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DEC 13 2006

Federal Communications Commission
Office of the Secretary

FAX COVER SHEET

DATE: 12-13-06

TO: Chairman Martin

COMPANY: _____

FAX NUMBER: 202-418-2801

FROM: City of Duluth - Mayor's Office

NUMBER OF PAGES INCLUDING COVER SHEET: 30

COMMENTS: _____

ORIGINAL TO FOLLOW BY MAIL: YES / NO

FOR REVIEW AND COMMENT: YES / NO

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**CITY OF DULUTH**

OFFICE OF THE MAYOR
411 West First Street, Room 403
Duluth, Minnesota 55802-1199

218/730-5230 218/730-5904 FAX
hbergson@ci.duluth.mn.us

HERB W. BERGSON
Mayor

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DEC 13 2006

Federal Communications Commission
Office of the Secretary

December 13, 2006

Ex Parte

Chairman Martin
Federal Communications Commission
445 12th Street, S.W.
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 Chairman Martin:

This notice is to record the concerns of the Administration of the City of Duluth regarding the upcoming FCC order on cable franchising. Our comments are summarized as follows:

- 1) The proposed rule eliminates incentive for providers to negotiate in good faith. If the city and the provider do not come to agreement within 90 days, the provider can proceed without an agreement. They can then make money using our public land without considering local needs. This framework would be unreasonable.
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 - C) A means for prevention or remedy of the imbalance.
- 3) The proposed rule reduces the support for PEG or other community media services from what

December 13, 2006

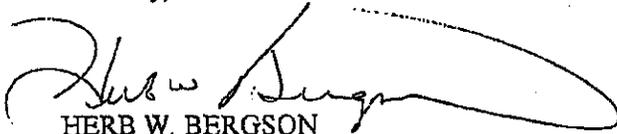
Page 2

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4) The changes being proposed to the law are dramatic. We believe that such changes to the law should be made by Congress, not the FCC. These changes will slow competition by confusing the legal framework. Such changes should be decided by law-makers, not the courts. The FCC should not usurp Congressional authority.

We look forward to working with the FCC to establish a process which supports both competition and community fairness. Please contact us if you have questions or comments.

Sincerely,



HERB W. BERGSON
Mayor

CC: Commissioner Tate
Commissioner MacDowell
Commissioner Adelstein
Commissioner Copps

FAX COVER SHEET

DATE: 12-13-06

TO: Commissioner Capps

COMPANY: FCC

FAX NUMBER: 202-418-2802

FROM: City of Duluth, Minn. Mayor's Office

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MB 05-311

CITY OF DULUTH

OFFICE OF THE MAYOR
411 West First Street, Room 403
Duluth, Minnesota 55802-1199

218/730-5230 218/730-5904 FAX
hbergson@ci.duluth.mn.us

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HERB W. BERGSON

Mayor

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Federal Communications Commission
Office of the Secretary

December 13, 2006

Ex Parte

Chairman Martin
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

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Sincerely,



HERB W. BERGSON
Mayor

CC: Commissioner Tate
Commissioner MacDowell
Commissioner Adelstein
Commissioner Copps

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CENTER FOR INDIVIDUAL FREEDOM

MB - OS - 311

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DEC 13 2006

December 13, 2006

Federal Communications Commission
Office of the Secretary

Chairman Kevin J. Martin
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 Chairman Martin:

On behalf of the Center for Individual Freedom and its more than 250,000 supporters and activists nationwide, I am writing to urge you and all other members of the Federal Communications Commission to support the implementation and enforcement of "video choice" rules for video franchising, the "Section 621(a)" provisions. The current lack of real choices for consumers in video services is harmful to our national economy and competitiveness.

Currently, only a small handful of local jurisdictions have provided consumers genuine choices in their respective markets. Consumers in most communities have only one, or perhaps two, local video service carriers to choose from, rather than the myriad options all Americans enjoy in comparable markets for telephone and Internet service. The burdensome barriers to competition that the current system has erected have created a virtual monopolistic market, dominated by a few companies, controlling both prices and the pace of innovation.

Indeed, such lack of competition violates the spirit of the 1992 Cable Act, which called for a prohibition on unreasonable refusals to award competitive franchises. Competition has been endorsed by Congress; the franchising process was meant to expedite video competition, not hinder it. Yet, in the 14 years since Congress passed the original Act, barriers have been erected to obstruct competition from ever reaching these markets.

In fact, there are competitors ready, willing and able to provide consumers alternative choices to their current video service provider. But the current system, and the anti-competitive barriers that it created, has made it too burdensome and inefficient for these new competitors and their new technologies to reach consumers.

The proposed action before the FCC would remove the artificial and counterproductive barriers to entry. It would establish reasonable deadlines for local franchising authorities to rule on franchise applications. Right now, many video service competitors are kept in limbo by local authorities, who refuse to rule on their application one way or the other.

113 S. Columbus Street
Suite 310
Alexandria, VA 22314
703-535-5836
703-535-5838 (fax)
www.cff.org



Fax

To: Bruce Gottlieb, Legal Advisor to
Commissioner Copps

From: Jeffrey Mazzella
President

Fax: 202-418-2802

Pages: 3 w/cover

Phone:

Date: 12/13/2006

Re: MB Docket No. 05-311

cc:

- Urgent** **For Review** **Please Comment** **Please Reply** **Please Recycle**

● **Comments:**

Formal comment 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

MB 05-311



Video Access Alliance

Advocating the need for more video platforms

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EX PARTE

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December 12, 2006

DEC 13 2006

Federal Communications Commission
Office of the Secretary

Chairman Kevin Martin
Federal Communications Commission
445 12th Street, S.W.
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

Product No. 05-311

Dear Chairman Martin:

We write on behalf independent content providers who stand ready to provide the American public with a more diverse set of viewpoints and information as a result of new entry into the video distribution market. We strongly urge the Commission to act now in order to hasten competitive entry into the video market by addressing problem areas with the current local franchising process that delay or prevent video competition.

There is an urgent need for new competitors in the video distribution market. Not only have cable prices been rising at alarming rates over the past decade but incumbent cable operators are stifling programming diversity and localism. Independent networks, as a group, are excluded under the current structure.

Recent research indicates that under the current market structure, the top video distribution networks carried—on a non-premium, national basis—less than 1% of channels with no media affiliation. A number of studies, including one by the GAO as well as academic studies, confirm that the top cable operators are much more likely to carry their own affiliated channels than independents. At the same time, independent channels have been shown to cost less than 1/3 of what affiliated channels cost. So independent channels apply downward pricing pressure on what the consumer pays. The best way to ensure diversity of information sources, lower prices for cable TV, higher quality programming and more consumer choice is to create an environment that allows for the rapid deployment of more platforms and greater competition which will also create more competition in the content space.

New entry into the video market will give independent programmers significant, additional opportunities for carriage. First, many new entrants, including the traditional telephone companies, are building new fiber optic networks, which have the capacity for carriage of a greater number of channels than do networks currently used by incumbent cable operators. Second, most new entrants do not own programming and, therefore, do not have the incentive to discriminate against independent

PO Box 14917, Tallahassee, Florida 32317

Phone: (800) 539-1470

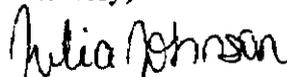
Fax: (850) 219-5753

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programmers in making carriage selections. Instead, these providers have a strong incentive to offer the diverse programming of independent content providers in order to differentiate themselves and to better compete against incumbent cable providers. Making such programming available to the public is important to our democracy. The carriage of independent content providers increases the diversity of information sources and contributes to ideas in the marketplace.

New entrants, unlike their cable predecessors, are showing a willingness to carry such important content. Adopting regulations that encourage rapid new entry into the video market will promote programming diversity and localism. We, therefore, encourage you to act now to address the aspects of the current local franchising process that frustrate the pro-competitive mandate of Section 621 and that delay or prevent more widespread video competition and broadband deployment. Taking this vital step will help ensure that independent content providers have the opportunity to contribute their valuable voice to the marketplace of ideas.

Sincerely,



Julia Johnson

Chairwoman

Video Access Alliance



FACSIMILE TRANSMITTAL SHEET

TO: BRUCE GOTTLIEB Legal Advisor to Commissioner Copps	FROM: JULIA JOHNSON
COMPANY: FCC	DATE: DECEMBER 12, 2006
FAX NUMBER: 202-418-2802	TOTAL NO. OF PAGES INCLUDING COVER: 3
PHONE NUMBER:	SENDER'S REFERENCE NUMBER: 800-539-1470
RE: DOCKET NUMBER 05-311	SENDER'S FAX NUMBER: 850-219-5755

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 PLEASE REPLY
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NOTES/COMMENTS:

MB 05-311

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DEC 13 2006

Federal Communications Commission
Office of the Secretary



National Black Chamber of Commerce
1380 Connecticut Avenue NW Suite 400, Washington DC 20036
202-466-6988 202-466-4918 fax www.nationalbcc.org info@nationalbcc.org

December 12, 2006

EX PARTE

Chairman Kevin Martin
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

MB DOCKET NO. 05-311

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

Dear Chairman Martin:

The National Black Chamber of Commerce is a business association representing 95,000 Black owned businesses and provides an advocacy that reaches one million Black owned businesses. We have 190 affiliated chapters domestically and globally, and are nonprofit, nonpartisan and nonsectarian dedicated to the economic empowerment of African American communities.

We write on behalf of the millions of American consumers who have seen their cable bills skyrocket over the past decade and, therefore, demand and deserve a greater choice in video service providers. We strongly urge the Commission to hasten competitive entry into the video market by streamlining the local franchising process, which has proven to be a significant barrier to video competition. The Commission should act now to adopt meaningful rules in this proceeding that will encourage video competition and broadband deployment.

The promise of widespread video competition is now stronger than ever. New entrants into the video market – including the traditional telephone companies – are investing billions of dollars to build state-of-the-art fiber networks that can deliver hundreds of channels of programming, enhanced interactivity, and blazing fast broadband speeds. We urge the Commission to adopt rules to address the obstacles posed by the current video franchising process so that these competitive and innovative services may be made

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available to as many Americans as quickly as possible. There is simply no justification for allowing local authorities to frustrate the pro-competitive policy of Section 621(a) of the Cable Act by unlawfully delaying or, in some instances, even foreclosing, video competition.

The Commission recently found that from 1995 to 2005 cable rates have risen 93 percent. At the same time, the Commission has also found that since 1996, the prices of every other communications service have declined while cable rates have risen year after year. These figures come as no surprise given the lack of wireline competition in the video distribution market. While satellite providers have been steadily gaining customers, FCC data indicates that only the competition from a second wireline cable operator exerts a downward pressure on prices. Unfortunately, less than two percent of communities have the benefits of such competition.

New entry into the video market can be expected to deliver tremendous benefits to consumers. Not only should increased competition bring lower cable prices, but it will also generate greater programming diversity and more service options. In addition, by removing barriers to entry into the video market, the Commission will achieve its goal of promoting greater broadband deployment. As the Commission has recognized, the revenues realized from video offerings will help fund the roll-out of the next-generation broadband networks over which those services will be delivered.

Consumers need the benefits of video competition for which they have been waiting for over a decade, including relief from ever-rising cable bills and improved service offerings. They also need increased access to state-of-the-art broadband networks that will allow them to function more effectively in the workforce and participate more fully in our society. As the record in this proceeding documents, several aspects of the local franchising process pose an obstacle to these goals and run afoul of the Cable Act. We urge you to act now to address the problems with the current local franchising process in order to speed new entry into the video distribution market and spur on increased broadband deployment.

Sincerely,

Harry C. Alford
HARRY C. ALFORD
President/CEO



THE NATIONAL BLACK CHAMBER OF COMMERCE

1350 Connecticut Avenue NW #405

Washington, DC 20036

202-466-6888 202-466-4918fax

TO: BRUCE GOTTLIEB
LEGAL ADVISOR TO COMMISSIONER COPPS

FROM: HARRY ALFORD
202-466-6886

Number of Pages, including cover 3

DOCKET NO. 05-311

NBCC Annual Business Conference July 20-21, 2005

“Networking for Prosperity”

Convening with National Association of Black Hotel Owners, Operators and Developers

On the NBCC Agenda for 2005

Death Tax

Association Health Plans

Social Security Reform

2nd Annual Prince George’s Football Classic

Broadening Streams to Procurement

Capital Access

*The Bronx Community Cable Programming Corporation***BRONXNET**

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Office of the Secretary

12/13/06

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Washington, DC 20554

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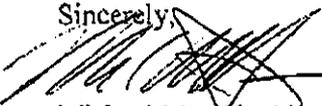
BRONXNET is the independent not-for-profit community media center serving the people of the Bronx. We unite with Alliance for Community Media members in calling for competition without destruction of local, community controlled media.

- 1) The proposed rule eliminates incentive for providers to negotiate in good faith. If the city and the provider do not come to agreement within 90 days, the provider can proceed without an agreement. They can then make billions of dollars using our public land without considering local needs. This framework would be unreasonable.
- 2) The proposed rule lacks a remedy for geographic discrimination. Public, Education and Government Access, or PEG, are tools to engage our local communities in Democracy. Democratic participation should be for all, not based on a company business rule. The public-right-of-way is owned by all in our community, not just those in an area lucky enough to be served. We believe that inevitable market imbalances must be anticipated by the FCC, as they were by Congress, and that any rule making must provide these three elements:
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by confusing the legal framework. Such changes should be decided by lawmakers, not the courts. The FCC should not usurp Congressional authority.

We've trained thousands of residents in media production and provide access to studios, equipment, channels and other resources so they might engage in civic participation through media. Each year BRONXNET trains hundreds of intermediate school, high school, and college students through our Training Program for Future Media Professionals. We provide access and training to not for profits so they may deliver important information to the public regarding health, education, and social services. All of this and other services that stations like BRONXNET provide, contributes to community development and economic vitality in our society, while furthering our democracy. We look forward to working with the FCC to establish a process, which supports both competition and community fairness. Please contact us if you have questions or comments.

Sincerely,



Michael Max Knobbe
Executive Director
BRONXNET
250 Bedford Park Boulevard West
BRONX, NY 10468
(718) 960-7158
max@bronxnet.org

CC: Christina Pauze
Chris Robbins
Heather Dixon
Rudy Brioche
Bruce Gottlieb
The Bronx Congressional Delegation



NEW BEDFORD CABLE ACCESS
EX PARTE OR LATE FILED

CITY OF NEW BEDFORD
SCOTT W. LANG, MAYOR

FILED/ACCEPTED

DEC 13 2006

Federal Communications Commission
Office of the Secretary

FAX COVER SHEET

Date: 12/13/06

To: CHRISTOPHER MARTIN

Fax Number: 202-478-2801

From: THOMAS J. SEITZ

Phone #: 608-979-1744 FAX # 1-508-979-1764

Subject: MB -05-311

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Washington, DC 20554

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I was instructed to communicate by Fax

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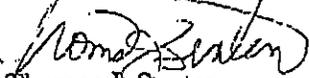
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Sincerely,



Thomas J. Sexton
Public Access Director
New Bedford Cable Access
918 S. Rodney French blvd
New Bedford, MA 02744

CC: Christina Pauze
Chris Robbins
Heather Dixon
Rudy Bricche
Bruce Gottlieb
Representative Barney Frank
Senator John Kerry
Senator Edward Kennedy

Elizabeth Park
Direct Dial: (202) 637-1056
elizabeth.park@lw.com

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565 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
Tel: (202) 637-2200 Fax: (202) 637-2201
www.lw.com

LATHAM & WATKINS LLP

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New Jersey	Washington, D.C.

DEC 13 2006
Federal Communications Commission
Office of the Secretary

FACSIMILE TRANSMISSION
December 13, 2006

To: **The Honorable Kevin J. Martin,** Chairman
and
Heather Dixon, Legal Advisor, Media
Issues, Office of Chairman Martin
Federal Communications Commission

Fax: (202) 418-2801 Tel: (202) 418-1000

From: Elizabeth Park

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 – Ex Parte Communication*

Original(s) to follow Number of pages, including cover: **5**

Dear Chairman Martin and Ms. Dixon:

The following is a courtesy copy of an ex parte submission filed by Hawaiian Telcom Communications, Inc. in Docket No. 05-311 earlier today. Please contact the undersigned if you have any questions regarding this filing.

Regards,

Liz Park

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Hawaiian Telcom

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DEC 13 2006

Federal Communications Commission
Office of the Secretary

December 13, 2006

The Honorable Kevin Martin
Chairman
Federal Communications Commission
445 12th Street, SW, Room 8 B201
Washington, D.C. 20554

The Honorable Michael Copps
Commissioner
Federal Communications Commission
445 12th Street, SW, Room 8 B1151
Washington, D.C. 20554

The Honorable Deborah Taylor Tate
Commissioner
Federal Communications Commission
445 12th Street, SW, Room 8 A204
Washington, D.C. 20554

The Honorable Jonathan Adelstein
Commissioner
Federal Communications Commission
445 12th Street, SW, Room 8 A302
Washington, D.C. 20554

The Honorable Robert M. McDowell
Commissioner
Federal Communications Commission
445 12th Street, SW, Room 8 C302
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 Consumer Protection
and Competition Act of 1992, MB Docket No. 05-311 – Ex Parte Communication

Dear Chairman Martin and Commissioners Adelstein, Copps, Tate and McDowell:

Hawaiian Telcom Communications, Inc. ("Hawaiian Telcom"), through its operating subsidiaries, currently provides local exchange, long-distance, wireless, broadband and information services to customers in Hawaii, and plans to offer Internet-protocol-based television services ("IPTV") using its existing digital subscriber line ("DSL") facilities. On February 13, 2006, Hawaiian Telcom filed Comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding (FCC 05-189, rel. Nov. 18, 2005). Subsequently, the State of Hawaii and Hawaiian Telcom have been working cooperatively to process Hawaiian Telcom's franchise application. Hawaiian Telcom respectfully submits these supplemental comments to address the particular concern of "institutional network" or "I-NET" requirements permitted by the Communications Act of 1934, as amended ("Act") to be imposed by state and local franchising authorities (LFAs).

Chairman Martin
Commissioners Adelstein, Copps, Tate and McDowell
December 13, 2006
Page 2

As noted in Chairman Martin's recent remarks to the forum hosted by the Phoenix Center, the Commission's record confirms the local franchising process can pose an unreasonable barrier to entry. Chairman Martin specifically mentioned LFA inaction, franchise fee issues, and unreasonable build-out requirements as examples of aspects of the franchising process that have proven problematic for new entrants. It also should be recognized that unreasonable I-NET requirements can be just as problematic for new entrants and are another aspect of the franchising process that potentially can be so onerous as to constitute "unreasonably refus[ing] to award an additional competitive franchise" (Section 621(a) of the Act).

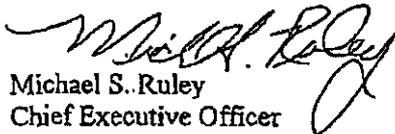
In its quest to obtain more facilities and equipment for local government use pursuant to the authority granted to it to impose I-NET requirements, an LFA may as a result create an unnecessary barrier to the introduction of competition in the video marketplace and thereby delay or deny a competitive marketplace. While LFAs are entitled to consider the benefits of additional I-NET facilities, such benefits should be outweighed by the benefits of competition. A national policy promoting competition in the video marketplace and providing rational guidelines on the imposition of I-NET and other conditions would assist LFAs in establishing franchise conditions that best serve the public interest. I-NET requirements, while permissible under the Act, should not be unlimited for a new entrant but rather subject to rational limitations such as being in proportion to the new entrant's presence in the market. New entrants with no market share and limited multichannel video programming distribution (MVPD) capability in the market should not have the same I-NET requirements as the incumbent cable provider with a dominant market position and facilities deployed throughout the market. Otherwise, I-NET requirements could effectively prevent pricing the fledgling service at rates that are both affordable and competitive with those of the incumbent provider.

Chairman Martin also noted that in-kind contributions required by localities that are unrelated to the provision of video service can hinder new entrants, and that requests of a local franchising authority that are unrelated to the provision of video service should count towards the 5% cap on franchise fees. I-NET requirements have no relationship with the quantity, quality, type or terms of video service offered to the public in the local franchising area. In addition, I-NET is not related in any way to the LFA's statutory role regulating the use of public rights-of-way. I-NET is simply another in-kind benefit that should count against the 5% cap. Otherwise, I-NET requirements could constitute an unreasonable barrier to entry, making market entry economically impossible for Hawaiian Telcom and other potential new franchisees.

Chairman Martin
Commissioners Adelstein, Copps, Tate and McDowell
December 13, 2006
Page 3

In conclusion, Hawaiian Telcom supports the Commission's goal of accelerating broadband development by ensuring that the local franchising process does not unreasonably hinder competitive entry into the video marketplace. Hawaiian Telcom urges the Commission to treat new entrants into the MVPD market as it has treated new entrants into the telecommunications market. To advance its goal, the Commission should preempt any state and local franchising requirements that cause an unreasonable delay, cost or burden on new IPTV entrants, including limiting LFAs' ability to require I-NET and other in-kind contributions unrelated to the provision of video service as conditions to obtaining a franchise.

Sincerely,


Michael S. Ruley
Chief Executive Officer

EX PARTE OR LATE FILED



Sun Prairie Cable Access

1350 Linnerud Drive Suite #2
Sun Prairie, WI 53590-0265
Phone • (608)-837-4193 Fax • (608)-837-0870
www.sunprairiecableaccess.com



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DEC 13 2006

Federal Communications Commission
Office of the Secretary

Fax:

To: Chairman Martin From: Pam Stoltz

Fax: 202-418-2801 Pages: 3

Phone: _____ Date: 12/13/06

Re: Docket # 05-311 CC: _____

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