

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

**COMMENTS OF
THE JEFFERSON COUNTY LEAGUE OF CITIES CABLE COMMISSION
IN RESPONSE TO THE FURTHER NOTICE
OF PROPOSED RULEMAKING**

The Jefferson County League of Cities Cable Commission, by and through its legal counsel submits these comments in response to the Further Notice of Proposal Rulemaking, released March 5, 2007, in the above-captioned rulemaking (“Further Notice”).

1. In 1994, the following Kentucky cities, formed the Jefferson County League of Cities Cable Commission (“JCLCCC”) pursuant to the Interlocal Cooperation Act of Kentucky, KRS 65.210 to 65.300: Anchorage, Bancroft, Cambridge, Coldstream, Graymore-Devondale, Green Spring, Hickory Hill, Hollow Creek, Hurstborne Acres, Kingley, Lyndon, Meadowbrook Farm, Meadowview Estates, Meadowvale, Norwood, Parkway Village, Pewee Village, St. Regis Park, Seneca Gardens, Sycamore, Ten

Broeck, Watterson Park, and Woodland Hills. The purpose of the JCLCCC is to jointly exercise all lawful powers authorized related to the provision, regulation, and control of cable television on behalf of the citizens of the member cities. In 1995, JCLCCC negotiated a model franchise with the cable operator, which was adopted by all of the member cities. The franchises expire in 2010. Our current cable provider is Insight Communications.

2. We support and adopt the comments of the National Association of Telecommunications Officers and Advisors, the National League of Cities, the National Association of Counties, the U.S. Conference of Mayors, the Alliance for Community Media, and the Alliance for Communications Democracy, filed in response to the Further Notice.

3. We oppose the Further Notice's tentative conclusion (at ¶ 140) that the findings made in the FCC's March 5, 2007, Order in this proceeding should apply to incumbent cable operators, whether at the time of renewal of those operators' current franchises, or thereafter. This proceeding is based on Section 621(a)(1) of the Communications Act, 47 U.S.C. § 541(a)(1), and the rulings adopted in the Order are specifically, and entirely, directed at "facilitat[ing] and expedit[ing] entry of new cable competitors into the market for the delivery of video programming, and accelerat[ing] broadband deployment" (Order at ¶ 1).

4. We disagree with the rulings in the Order, both on the grounds that the FCC lacks the legal authority to adopt them and on the grounds that

those rulings are unnecessary to promote competition, violate the Cable Act's goal of ensuring that a cable system is "responsive to the needs and interests of the local community," 47 U.S.C. § 521(2), and are in conflict with several other provisions of the Cable Act. But even assuming, for the sake of argument, that the rulings in the Order are valid, they cannot, and should not, be applied to incumbent cable operators. By its terms, the "unreasonable refusal" provisions of Section 621(a)(1) apply to "additional competitive franchise[s]," not to incumbent cable operators. Those operators are by definition already in the market, and their future franchise terms and conditions are governed by the franchise renewal provisions of Section 626 (47 U.S.C. § 546), and not Section 621(a)(1).

5. Of particular concern to the JCLCC are the time limits that the FCC's new rules place on franchise negotiations. Under the new rules, a local franchising authority ("LFA") has 90 days to act if "the applicant has existing authority to access public rights-of-way", 180 days otherwise.

6. The FCC's 90-day/180-day "shot clock" will make it impossible for LFA's in Kentucky to negotiate franchises. Sections 163 and 164 of the Kentucky Constitution provide that before granting a franchise for cable or telephone service, a city must first, after due advertising, receive bids therefore publicly. KRS 424.130(1)(b) provides that bids must be advertised not less than seven (7) days before the bid opening occurs.

7. Therefor, in Kentucky, not only are cities required to pass a franchise ordinance, they are also required take bids on the franchise and grant said franchise either by resolution or ordinance. Please note that Kentucky law requires that ordinances receive two “readings” at two separate city council meetings¹. Many of the members of the JCLCCC are small cities that hold monthly meetings. Additionally, Kentucky law provides that no ordinance shall be effective until published.² Thus, there is additional time required by the publishing requirement. Clearly, the ninety (90) day rule would not even give the members cities of the JCLCCC time to comply with state law, let alone enter into meaningful negotiations.

8. We strongly endorse the Further Notice’s tentative conclusion (at para. 142) that Section 632(d)(2) (47 U.S.C. § 552(d)(2)) bars the FCC from “preempt[ing] state or local customer service laws that exceed the Commission’s standards,” and from “preventing LFAs and cable operators from agreeing to more stringent [customer service] standards” than the FCC’s.

Respectfully submitted,

Jefferson County League of Cities
Cable Commission

By: _____
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¹ KRS 83A.060 (4)

² KRS 83A.060 (9)

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