

**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 GREATER GRAND RAPIDS AREA  
CABLE COMMUNICATIONS COMMISSION  
  
IN RESPONSE TO FURTHER NOTICE  
OF PROPOSED RULEMAKING**

The Greater Grand Rapids Area Cable Communications Commission (“GGRACCC”) submits these comments in response to the Further Notice of Proposed Rulemaking, released March 5, 2007, in the above-captioned rulemaking (“Further Notice”).

1. The GGRACCC is a municipal consortium comprised of the neighboring cities of Grand Rapids, LaPrairie, and Cohasset, and the townships of Grand Rapids and Harris, all municipalities under Minnesota law. The GGRACCC was formed to assist in the administration and enforcement of its members’ cable franchises, and to coordinate the production and delivery of public, educational and governmental (“PEG”) access programming in those communities.

2. There are two (2) franchised cable operators in the GGRACCC’s jurisdiction. The GGRACCC’s member municipalities have franchises with an

incumbent cable operator, Mediacom Minnesota, LLC (“Mediacom”). These franchises were recently renewed. In addition, several of the member municipalities have issued competitive franchises to Paul Bunyan Rural Telephone Cooperative (“Paul Bunyan”). The franchises expire in or about 2020.

3. The GGRACCC wishes to correct the record underlying the Order released on March 5, 2007 (“Order”) and the Further Notice. At the Commission’s December 20, 2006 meeting, Chairman Martin cited several examples of allegedly unreasonable competitive franchising actions by local governments. Specifically, the Chairman commented on the competitive franchising processes involving the City of Grand Rapids and Paul Bunyan. The Chairman stated that Paul Bunyan had been required to install fiber connections to “every water treatment facility” in Grand Rapids. The Order states that “Grand Rapids, Minnesota insisted that Paul Bunyan Telephone Cooperative provide fiber connections to every municipal building in the City, including a water treatment plant.” (fn. 76)

This anecdote is based on an ex parte filing by USTelecom. USTelecom to Marlene H. Dortch, Secretary, FCC (July 28, 2006) (“UST filing”). The UST filing states:

Paul Bunyan Telephone Cooperative. Paul Bunyan Telephone Cooperative (PBTC) operates in rural communities in the northern part of Minnesota. PBTC has obtained competitive franchises in three communities—Bemidji, Cohasset, and Grand Rapids, Minnesota. In each case, the process has taken a very long time (approximately 5 years in Grand Rapids) and cost the company considerable resources (two of its 60+ employees working nearly full time for six months, a \$10,000 application fee, and over \$20,000 in legal fees). In each case, the biggest cause for delay has been excessive demands for services. In particular, Grand Rapids demanded that PBTC provide fiber connections to every municipal building, including the power plant and the water filtration facility. Plainly, these requests were unrelated to any legitimate public, educational, or governmental communication authorized in the statute, and PBTC resisted the community’s

demands. Similarly, Bemidji sought free DSL connections for the use of all of the employees in its City Hall, which also far exceeds any obligation authorized in the statute.

The UST filing was not served on the City of Grand Rapids or the GGRACCC. Thus, there was no opportunity to timely respond to these allegations.

The UST's claims are false. First, the claim that the City's competitive franchising process took five (5) years is ludicrous. By letter dated December 8, 2003, Paul Bunyan requested that the City initiate the cable franchising process established by Minnesota state law. The City promptly initiated that process and received a formal franchise application in March, 2004.<sup>1</sup> As required by Minnesota law, the application was considered by the City Council during a public hearing on April 26 and May 10, 2004. In December, 2004, the City issued a franchise. Paul Bunyan promptly accepted. Thus, the City issued a competitive franchise to Paul Bunyan within approximately nine (9) months.

Further, the City did not insist that Paul Bunyan provide fiber to every municipal building. Paul Bunyan agreed to provide connections to several specified municipal sites, not every building.

More importantly, Paul Bunyan did not "resist" the City's "demands" for connectivity. At the outset of discussions with the City, Paul Bunyan indicated that it planned to obtain open video system ("OVS") certification.<sup>2</sup> Paul Bunyan suggested that it could match certain of Mediacom's commitments as required by the OVS rules through in-kind consideration such as connectivity. Over Mediacom's objection, the City agreed to Paul Bunyan's connection of sites that Mediacom did not serve. In subsequent

---

<sup>1</sup> This corresponded to a February, 2004 announcement that Paul Bunyan was awarded a \$53.7 million USDA rural development loan. [http://www.nrtc.coop/us/main/nrtc\\_update/Update2004/NRTCUCU\\_033104.pdf](http://www.nrtc.coop/us/main/nrtc_update/Update2004/NRTCUCU_033104.pdf)

<sup>2</sup> Paul Bunyan asserted OVS rights and obligations upon applying for a franchise but did not file for OVS certification until Nov. 10, 2004 (approved Nov. 19<sup>th</sup>). <http://www.fcc.gov/mb/ovs/pbunyan111504.pdf>

franchise renewal negotiations, Mediacom agreed to retain connectivity at the sites it had previously served. The City uses this connectivity for the transmission of data and the origination of live PEG access programming at various sites.

The UST filing ignores the fact that Paul Bunyan's provision of new connections was the result of the OVS rules. The UST filing also wrongly claims that Paul Bunyan resisted these connections. In fact, Paul Bunyan offered to meet its matching obligations by providing the connections. The City accepted over Mediacom's objections.

The Order wrongly relies on misrepresentations in the (ex parte) UST filing. The Commission should not compound the problem. For purposes of the Further Notice, the Commission should disregard the UST filing.

4. The GGRACCC opposes the Further Notice's tentative conclusion (at ¶ 140) that the findings made in the Order should apply to incumbent cable operators at the time of franchise renewal. This proceeding is based on Section 621(a)(1) of the Communications Act, 47 U.S.C. § 541(a)(1). By its terms, the "unreasonable refusal" provisions of Section 621(a)(1) apply to "additional competitive franchise[s]," not to incumbent cable operators. Accordingly, the Order is aimed specifically and entirely 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).

Incumbent cable operators are already in the market. Re-writing federal law to change the franchise renewal process will not facilitate or expedite competition. Thus, there is no basis under Section 621(a)(1) to extend the Order to renewal of incumbent franchises.

Further, the Order's rulings 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). Most notably, Congress has mandated that an incumbent cable operator's future franchise terms and conditions be established pursuant to the franchise renewal provisions of Section 626 (47 U.S.C. § 546). These statutory renewal requirements focus on consideration of the "community's cable-related needs and interests." The Commission has not been delegated authority to evaluate individual community interests and pre-determine the terms and conditions that can be negotiated to address those interests. Even if the Commission were to be given such authority, this expedited and badly flawed rulemaking proceeding could not produce an adequate record for evaluating such interests.

5. Finally, the GGRACCC supports and adopts 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.

Dated: April 19, 2007

Respectfully submitted,

KENNEDY & GRAVEN, CHARTERED



---

Its Attorneys  
Robert J. V. Vose (#251872)