission no authority to regulate, constrain, or review LFA franchising decisions.

- In sharp contrast with numerous other statutory provisions in the Communications Act, Section 621 confers no rulemaking authority whatsoever on the Commission. Section 621 sets forth a detailed *congressional* regime for cable franchising, a regime in which there is no role for the Commission.
- The Commission's assertion of broad rulemaking authority conflicts with the legislative history of Section 621(a)(1). Over the last 22 years, Congress has enacted three laws relating to cable franchising. Each time, Congress unequivocally entrusted administration of the process to local authorities, under congressional guidance and backstopped by judicial review. In none of these enactments did Congress indicate that the Commission should have the authority to revisit these congressional judgments or involve itself in the franchising process.
- Section 635(a) expressly directs that complaints about an LFA's failure to comply with Section 621(a)(1) be adjudicated in state or federal court. There is no role in that process for the Commission.
- The cases cited by the Bells are irrelevant to the question of Commission authority over the franchising process. These cases deal with either narrow definitional questions (*e.g.*, *ECI*, *City of Chicago*, *NCTA*) or entirely different provisions and Titles of the Act (*e.g.*, *Iowa Utilities*). On the other hand, courts have had numerous occasions to interpret and discuss Section 621(a)(1) and the franchise process specifically; each time, the courts followed the framework established by Congress -- *i.e.,* appellate review by a state or federal court without any Commission involvement. *See, e.g.*, *Qwest v. Boulder*, 151 F. Supp. 2d 1236 (D.C. Col. 2001); *Knology v. Insight*, No. 00-00723, 2001 WL 1750839 (W.D. Ky. Mar. 20 2001).

Even assuming there is ambiguity regarding the enforcement of Section 621(a)(1), the Commission has no authority to adopt the far-reaching rules proposed by the Bells.

- The plain language and legislative history of Section 621(a)(1) shows that the Commission has no authority to regulate the conditions attached to franchise agreements or the manner in which LFAs conduct their congressionally-mandated duties.
  - Section 621(a)(1) refers to "unreasonably *refusing* to award" competitive franchises and provides for appeal only where a competitive franchise application has been "*denied* by a final decision of the franchising authority." Construing the statute to encompass franchise conditions or the manner in which the LFA carries out its congressionally-mandated duties would require reading the word "refusing" out of the statute, and render meaningless the phrase "denied by a final decision of the franchising authority."
  - Courts have consistently held that Congress's reference to "unreasonably refusing to award" should be construed in the plain language sense of "unreasonably denying" a franchise application. *Knology*, 2001 WL 1750839, at *2; *CableTV Fund 14-A, Ltd. v. City of Naperville*, No. 96 C 5962, 1997 U.S. Dist. LEXIS 7336 (N.D. Ill. May 21, 1997). That interpretation is fully consistent with the legislative history.
- The Commission may not prohibit LFAs from imposing reasonable build-out requirements. Congress has established an unambiguous national policy against redlining, and Section 621(a)(3) requires local governments to enforce that policy. Congress clearly anticipated that

LFAs would use this provision to "require the wiring of all areas of the franchise area" to avoid redlining. H. Rep. No. 09-934, at 59 (1984).

- Further, both Sections 621(a)(4) and 632(a)(2) plainly authorize LFAs to require build-out, and there is nothing to the contrary in the statute or legislative history of Section 621(a)(1). Importantly, Section 621(a)(4) was added in 1992, at the same time that Congress added language regarding "additional competitive franchise[s]," and after most incumbent cable operators already built-out their systems. So, it is clear that Congress intended to give franchise authorities the power to impose reasonable build-out requirements on additional franchisees.

- The Commission has no statutory basis upon which to adopt a "shot-clock" or any of the more far-reaching rules proposed by the Bells. Relying on the congressionally-mandated "shot clock" for transfer applications is inapt; the process for transferring a franchise is completely different from the initial grant of a franchise, and Congress's decision to impose a shot-clock on transfers but not on initial applications is not subject to second-guessing by the Commission.

Neither Section 201(b) nor Section 706 gives the Commission the necessary authority to alter the local franchising process.

- Congress was clear in 1984 that it wished to establish a scheme that could *not* be altered by the Commission. Nothing in the 1992 Cable Act or 1996 Act did anything to suggest that the Commission now has such authority.

- The Bells' reliance on Section 201(b) is misplaced. The Commission's rulemaking authority under Section 201(b) is limited to providers of *telecommunications services*. *See 2002 Biennial Review*, 18 FCC Rcd. 4726 ¶ 18 n.31 (2003). Likewise, the Supreme Court's statements in *Iowa Utilities* were made in the context of the local telephone competition provisions that the 1996 Act added to Title II, and cannot be construed to apply beyond Title II of the Act.

- Section 706 of the 1996 Act cannot be invoked to wholly remake the local franchising process. Section 706, by its plain terms, deals with the deployment of "advanced telecommunications capability" (i.e., transmission services, devoid of content), not *cable* services. Attempts to draw a connection between the two fall flat, both as a matter of fact and as a matter of law.

  - Section 706 requires the Commission to take action *if* it determines that broadband capability is not being deployed to all Americans in a reasonable and timely manner. The Commission has made no such determination, and cannot in this proceeding because there is no record evidence to make that finding. In fact, in each of the Commission's Section 706 Reports, it has found precisely the opposite -- that broadband "*is indeed being deployed in a reasonable and timely basis to all Americans*." *Availability of Advanced Telecommunications Capability in the United States*, *Fourth Report to Congress*, at 8 (2004) (emphasis added).

  - Furthermore, the Commission has already definitively ruled that Section 706 is *not* an independent source of rulemaking authority. *See Wireline Broadband Order*, 13 FCC Rcd. 24011 ¶ 77 (1998).

  - Even if Section 706 did confer the necessary authority upon the Commission, it is ludicrous to suggest that local franchising rules are holding up the Bells' broadband

investment decisions. The Bells are free to deploy broadband networks without obtaining cable franchises, and they are in fact doing so.

- The Bells also lack credibility on their broadband-related claims. Time and time again, whether in the context of price cap regulation, unbundling relief, or broadband reclassification, the Bells have demanded -- and received -- regulatory relief to spur investment in their broadband facilities and services -- and time and again they come back to the Commission making new demands for yet more regulatory concessions.

The Commission lacks the authority to preempt state and local franchising laws, particularly "level-playing-field" statutes.

- The law is clear that if Congress wishes to preempt a power traditionally exercised by a state or local government, it must make its intention to do so "unmistakably clear." *See Gregory v. Ashcroft*, 501 U.S. 452, 460-61 (1991); *City of Dallas v. FCC*, 165 F.3d 341 (5th Cir. 1999). There is no such statement here; if anything, Congress has expressed the contrary intent.

- Preempting state and local franchising laws would be inconsistent with longstanding Commission practice. In the past, when the Commission has exercised preemption authority, it has done so pursuant to clear congressional authority, such as Section 253. Even in those cases, the Commission has been very careful to tread lightly on state and local authority. *See In Re California Payphone Association*, 12 FCC Rcd. 14,191 (1997); *In Re Classic Telephone, Inc.*, 11 FCC Rcd. 13,082 (1996).

- Proposals to preempt state level-playing field statutes as unreasonable are inconsistent with existing law. Courts have concluded that these statutes are not unreasonable under Section 621(a)(1). *See, e.g.*, *Cable TV Fund*, 1997 U.S. Dist. LEXIS 7336, at *13.

Bell arguments that local franchising requirements violate the First Amendment are unfounded.

- Franchising requirements within the bounds of the statute impose no genuine impediment to the Bells' ability to speak or to publish. Courts have recognized that local governments have substantial governmental interests, including, among other things, preventing redlining and managing construction in rights-of-way in requiring reasonable build out of the franchise area.

- Reasonable build-out has routinely been found to be consistent with the First Amendment. *See, e.g., Telesat Cablevision, Inc. v. City of Riviera Beach*, 773 F. Supp. 383, 406 (S.D. Fla. 1991). The Bells' reliance on the *Preferred Communications* decision -- which involved the *denial of a franchise*, not build-out requirements imposed as a condition of granting the franchise -- completely misses the point the Supreme Court's analysis.

LOCAL FRANCHISING REQUIREMENTS
ARE NOT A BARRIER TO BROADBAND DEPLOYMENT

The cable franchising process is not impeding broadband deployment: the Bells, and others, are free to deploy broadband networks without obtaining cable franchises, and they are doing so at a rapid rate.

- All of the Bell companies have been offering DSL for years to a majority of their customers, and they have done so without needing to obtain cable franchises. Plus, all of the Bell companies are now increasing the availability and transmission speeds of their DSL offerings, and also investing in fiber that allows for more robust broadband services.
- Verizon, for example, has deployed its "FiOS" broadband service in many areas in which it does not have a cable franchise. Although Verizon has cable franchises in 9 states covering approximately 3.5 million households, it already offers FiOS broadband in 16 states, passing 6 million households. Obviously, the local franchising process is not slowing this deployment; in fact, Verizon's management has said repeatedly that "franchising is not holding [Verizon] back."
- AT&T and BellSouth also say they are dedicating significant resources to deploying broadband facilities. For example, AT&T is reportedly investing some $4.6 billion in rolling out its new fiber, yet AT&T has not yet bothered to seek a single local cable franchise.
- Even if there is a connection between broadband deployment and cable franchising, the Bells and their allies failed to provide any credible data or examples showing any genuine problem, much less a pervasive one, that requires Commission intervention. The credible evidence comes from over 250 franchise authorities from across the country, which demonstrated that local governments welcome additional competition and that the franchising process not a "barrier to entry" to those who wish to enter the cable business.
- The record clearly demonstrates that the Bells' difficulties in obtaining franchises are primarily of their own making. There is no evidence that AT&T, for example, has even applied for a single cable franchise. Those Bells that are seeking franchises are obtaining them *faster* than they can deploy their cable service: Verizon, for example, has acquired over 200 franchises covering approximately *4 million* households, but it offers its cable TV service to only about *1 million* households (or about than one-quarter of the households Verizon is legally able to serve.)

Section 706 does not give the Commission the statutory authority to intervene in the cable franchising process.

- Section 706, by its plain terms, does not apply to cable services. The provision deals with the deployment of "advanced telecommunications capability" -- that is, broadband *transmission* services, devoid of content -- not the regulation of content-based *cable* services by state or local governments. No one has offered any credible evidence linking the *video* franchising process with the deployment of *broadband*.
- Furthermore, the Bells have not provided any evidence that suggests Section 706 need be invoked. Section 706 provides that, if the Commission determines that broadband capability is not being deployed to all Americans in a reasonable and timely manner, it "shall take immediate action to accelerate the deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market." The Commission has never found such deficiencies in broadband deployment, and there is no evidence on the record in this proceeding that would lead to a contrary conclusion. Indeed,

the most recent Section 706 Report and Form 477 Report, and even the Bells' own annual and quarterly reports, show that *broadband deployment is widespread, and consumers' options are expanding constantly due to an ever-widening array of technologies and providers. See, e.g., Availability of Advanced Telecommunications Capability in the United States, Fourth Report to Congress* (2004).

- Section 706 does not provide a basis for preempting state or local franchising laws. The Commission has already definitively ruled that Section 706 is *not* an independent source of rulemaking authority. *See Wireline Broadband Order*, 13 FCC Rcd. 24011 ¶ 77 (1998) ("[S]ection 706 does not constitute an independent grant of authority"). Further, Section 706 is particularly ill-suited for use as a source of preemption power. The law is clear that, if Congress intends to preempt a power traditionally exercised by a state or local government, it must make its intention "unmistakably clear." *See Gregory v. Ashcroft*, 501 U.S. 452, 460-61 (1991); *City of Dallas v. FCC*, 165 F.3d 341 (5th Cir. 1999). There is no such clear statement of congressional intent in Section 706.
- Section 706 seeks to promote broadband deployment "to all Americans." In the same vein, Sections 621(a)(3) and (a)(4)(A) give franchise authorities the tools to ensure that cable franchisees serve all households equally, within a reasonable period of time, and without regard to income. These provisions, like Section 1 of the Communications Act, all focus on *inclusion. None* of these provisions can justify any Commission role in restricting the power of local governments to protect their citizens, especially in the area of redlining.

The Commission should give no credence to the Bells' broadband claims.

- The Bells have already received, on multiple occasions, the expansive regulatory relief they said was necessary to accelerate broadband deployment. Time and time again, the Bells have demanded -- and received -- regulatory relief to spur investment in their broadband facilities and services. And time and time again, they come back to the Commission making new demands for yet more regulatory concessions.
  - They did this in pursuing price cap regulation from state and federal regulators beginning around 1990.
  - They did this in seeking relief from the Modification of Final Judgment in the 1996 Act.
  - They did this -- multiple times -- in their recurrent efforts to weaken the unbundling rules adopted under Section 251 of the 1996 Act.
  - They did this in many states in exchange for lessened rates and other economic and social regulations.
- Clearly, promising "more broadband" in exchange for regulatory favors has become a routine strategy for the Bells, so it is no surprise that they choose to employ it here. Policymakers should be wary, and should take the Bells' claims of hardship for what the are -- bogus.

Alvarez, Daniel

From: Alvarez, Daniel
Sent: Friday, December 08, 2006 6:55 PM
To: 'rudy.brioche@fcc.gov'
Cc: 'Coltharp, Jim'; 'Nathan, Tom'; Casserly, James; Friedman, Jonathan; Alvarez, Daniel
Subject: Section 621/Franchising Proceeding (Dkt 05-311) -- Comcast Meeting Follow-Up

Rudy,

Thank you for taking the time to meet with us today. In response to some of your questions today, I wanted to point you to the specific discussions in Comcast's comments and reply comments. To make things easier for you, here are the links to Comcast's comments and reply comments in this proceeding:

Comments: http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518328205

Reply Comments: http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518332196

First, regarding the question of the history of the franchise process, and whether the FCC retained ancillary jurisdiction after the 1984 Act, we are preparing a response to AT&T's Dec 4 ex parte. Until we have that finalized, however, I'd like to point you to the discussion of the legislative history of the 1984 Act on pages 28-33 of Comcast's comments. We think this pretty clearly demonstrates that what Congress intended to create in the 1984 Act was what Tom called a "structured dualism," with the localities handling certain aspects of cable regulation, most notably franchising, and the FCC handlings other aspects.

Second, regarding the question of preemption, please see the discussion on pages 36-40 of Comcast's comments, and pages 35-37 of Comcast's reply comments. Based on our reading of the case law, there is no preemption theory available in this situation for the Commission to preempt state level playing field laws.

Third, we mentioned in our meeting that Verizon, the only Bell that has really been actively engaged in the franchising process, has been publicly stating that the franchising process is not a problem for them. In support of what we said, we want to provide you with the following quotes and citations:

- Verizon Telecom President Virginia Ruesterholz said in no uncertain terms, franchising "isn't holding us back in our deployment of video," and that Verizon "has been able to match the pace of franchise agreements to the buildout of" its cable service. [Glen Dickson & John M. Higgins, Verizon Details TV Progress, Broad. & Cable, Sept. 27, 2006, available at http://www.broadcastingcable.com/article/CA6375527.html.]

- This is completely in agreement with what Verizon's Chairman and CEO, Ivan Seidenberg, said last year: "We haven't been turned down anywhere we've gone." [Olga Kharif, Verizon's Muddy TV Picture, Bus. Wk. Online, Sept. 28, 2005, available at http://www.businessweek.com/print/technology/content/sep2005/tc20050928_4147.htm?chan=tc.]

- More recently, Doreen Toben, Verizon's CFO, told an investor conference call that "[W]e have become very successful now in getting franchising. So we don't see that as an issue certainly going forward." [Verizon at UBS 34th Annual Global Media Conference, Thomson StreetEvents, Conference Call Transcript, at 7 (Dec 6, 2006), available at http://investor.verizon.com/news/20061206/20061206_transcript.pdf.]

The first two have been previously placed on the record -- the first by NCTA in several ex partes filed in early October (see, e.g., http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518526775), and the second we put on the record in Comcast's comments (See pgs 8-9). We will, of course, be putting the third set of quotes on the record in the ex parte we will be filing on Monday.

Finally, we've attached three documents to this e-mail that we hope you will find useful. The first two were previously placed on the record as attachments to the ex parte notice we filed on Oct 31, 2006 (http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518539091), and we will be attaching all of them to the ex parte notice we file on Monday, as well. The first is a general overview of the proceeding. As we see it, there is no evidence of a problem with the franchising process, and the FCC does not have the authority to undertake these changes. The second is a more specific 3-page summary focusing on the question of statutory authority. Finally, I have attached a two-page discussion of the purported relationship between the franchising process and broadband deployment. We have heard that some of the justification for this action may be based on this, and, in addition to what we have already said on the record (see Comments, pages 33-36), we hoped you might find this useful reading.

Thank you, again, for meeting with us today. Please do not hesitate to contact us if you have any questions or concerns.

Best,

Daniel

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Alvarez, Daniel

From: Alvarez, Daniel
Sent: Friday, December 08, 2006 6:58 PM
To: 'Chris.Robbins@fcc.gov'
Cc: 'Coltharp, Jim'; Casserly, James; 'Nathan, Tom'; Friedman, Jonathan; Alvarez, Daniel
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Reply Comments: http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518332196

First, regarding the question of statutory authority, I'd like to point you to the discussion on pages 26-40 of Comcast's comments, and pages 26-39 of Comcast's reply comments. In particular, I'd like to direct you to pages 28-33 of Comcast's comments, where we discuss the legislative history behind the 1984 Act. We think this pretty clearly demonstrates that what Congress intended to create in the 1984 Act was what Tom called a "structured dualism," with the localities handling certain aspects of cable regulation, most notably franchising, and the FCC handlings other aspects. In addition, I've attached to this e-mail a 3-page summary of the statutory authority arguments. We have previously placed this document on the record (as an attachment to the ex parte notice we filed on Oct 31, 2006, which you can see at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518539091), and we'll be attaching it to the ex parte we file on Monday, as well.

Regarding the broadband question, please see the discussion on pages 33-36 of Comcast's comments. In addition, I have attached a two-page summary discussion of the purported relationship between the franchising process and broadband deployment. We have not placed this 2-pager on the record before, but we will do so on Monday.

Third, we mentioned in our meeting that Verizon, the only Bell that has really been actively engaged in the franchising process, has been publicly stating that the franchising process is not a problem for them. In support of what we said, we want to provide you with the following quotes and citations:

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Thank you, again, for meeting with us today. Please do not hesitate to contact us if you have any questions or concerns.

Best,

Daniel

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