



December 12, 2006

VIA ELECTRONIC COMMENT FILING SYSTEM (ECFS)

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

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

Dear Ms. Dortch:

This *ex parte* notice is filed on behalf of 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”), the Alliance for Community Media (“ACM”), and the Alliance for Communications Democracy (“ACD”).

Attached is a letter sent to Chairman Martin and Commissioners Adelstein, Copps, Tate, and McDowell in which the national local government organizations voiced their strong concerns with the proposed draft order on video franchising in MB Docket No. 05-311. In the letter, the organizations pointed out that the draft order would hurt consumers, cities, and counties in four significant ways:

- The Commission’s actions will become the true barrier to entry as it lacks the legal authority to dictate the terms and conditions of franchise agreements and any action taken will necessarily result in litigation and delay;
- A fixed deadline within which to approve a franchise agreement would fail to act as an incentive for new providers to negotiate in good faith with local franchising authorities absent a unilateral grant of a franchise containing only the terms of the incumbent provider’s agreement in the event the negotiation deadline is not met. Any automatic authority would result in a taking of local government property and could permit unauthorized use of public rights-of-way without local oversight;

December 12, 2006

Page 2

- Offsetting in-kind benefits and other monetary payments relating to public, educational and governmental access channels or institutional networks against the 5% franchise fee is counter to federal law and would result in a significant net fiscal loss to local communities; and
- Restrictions on reasonable build-out requirements ignore the public interest obligations of locally elected officials and will fail to protect the interests of all consumers in the community.

Over the past year, the national organizations have filed numerous comments with the Commission, setting forth sound legal arguments why the Commission does not have the authority to interpret, impose, and enforce local franchising rules. Further, the national organizations have had numerous meetings with the commissioners and staff to point out the complete lack of a factual basis to support any claims that local governments have impeded the grant of competitive franchises. In fact, the record clearly shows that local governments have long facilitated and supported the fair and rapid deployment of telecommunications services in our communities.

The organizations and the communities they represent need and support the provision of competitive services – but those services need to be provided in a manner that meets the unique needs and interests of our communities, as determined by their locally elected and locally accountable officials. The FCC in Washington DC is not the right place to dictate the outcome of contract negotiations and consumer protections determined by our cities, towns and counties across this nation.

Pursuant to Commission rules, please include a copy of this notice in the record for the proceeding noted above.

Sincerely,

A handwritten signature in black ink that reads "Libby Beaty". The signature is written in a cursive, slightly slanted style.

Libby Beaty
Executive Director, NATOA

Attachment

December 12, 2006

Page 3

cc: Alex Ponder, NLC
Jeff Arnold, NACo
Ron Thaniel, USCM
Anthony Riddle, ACM
James Horwood, Spiegel and McDiarmid
Tillman Lay, Spiegel and McDiarmid
Chairman Kevin J. Martin
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert M. McDowell
Heather Dixon
Scott Bergmann
Rudy Brioche
Jessica Rosenworcel
Ian Dillner
Chris Robbins
Cristina Pauze
Donna Gregg
Julie Veach
Holly Saurer



December 12, 2006

Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Michael J. Copps
Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Jonathan S. Adelstein
Commissioner
445 12th Street, SW
Washington, DC 20554

Deborah Taylor Tate
Commissioner
445 12th Street, SW
Washington, DC 20554

Robert M. McDowell
Commissioner
445 12th Street, SW
Washington, DC 20554

Dear Mr. Chairman and Commissioners:

The national associations representing America's local elected officials and their advisors write to bring to your immediate and urgent attention our concerns with the draft order on video franchising that is being circulated by Chairman Kevin J. Martin.

While the draft order has not been made public, several news organizations have reported on certain key elements. Based on these reports we have serious concerns with the Commission taking further action in the franchising proceeding (MB Docket No. 05-311) in such a short time frame and without further public scrutiny. The cumulative impact of the draft order's preemption on state and local governments runs counter to our federal system and applies a federally-mandated command-control model approach to traditionally state and local issues. The draft order would harm consumers, cities and counties in four significant ways.

First, Title VI of the Communications Act does not provide sufficient, if any, legal authority for the Commission to take action in changing the way cable franchises are granted without explicit Congressional approval. Furthermore, the Commission does not have the authority to dictate the terms and conditions of franchises given by local franchising authorities. To take action on this order without first establishing clear legal authority in this matter would only lead to litigation and delay, having the exact opposite effect the Chairman is seeking.

Second, while we acknowledge franchising needs to be done in a timely fashion, we do not believe that Title VI permits a fixed deadline on local franchise authority action. The facts and circumstances in every case will vary, and much depends on the cooperativeness and good faith of the applicant, not just that of the local franchising authority. We also believe that a fixed deadline would provide no incentive for new providers to work toward a local franchise agreement because they would have access to the public right of way without local oversight if they simply wait out the timeframes.

Third, we understand the draft order would require the cost of any in-kind benefits, such as I-Nets, as well as any monetary payments other than the franchise fee, to be offset against the 5% franchise fee. In virtually every instance, this would be a significant net fiscal loss to the local franchising authority. The “franchise fee” definition in the Cable Act does not include in-kind services or facilities, and it also does not include monetary payments for PEG capital facilities and equipment (including I-Net facilities) or monetary payments incidental to the award or enforcement of the franchise

Fourth, we understand the “build-out” requirements in the draft order do not protect the interests of all customers in a local franchising area. Competition is good when everyone can benefit, not just a privileged few. Local franchising authorities have effectively managed build-out in their respective jurisdictions without hindering the deployment of broadband services. Indeed, the most widely and quickly deployed broadband networks are owned by the cable industry – the very industry that has complied with local build-out requirements.

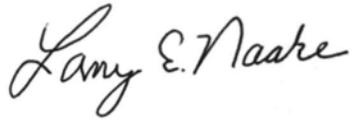
To act on this order in December would be precipitous and unwise given the uncertainty of the Commission’s authority in this matter, and the other concerns raised by this letter. There is no real urgency here, just the pleadings of a very powerful industry.

Chairman Martin has spoken about the need to spur competition in the video market. We agree. Our nation’s cities and counties welcome video competition in their communities. However, Chairman Martin’s draft order undermines local franchising authority and enforcement, threatens local budgets, and limits the benefits of broadband video competition to a few well-to-do neighborhoods.

While it is the Commission’s responsibility to facilitate the utilization of communications technologies, it is also the responsibility of the Commission to follow the statute and protect the interests of franchising authorities and the consumers as the Cable Act requires.

Collectively, we represent the interests of almost every municipal or county government in the United States and look to you for your attention to our concerns. We would be pleased to supply additional information to further your assessment of these concerns as you continue your deliberations on video franchising.

Sincerely,



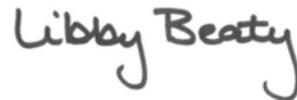
Executive Director
National Association of Counties



Executive Director
U.S. Conference of Mayors



Executive Director
National League of Cities



Executive Director
National Association of
Telecommunications Officers and Advisors

cc: Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554