

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

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

COMMENTS OF AT&T INC.

AT&T Inc. (AT&T) respectfully submits these limited comments to address two issues raised in the Commission's March 5, 2007 Further Notice of Proposed Rulemaking (FNPRM) in the above-referenced docket: (1) whether the Commission should extend the franchise relief adopted in the *Franchising Order* to incumbent cable operators to promote regulatory parity between incumbents and new entrants; and (2) whether the Commission can and should adopt rules to prevent local franchising authorities (LFAs) from imposing disparate customer service standards, data collection and related requirements in exchange for a franchise.¹ As discussed herein, AT&T has long promoted Commission efforts to eliminate unnecessary regulatory requirements and ensure that markets, rather than one-sided regulation, determine competitive outcomes. But, insofar as the Commission expedites action here to level the playing field between incumbent cable operators and telco new entrants in the video market (which collectively have less than 2 percent market share nationwide), the Commission should attach at least

¹ *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, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 5101 (2007) at paras. 139-43. (*Franchising Reform Order*).

the same sense of urgency to completing action in a variety of proceedings in which incumbent carriers have sought regulatory relief to bring them into parity with new entrants into the voice and data market and with other providers of broadband services.² And, as AT&T explained in its Comments and Reply Comments in the prior round of this proceeding, the Commission should, and has ample authority to, adopt rules to ensure that disparate quality of service standards and reporting requirements adopted by LFAs do not create barriers to entry, contrary to the public interest and the procompetitive goals of the Cable Act and section 706 of the 1996 Act.

Discussion

1. The Commission Should Adopt the Same Sense of Urgency to Eliminating Regulatory Bias In Voice, Data and Broadband as it Apparently has for Video.

For many years, and in many different proceedings, AT&T has urged the Commission to eliminate onerous regulatory burdens on incumbent carriers and other service providers where competitive conditions have obviated the need for continued regulatory intervention in the market. As the Commission has long recognized, absent market power, the discipline of the market is far more effective at protecting consumers and promoting consumer welfare and the public interest than regulation.³ The

² See *Equal Access NOI*, WC Docket No. 02-39; *272 Sunset Proceeding*; *AT&T's Long-Distance Forbearance Petition*, WC Docket No. 06-120; *AT&T's Broadband Forbearance Petition*, WC Docket No. 06-125; *2006 Biennial Review Proceeding*, WC Docket No. 06-157; and *Separations FNPRM*, CC Docket No. 80-286.

³ See *Petition of US West Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance*, 14 FCC Rcd 16252, para. 31 (1999); *Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorization Therefor*, CC Docket No. 79-252, Further Notice of Proposed Rulemaking, 84 F.C.C.2d 445, 448-55 (1981); *Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorization Therefor*, CC Docket No. 79-252, Second Report and Order, 91 F.C.C.2d 59, 60-62 (1982) (applying Title II regulation, which was intended to constrain the exercise of substantial market power, to carriers without such power is unnecessary and contrary to the goals of the Act).

Commission further has recognized that consumers are denied the full benefits of competition when regulators “tip the scales” through asymmetric regulation of a service or industry. Consequently, the Commission has exercised care to impose unique rules and regulatory requirements on a single service provider or group of providers only where there is a market failure and the benefits of such regulation outweigh the costs, lest the heavy thumb of regulation, rather than market forces, decides competitive outcomes.

For these reasons, AT&T generally supports efforts to deregulate incumbents as competitive conditions warrant it. But, AT&T questions the Commission’s priorities in rushing to “level the regulatory playing field” for incumbent cable operators only six months after extending franchising reform to new video entrants, even as it continues to weigh proposals for eliminating unnecessary, asymmetrical regulatory requirements imposed on incumbent carriers in their provision of voice, data and broadband services in proceedings that, in some cases, have been pending for several years. AT&T notes, in this regard, that, while DBS providers have achieved some success in offering a competitive alternative to cable over the past two decades,⁴ telco new entrants only recently have begun to provide consumers with facilities-based multichannel video programming services. As a consequence, wireline new entrants and cable overbuilders together still have garnered less than 2 percent of all MVPD subscribers, as NCTA itself has conceded.⁵

⁴ Even this success, however, has depended (and will continue to depend) on access to must-have programming, which, in many cases, is controlled by incumbent cable operators, as AT&T and others have explained in the *Programming Access Proceeding*. Comments of AT&T, MB Docket No. 07-29, Apr. 2, 2007, at 16 (noting that, where Comcast has refused to allow carriage by DBS providers of regional sports programming in Philadelphia, DBS penetration is 40 percent below what otherwise would be expected in that market).

⁵ NCTA Comments, MB Docket No. 06-189, Nov. 29, 2006, at 9.

In contrast, broadband services are robustly competitive, as the Commission repeatedly has acknowledged. And, over the past decade, competition for other voice and data services has matured and grown by leaps and bounds as multiple competitors vie for subscribers in today's multimodal communications marketplace. Incumbent cable operators, in particular, have entered the market in a big way, signing up millions of customers to their telephony services and offering head-to-head competition to telecom carriers' core voice and data services (by comparison, AT&T, to date, has signed up approximately 18,000 subscribers to its IPTV service). In these circumstances, there is no justification for continuing to apply outmoded and unnecessary regulatory requirements on incumbent telecommunications carriers – including dominant carrier regulation to BOC provision of in-region long-distance services post sunset of section 272's separate affiliate requirement, separations requirements, ARMIS reporting requirements, equal access requirements, among other things. Nor is there any basis for allowing cable incumbents to jump to the head of the queue when the Commission has before it multiple, fully briefed proceedings concerning the appropriate level of regulation, if any, for incumbent telecommunications carriers under existing market conditions. Consequently, if the Commission is convinced that swift deregulation is necessary or appropriate for cable incumbents, it should be even more convinced of the need to grant incumbent telecommunications carriers the relief they have long sought from unnecessary and outmoded regulatory requirements to ensure that market forces, rather than asymmetrical regulation, dictate competitive outcomes, particularly given the increasing demand by consumers for packages of voice, data and video services.

2. The Commission Can, and Should, Adopt Rules to Prevent LFAs from Adopting Unreasonable Data Collocation Requirements or Service Quality Standards.

The Commission can and should adopt rules to prevent LFAs from adopting disparate and potentially inconsistent quality of service standards and reporting requirements, which can be so burdensome to a new entrant as to constitute a barrier to entry. As AT&T explained in its comments in the prior round in this proceeding, many LFAs impose data collection and reporting, and quality of service requirements on a city or franchise-specific basis.⁶ Irrespective of whether these requirements were reasonable when applied to MVPDs providing services over a traditional cable system architecture, they would pose huge challenges for new entrants, like AT&T, whose network and operations support systems are deployed on a regional basis. In AT&T's network, service requests for IP video and other IP-based services are handled by call centers and service personnel that provide support for the full-range of services offered by AT&T – including voice, data, and video services – and serve multiple LFAs. As a result, AT&T does not collect, track and report data isolated to a particular municipality. Isolating calls only to IP video services and/or to a particular municipality would require AT&T to overhaul its systems (at great cost) and operate inefficiently. The Commission therefore should rule that LFA demands that necessitate franchise or city-specific data collection and reporting requirements could constitute an unreasonable barrier to entry under section 621(a)(1). At a minimum, providers like AT&T that operate regional networks

⁶ AT&T Comments at 72 (filed Feb. 13, 2006).

should be able to demonstrate compliance with any LFA customer service standards based on aggregate performance data for the call center serving that LFA.⁷

Likewise, the Commission should reaffirm that LFAs may not impose any local service quality standards that exceed those of duly enacted laws and ordinances absent the franchise applicant's consent. To be sure, section 632(d)(2) of the Cable Act provides that the Act does not "preclude a franchising authority and cable operator from agreeing to customer service requirements that exceed" those established by the Commission.⁸ But, as the statute makes clear, absent such agreement, an LFA may only impose service quality standards through duly enacted "municipal law or regulation, or any State law."⁹

There is no question the Commission has authority to adopt the rules AT&T proposes. As the Commission recognized in the *Franchising Reform Order*, it has express statutory authority to adopt rules interpreting and implementing both section 621(a), which prohibits LFAs from "unreasonably refusing to grant additional cable franchises, as well as section 636(c), which preempts any state and local laws that are inconsistent with the Communications Act.¹⁰ And those rules clearly have preemptive effect.¹¹

⁷ AT&T notes, in this regard, that there is no reason to believe that performance will vary from municipality-to-municipality within the call center serving area.

⁸ 47 U.S.C. § 552(d)(3).

⁹ *Id.*; *Implementation of Section 8 of the Cable Television Consumer Protection Act and Competition Act of 1992; Consumer Protection and Customer Service*, 8 FCC Rcd 2892, at para. 12 (1993) ("Should local governments wish to exceed the customer service standards we adopt today, they may do so through the franchise process or otherwise *with the consent of the cable operator*, or they may enact an appropriate law or regulation.") (*emphasis added*).

¹⁰ *Franchising Reform Order* at paras. 125-132.

¹¹ *Id.* at para. 129 ("These rules represent a reasonable interpretation of relevant provisions in Title VI as well as a reasonable accommodation of the various policy interests that Congress entrusted to the Commission. They therefore have preemptive effect pursuant to Section 636(c)."); para. 130 ("preemption

Likewise the Commission has authority to adopt rules interpreting section 632, including section 632(d), which preserves state and municipal customer service requirements. In so doing, the Commission must read section 632(d) consistent with section 621's prohibition against any unreasonable refusal by an LFA to grant additional cable franchises. In particular, the Commission must be mindful that customer service standards and reporting requirements may pose significant barriers to entry by new entrants. Plainly, in preserving state and municipal authority to adopt consumer protection laws, Congress could not have intended to allow states and municipalities to erect through the back door barriers to entry that are inconsistent with the market opening provisions of section 621 and the objectives of the Act – including, in particular, Congress's mandate in section 706 of the 1996 Act that the Commission (and the states) eliminate obstacles to the deployment of broadband facilities and advanced telecommunications services. Consequently, whatever limits section 632(d) imposes on the authority of the Commission to preempt consumer protection and customer service requirements outright, the Commission undoubtedly has authority to impose limits on the application of those requirements to video service providers to ensure that those requirements do not result in the unreasonable denial of a competitive franchise.¹² The

in these circumstances is proper pursuant to the Commission's judicially recognized ability, when acting pursuant to the Commission's judicially recognized ability, when acting pursuant to its delegated authority, to preempt local regulations that conflict with or stand as an obstacle to the accomplishment of federal objectives"); para. 131 (concluding that, insofar as section 621 "expressly limits the authority of franchising authorities by prohibiting exclusive franchises and unreasonable refusals to award additional competitive franchises," "Congress could not have stated its intent to limit local franchising authority more clearly," satisfying "any express preemption requirement"); and para. 132 (concluding that, since Congress charged the Commission with administering the Communications Act, including Title VI, the Commission has "clear authority to adopt rules implementing . . . Section 621," and that such "rules preempt any contrary local regulations").

¹² In analogous circumstances, the Commission has interpreted provisions that preserve state authority so as not to conflict with federal objectives. For example, in the context of universal service, the Commission has ruled that classifying a state requirement as a measure to preserve and advance universal service will

Commission therefore can, and should, adopt rules to prevent LFAs from adopting unreasonable data collocation requirements or service quality standards.

CONCLUSION

For the reasons set forth herein, the Commission should adopt rules consistent with the proposals set forth herein.

Respectfully submitted,

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not preserve such a requirement from preemption under section 253, unless that requirement is competitively neutral, consistent with the requirements of section 254, and necessary to preserve and advance universal service. *See In the Matter of Western Wireless Corp. Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act*, CWD File No. 98-90, Memorandum Opinion and Order, 15 FCC Rcd 16227 (2000). So too, here, the mere fact that a state or municipal requirement is classified as a consumer protection or customer service requirement cannot save that requirement to the extent it operates as an unreasonable barrier to entry to the provision of competitive video services.