

**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 ) MB Docket No. 05-311  
of 1934 as amended by the Cable Television )  
Consumer Protection and Competition Act )  
of 1992 )

**COMMENTS OF ALCATEL-LUCENT**

Alcatel-Lucent<sup>1</sup> hereby respectfully submits its Comments on the Further Notice of Proposed Rulemaking in the above-captioned docket.<sup>2</sup> In its Further Notice, the Federal Communications Commission (“Commission”) asked whether its recently adopted measures to address aspects of the local franchising process that hinder market entry by competitive video providers should be extended to incumbent cable operators.<sup>3</sup> Once competitive entry into the wireline video market has occurred, subjecting incumbent video providers to more stringent franchise requirements than those applicable to the new entrants frustrates the national goals of further broadband deployment and

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<sup>1</sup> Alcatel and Lucent Technologies, Inc., two leading global telecommunications equipment manufacturing companies, merged on November 30, 2006 to create Alcatel-Lucent. A global leader in fixed, mobile and converged broadband networking, IP technologies, applications, and services, Alcatel-Lucent operates in more than 130 countries and has one of the largest research, technology, and innovation organizations in the telecommunications industry. Alcatel-Lucent provides solutions that enable service providers, enterprises and governments worldwide to deliver voice, data and video communications services to end-users and achieved adjusted pro forma revenues of 23.9 billion dollars in 2006. Alcatel-Lucent hereby adopts in full the pleadings and positions of the former Alcatel in this proceeding.

<sup>2</sup> *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*, Report and Order and Further Notice of Proposed Rulemaking, MB Docket No. 05-311 (rel. Mar. 5, 2007) (“Order and Further Notice”).

<sup>3</sup> *Id.*, ¶ 140.

video services competition. Therefore, Alcatel-Lucent urges the Commission ensure the application of its new rules to incumbent cable franchises in those areas where competitive wireline video entry has occurred through application of an existing most favored nation (“MFN”) clause or through modification of the incumbent’s franchise.

**I. UNREASONABLE LOCAL FRANCHISING DEMANDS PREVENT THE DEPLOYMENT OF BROADBAND SERVICES AND VIDEO COMPETITION.**

In its recent Order implementing Section 621(a)(1) of the Communications Act of 1934, as amended, the Commission found that certain aspects of the local franchising process constituted an unreasonable barrier to entry “that impedes the achievement of the interrelated federal goals of enhanced cable competition and accelerated broadband deployment.”<sup>4</sup> The Commission also determined that most areas of the United States lack video competition, resulting in higher prices and lower quality service.<sup>5</sup> This stems at least in part from delays in the local franchising process and unreasonable entry restrictions and conditions by local franchising authorities (“LFAs”).<sup>6</sup>

In response, the Commission approved measures “to facilitate and expedite entry of new cable competitors into the market for the delivery of video programming, and accelerate broadband deployment...”<sup>7</sup> Specifically, the Commission adopted time limits for LFA consideration of franchise applications,<sup>8</sup> determined that certain build-out

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<sup>4</sup> *Id.*, ¶ 1.

<sup>5</sup> *Id.*, ¶ 20.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* (footnote omitted).

<sup>8</sup> *Id.*, ¶ 67.

requirements are unreasonable,<sup>9</sup> qualified what constitutes appropriate franchise fees within the 5 percent cap,<sup>10</sup> adopted limitations on PEG channel and studio and I-Net obligations,<sup>11</sup> and preempted inconsistent local franchising laws, including level-playing-field requirements.<sup>12</sup> The Commission concluded that:

a provider's ability to offer video services and to deploy broadband networks are linked intrinsically, and the federal goals of enhanced cable competition and rapid broadband deployment are interrelated.... Thus, if the franchising process were allowed to slow competition in the video service market, that would decrease broadband infrastructure investment, which would not only affect video but other broadband service as well.<sup>13</sup>

Alcatel-Lucent strongly supports the Commission's determinations. In its prior Comments, Alcatel stressed the relationship between new entry into video services and the expansion of broadband deployment. Alcatel emphasized that "[p]roviding a 'triple-play' offering including video services is critical for telecommunications carriers to earn sufficient revenue to justify upgrading and expanding their broadband networks. However, the next generation of broadband networks, whether based on a DSL, fiber, or wireless technology, will go unrealized unless the service provider can demonstrate to its shareholders and creditors that the revenue expectation justifies the expenditure."<sup>14</sup>

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<sup>9</sup> *Id.*, ¶¶ 87-91.

<sup>10</sup> *Id.*, ¶¶ 94-108.

<sup>11</sup> *Id.*, ¶¶ 119-120.

<sup>12</sup> *Id.*, ¶¶ 129, 138.

<sup>13</sup> *Id.*, ¶ 62 (footnotes omitted).

<sup>14</sup> *Implementation of Section 621(a)(1) of The Cable Communications Policy Act of 1934 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Comments of Alcatel, MB Docket No. 05-311, at 6 (filed Feb. 13, 2006).

Others supported this view. For example, TIA explained that, “[p]rompt entry into the video market is a key predicate to justifying construction of new broadband markets, regardless of the network architecture, because the extra revenue potential of video (as well as ancillary offerings such as video on demand, HDTV, and personal video recording capability) is necessary to justify the multi-billion dollar investment such networks require.”<sup>15</sup> Thus, removal of unreasonable franchise requirements is critical to encouraging competitive entry.

**II. THE COMMISSION SHOULD, AND HAS THE AUTHORITY TO, EXTEND ITS RULES TO INCUMBENT CABLE FRANCHISES ONCE COMPETITIVE WIRELINE VIDEO ENTRY HAS OCCURRED.**

In the Further Notice, the Commission asks “what effect, if any, the findings in this *Order* have on most favored nation clauses that may be included in existing franchises.”<sup>16</sup> The Commission should clarify that once competitive wireline video entry has occurred, an incumbent whose franchise contains an MFN clause should be eligible to amend its franchise so that it is subject to the same requirements as the new entrant.

As cable companies, ILECs, and other providers increasingly compete to provide the same types of services, the Commission must strive for regulatory parity so that one technology is not favored over another. “The best way to achieve universal adoption of broadband is vigorous facilities-based competition among cable modem, wireline

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<sup>15</sup> *Implementation of Section 621(a)(1) of The Cable Communications Policy Act of 1934 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Comments of Telecommunications Industry Association, MB Docket No. 05-311, at 11 (filed Feb. 13, 2006).

<sup>16</sup> Order and Further Notice, ¶ 140 (emphasis in original).

broadband, and alternative platforms, such as satellite and wireless.”<sup>17</sup> Regulatory parity among competitors is the most effective means of ensuring such full and fair competition. Further, in a competitive environment, reducing regulation to only what is necessary ensures consumers reap the full benefits of competition.

As new providers, including ILECs, enter the video market and provide a triple play of offerings, cable operators will need to introduce “innovative new technology and services” using a next-generation network to remain competitive.<sup>18</sup> Deployment of these next-generation networks by all providers is “risky and resource-intensive,”<sup>19</sup> and promoting competition among different technologies is vital to ensuring broad availability of advanced services. MFN clauses were included in franchise agreements specifically so that incumbents could amend their agreements if new entrants had differing franchise obligations. Therefore, incumbent cable operators should be allowed to exercise MFN provisions once competitive wireline video entry has occurred so that all providers are subject to similar franchise obligations. In addition, the Commission should encourage LFAs and incumbents to include MFNs in any renewals of franchise agreements so that incumbents can revise their franchise obligations as soon as they are subject to competition from a wireline company offering video.

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<sup>17</sup> *Implementation of Section 621(a)(1) of The Cable Communications Policy Act of 1934 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Reply Comments of the High Tech Broadband Coalition, MB Docket No. 05-311, at 2 (filed Mar. 28, 2006) (“HTBC Reply Comments”).

<sup>18</sup> White Paper, “Broadband Household Segmentation: The Impact on Service Provider Consumer Applications Strategies,” In-Stat, IMS/FMC Research Services (Sept. 2006) available at [http://www1.alcatel-lucent.com/com/en/appcontent/apl/IN0603372WHT\\_tcm172-1103251635.pdf](http://www1.alcatel-lucent.com/com/en/appcontent/apl/IN0603372WHT_tcm172-1103251635.pdf).

<sup>19</sup> HTBC Reply Comments at 4.

Moreover, incumbents that do not have MFN provisions in their franchise agreements should be allowed to seek modification of their agreements once they are subject to wireline video competition. The rationale for allowing incumbents to exercise MFN clauses applies equally to incumbents whose franchises do not contain MFN clauses. In a competitive environment, subjecting an incumbent to more burdensome franchise obligations than a new entrant impedes full and fair competition and its accompanying benefits by increasing the costs on incumbents. These unnecessary costs can discourage the deployment of additional broadband services and the development of new offerings.

The Commission has the authority to ensure that incumbent video providers are allowed to modify their franchises once competitive entry has occurred. The Commission has already determined that it has broad authority to implement Title VI of the Act.<sup>20</sup> Sections 201(b), 303(r), and 4(i) allow the Commission to adopt rules and regulations to carry out the provisions of the Communications Act, including Title VI.<sup>21</sup>

Section 625 allows a cable operator to obtain modification of its franchise requirements:

(A) in the case of any such requirement for facilities or equipment, including public, educational, or governmental access facilities or equipment, if the cable operator demonstrates that (i) it is commercially impracticable for the operator to comply with such requirement, and (ii) the proposal by the cable operator for modification of such requirement is appropriate because of commercial impracticability; or

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<sup>20</sup> *Id.*, ¶¶ 53-54.

<sup>21</sup> *Id.*

(B) in the case of any such requirement for services, if the cable operator demonstrates that the mix, quality, and level of services required by the franchise at the time it was granted will be maintained after such modification.<sup>22</sup>

Section 625(f) defines a requirement as commercially impracticable when “it is commercially impracticable for the operator to comply with such requirement as a result of a change in conditions which is beyond the control of the operator and the nonoccurrence of which was a basic assumption on which the requirement was based.”<sup>23</sup>

The Commission should find that it may be commercially impracticable for an incumbent video provider to comply with franchise provisions that are more burdensome than those imposed on a new entrant because the incumbent could face higher costs than the new entrant. Application of less stringent obligations to new entrants by an LFA as a result of the Commission’s recent Order is not within an incumbent’s control and could not have been anticipated when such franchises were adopted. Moreover, an incumbent’s request to modify its franchise so that it is obligated to provide the same facilities and equipment as a new entrant is “appropriate” to address the commercial impracticability that would be caused by application of differing requirements to new and incumbent competitors. Therefore, the Commission should make clear that Section 625 allows incumbents to modify their franchises so that they are similar to those applicable to new entrants for (1) the facilities and equipment requirements and (2) the service requirements, as long as the mix, quality, and level of services remains the same after the modification.

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<sup>22</sup> 47 U.S.C. § 545(a)(1). This Section does not allow modification of requirements for services relating to public, educational, or governmental access. *Id.*, § 545(e).

<sup>23</sup> 47 U.S.C. § 545(f).

### **III. CONCLUSION**

Wider deployment of broadband services is “linked intrinsically” to increased video entry. The Commission has taken significant strides to fulfilling the goals of Section 706 by eliminating some of the local franchising requirements that discourage the deployment of advanced services networks. The Commission should now take the next step and expand this relief to incumbent cable providers subject to competition from new wireline video entrants. As technology develops and allows once-distinct services to be offered over competing platforms, regulatory parity is essential so that no technology is favored over another and the full benefits of competition can be realized.

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