

their current franchises. The arguments concerning the Commission’s authority to adopt the rules and interpretations set out in the *Franchise Order* are entirely misplaced here, and in any event, were properly rejected by the Commission in that order. The Commission has ample authority to remove barriers posed to video competition and broadband deployment by the local franchising process. Moreover, as the cable incumbents and other commenters recognize here, many of the Commission’s conclusions in the *Franchise Order* were justified independently by other provisions of the Cable Act – including the Act’s franchise fee and PEG provisions. Those valid interpretations of the limitations imposed by the Cable Act are binding on all franchising authorities and all video providers as they negotiate new franchises or renew existing ones.

I. Local Customer Service Regulation of Cable Services Is Permitted, But May Not Unreasonably Burden Video Competition and Broadband Deployment.

As Verizon previously explained, notwithstanding the leeway granted to LFAs by Section 632(d)(2) to craft reasonable cable customer service requirements, local and state governments do not have unfettered discretion to regulate video and broadband providers under the guise of cable customer service rules. Instead, the Cable Act constrains state and local authorities by prohibiting them from imposing requirements that are so onerous that they would rise to the level of an unreasonable refusal to award a competitive franchise or from venturing beyond reasonable “customer service” rules limited to cable service. Moreover, state and local authorities are not permitted to adopt regulations that would undermine the overriding federal policies aimed at encouraging broadband deployment and video competition.

Although many of the LFAs filing comments in this proceeding endorse the Commission’s tentative conclusion that it “cannot preempt state or local customer service laws that exceed the Commission’s standards,” *see Franchise Order* ¶ 143, they do not rebut the

fundamental limitations on state and local authority discussed in Verizon’s comments.’ In fact, even some LFAs seem to recognize that their authority is limited to true “cable customer service standards,” *see NATOA Comments* at 17, and state and local governments are not authorized to regulate non-cable services like broadband.³ Moreover, as AT&T correctly points out, in the case of video providers offering service over regional or national broadband networks, the imposition of local regulations – such as certain local data collection requirements that require reporting of local-level metrics – may be extremely costly and inefficient.⁴ To the extent such requirements rise to the level of an unreasonable refusal to award a competitive franchise or venture beyond reasonable cable customer service rules, such rules would be inconsistent with the Cable Act and would be preempted. Likewise, the Commission must ensure that such requirements do not undermine the federal policies favoring video competition and broadband deployment. *See, e.g., Franchise Order* ¶ 4 (“Section 706 of the Telecommunications Act of 1996 directs the Commission to encourage broadband deployment by removing barriers to infrastructure investment, and the U.S. Court of Appeals for the District of Columbia Circuit has held that the Commission may fashion its rules to fulfill the goals of Section 706.”)

² *See, e.g.,* Comments of the National Association of Telecommunications Officers and Advisors, the National League of Cities, et al., *Implementation of Section 621(a)(1) of the Cable Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, at 17 (April 20, 2007) (“*NATOA Comments*”); Comments of the New Jersey Board of Public Utilities, *Implementation of Section 621(a)(1) of the Cable Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, at 4 (April 20, 2007).

³ *See* Comments of the League of Minnesota Cities, et al., *Implementation of Section 621(a)(1) of the Cable Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, at 14 (April 20, 2007) (“*Minnesota Cities Comments*”) (acknowledging that broadband services are “regulated only at the federal level” and that LFAs are not permitted to regulate those services).

⁴ *See* Comments of AT&T Inc., *Implementation of Section 621(a)(1) of the Cable Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, at 5-6 (April 20, 2007).

II. The Commission Has Ample Authority to Remove Barriers to Video Competition, and Most of Its Conclusions from the *Franchise Order* Should Apply To Existing Franchise Holder Upon Renewal.

In the *Franchise Order*, the Commission recognized the barriers created by the local franchise process to more widespread video competition and broadband deployment and took important steps to remove those barriers. The Commission's pro-competitive rules and findings in that order were based both on Section 621(a)(1)'s prohibition on unreasonable refusals to award competitive franchises, as well several other provisions of the Cable Act that limit LFAs' discretion. Although the parties with a vested interest in the status quo, including some LFAs and the cable incumbents, continue to raise the same tired arguments concerning the supposed limited reach of the Commission's jurisdiction with respect to franchising issues, the Commission properly rejected those arguments in the *Franchise Order*, and there is no reason to revisit that issue here. Moreover, as many of the cable incumbents now concede, several of the Commission's important conclusions from the *Franchise Order* – including the Cable Act's limits on permissible franchise fees, PEG requirements, build-out obligations, and regulation of mixed-use networks or non-cable services – were fully justified by provisions of the Cable Act other than Section 621(a)(1), although that section certainly bolstered the Commission's conclusions in the context of competitive providers. Those interpretations of other provisions of the Act should apply to all franchising authorities and to all providers as they negotiate new franchises or seek renewal of existing ones.

1. Although the same parties who earlier questioned the Commission's jurisdiction to address problem areas with the local franchising regime continue to do so here,' there is no

⁵ See, e.g., *NATOA Comments* at 3; Comments of the National Cable & Telecommunications Association, *Implementation of Section 621(a)(1) of the Cable Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, at

reason for the Commission to revisit its well-founded decision that it possesses authority under Section 621(a)(1) to address actions by LFAs that rise to the level of an unreasonable refusal to award a competitive franchise.⁶ In any event, any request for the Commission to return to that issue would need to be brought as a petition for reconsideration of the *Franchise Order* itself, and any such petition would now be untimely. *See* 47 C.F.R. § 1.429(d) (requiring that petitions be filed within 30 days of public notice of Commission action).

As Verizon explained prior to the Commission’s adoption of the *Franchise Order*, the Commission has well-recognized authority to adopt binding and preemptive rules that interpret and enforce all parts of the Communications Act, including the Cable Act. *See AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 380 (1999) (“‘Commission jurisdiction’ always follows where the Act ‘applies,’” and the Commission has general rulemaking authority to prescribe rules governing such matters.); *City of Chicago v. FCC*, 199 F.3d 424,428 (7th Cir. 1999) (“the FCC

5 (April 20,2007) (“*NCTA Comments*”);*Minnesota Cities Comments* at 6; Comments of Time Warner Cable Inc., *Implementation of Section 621(a)(1) of the Cable Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, at 2 (April 20,2007) (“*Time Warner Comments*”).

⁶ In addition to arguing that the Commission lacked authority, some parties continue to assert that **the** local franchising process is not an obstacle to more widespread video competition. *See, e.g., NATOA Comments* at 3. The Commission appropriately found to the contrary in the *Franchise Order* in light of the substantial evidence on the record, and it need not revisit those issues **here**. Moreover, one commenter, the City of Boston, has suggested in its comments that Verizon has made “a decision not to pursue franchising in major cities,” in general, and has decided that it “will not pursue additional Massachusetts franchising while legislation is pending.” Comments of the City of Boston, *Implementation of Section 621(a)(1) of the Cable Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311 ¶¶ 9-12 (April 19,2007). Those suggestions are both incorrect. Although large cities do present some operational and technological challenges, Verizon is currently in discussion with New York City concerning a franchise. Also, Verizon is already, or soon will be, offering FiOS TV in parts of Richmond, Tampa, Los Angeles, and Dallas. Moreover, the referenced story from the *Boston Globe* misstated Verizon’s position with respect to FiOS deployment in Massachusetts. Verizon remains in negotiations for 22 franchises in Massachusetts, which it hopes to obtain by the end of the year, and actively continues to expand its FiOS networks in the 45 communities with which Verizon already has franchises.

is charged by Congress with the administration of the Cable Act”). And more particularly, the Commission’s exercise of jurisdiction specifically to enforce and interpret Section 621 has been upheld on numerous occasions. For example, the Seventh Circuit concluded that it was “not convinced that for some reason the FCC has well-accepted authority under the Act but lacks authority to interpret § [621].” *City of Chicago*, 199F.3d at 428; see also *NCTA v. FCC*, 33 F.3d 66, 70 (D.C. Cir. 1994) (upholding Commission order interpreting application of Section 621’s franchise requirements); see also *ACLU v. FCC*, 823 F.2d 1554 (D.C. Cir. 1987) (affirming Commission’s “interpretative rules” concerning Section 621). The opponents of reform have not, and cannot, point to anything special about the “unreasonable refusal” requirement of Section 621(a)(1) that makes Commission action inappropriate.⁷

Moreover, the Commission has authority – as a result of other provisions of the Communications Act – to take actions and issue orders necessary to give effect to its determinations of the requirements of federal law. For example, as the Commission recently noted, “[f]ederal Courts have consistently recognized” that various provisions of the Act,

⁷ The fact that Section 621(a)(1) speaks in terms of “reasonableness” of LFA actions does not alter the Commission’s authority. The Commission routinely decides the content of statutory provisions that hinge on whether particular actions are “reasonable” or “unreasonable.” See, e.g., *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992-Rate Regulation*, 8 FCC Rcd 5631 ¶ 1 (1993) (setting rules to ensure reasonable rates for basic cable service tier). Moreover, contrary to the suggestion of some parties, see, e.g., *NATOA Comments* at 9; *NCTA Comments* at 5, neither the fact that the statute’s franchising provisions provide a role for local authorities, nor its judicial review provision, deprives the Commission of authority to adopt binding and preemptive federal rules to effectuate Section 621(a). In fact, the courts have already upheld the Commission’s authority to preemptively interpret the application of Section 621’s franchising requirements. See *City of Chicago*, 199F.3d at 428; *NCTA*, 33 F.3d at 70; *ACLU*, 823 F.2d at 1580. More generally, the Supreme Court has recognized in other contexts that even if the Act “entrusts” a state or local agency with a particular responsibility, that “do[es] not logically preclude the Commission’s issuance of rules to guide the state-[authority] judgments.” *Iowa Utilities Board*, 525 U.S. at 385 (brackets omitted). Therefore, the Commission was on solid jurisdictional ground when it determined that it possessed authority to

including §§ 4(i) and 303(r), “give the Commission broad authority to take actions that are not specifically encompassed within any statutory provisions but that are reasonably necessary to advance the purposes of the Act.” *Continental Airlines; Petition for Declaratory Ruling Regarding the Over-the-Air Reception Devices*, 21 FCC Rcd 13,201 at n. 112 (rel. Nov. 1, 2006). And as discussed above and in Verizon’s comments, Section 706 of the 1996 Act – which directs the Commission to take action to encourage the deployment of advanced communications infrastructure and services – further supports the Commission’s authority given the close connection between video competition and broadband deployment.

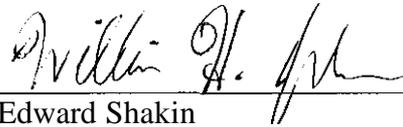
2. In any event, as Verizon explained in its opening comments, many of the significant holdings in the *Franchise Order* did not rest on Section 621(a)(1) alone, but instead were independently justified by other provisions of the Cable Act. For example, the Commission’s conclusions concerning limits on franchise fees were largely based on its interpretation of Section 622, *Franchise Order* ¶ 105, PEG and I-Net limitations recognized by the Commission come largely from Sections 611, 621(a)(4)(b) and 622, *id.* ¶¶ 112-20, and Section 602(7)(C) was found to limit local regulation of mixed-use broadband networks and broadband services, *see id.* ¶¶ 121-23.

Many commenters, including in particular the cable incumbents, support this view, and recognize the validity of the Commission’s interpretations of these portions of the Cable Act. For example, NCTA argues that “with respect to its determinations on franchise fees, PEG/I-Net requirements and ‘mixed-use’ facilities, the Commission merely restated existing law or clarified provisions in Title VI.” *NCTA Comments* at 8; *see also Time Warner Comments* at i (“The Commission does. . . have the requisite authority, independent of Section 621, to adopt

address the recurring problem areas of the local franchising regime that unreasonably hinder

clarifications and offer regulatory guidance with respect to certain other provisions of the Cable Act addressing specific franchise obligations, including franchise fee payments (Section 622), PEG and I-Net obligations (Section 611) and the regulation of mixed-use networks (Section (602(7))).”⁸ As Verizon explained in its comments, the Commission’s definitive constructions of the limitations imposed by these statutory provisions should apply to all franchising authorities and to all providers as they negotiate new franchises or renew existing ones.

Respectfully submitted,



Edward Shakin
William H. Johnson

Michael E. Glover
of Counsel

1515 North Courthouse Road
Suite 500
Arlington, VA 22201
(703) 351-3060
will.h.johnson@verizon.com

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Attorneys for Verizon

competitive entry, and there is **no** reason for the Commission to revisit that conclusion here.

⁸ *See also* Comments of Charter Communications, Inc., *Implementation of Section 621(a)(1) of the Cable Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311 at 1-2 (April 20, 2007).