

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 by the Cable Television Consumer
Protection and Competition Act of 1992

MB Docket No. 05-311

ERRATA TO REPLY COMMENTS OF THE CITY OF DUBUQUE ET AL.

The Local Community Coalition (as defined in the attached corrected filing), by their attorneys, hereby submits the following correction to the Reply Comments of the City of Dubuque et al., filed in these proceedings on May 7, 2007 (“Reply Comments”).

The Reply Comments should have listed the Mt. Hood Cable Regulatory Commission (“MHCRC”) rather than simply the City of Portland, Oregon as a member of the Coalition. The MHCRC is the local franchising authority for Multnomah County and the cities of Portland, Gresham, Troutdale, Fairview and Wood Village, Oregon. Hence, all of these Oregon communities, including the City of Portland, are participating in the comments through their membership in the MHCRC.

In addition, reference to the initial Comments filed by the MHCRC in this proceeding was inadvertently omitted from page 2, footnote 2 (now footnote 3) of the Reply Comments.

The attached complete copy of the Reply Comments corrects these errors, and should be substituted for the Reply Comments document filed yesterday.

Respectfully submitted,



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May 8, 2007

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**REPLY COMMENTS OF THE CITY OF DUBUQUE, IOWA, THE CITY OF ST.
LOUIS, MISSOURI, THE CITY OF SANTA CLARA, CALIFORNIA, THE CITY OF
WILMINGTON, DELAWARE, THE CITY OF ST. PAUL, MINNESOTA, THE MT.
HOOD CABLE REGULATORY COMMISSION, ANNE ARUNDEL COUNTY,
MARYLAND, MONTGOMERY COUNTY, MARYLAND, AND
CARROLL COUNTY, MARYLAND**

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May 7, 2007

TABLE OF CONTENTS

Summary	i
I. Institutional Networks Are Lawful Parts of Cable Franchises	3
A. The Cable Act Authorizes Institutional Networks	3
B. Institutional Networks Meet Key Needs and Interests of Local Communities.....	7
II. The Cable Act Guarantees Local Communities’ Right to Establish Customer Service Regulations to Protect Consumers.....	10
III. The Commission Should Not Make A Rule Regarding GAAP	14

SUMMARY

The Cities of St. Paul, Minnesota, Dubuque, Iowa, St. Louis, Missouri, Wilmington, Delaware and Santa Clara, California, the Mt. Hood Cable Regulatory Commission, and the Maryland Counties of Anne Arundel, Montgomery and Carroll submit reply comments on two specific issues – institutional network (“I-Net”) requirements and local customer service regulations – and comment briefly on one new suggestion made by Time Warner regarding GAAP.

At least one cable commenter, Charter, seeks to use the FNPRM as a means of escaping its contractual obligations with respect to institutional networks (“I-Nets”), arguing for immediate “elimination of unreasonable I-Net obligations on existing cable operators.” There is, however, no basis for Charter’s claim. The Cable Act authorizes a local community to require a cable operator to build an I-Net and to dedicate capacity on that network for educational and government use. This authority has been in the Cable Act since the Act’s inception and is supported by its legislative history. Moreover, the Commission has recognized unambiguously that an LFA can require a cable operator to provide an I-Net. The plain language of the Cable Act and the legislative history both demonstrate that Congress did not intend to exclude telecommunication uses of I-Nets. In addition, many I-Nets are used to transport public, educational, and governmental (“PEG”) video programming, and thus are directly related to cable service.

If the Commission were incautiously to accept Charter’s invitation to break cable operators’ I-Net agreements, the result would be far from trivial. In many localities, I-Nets provide vital benefits to the community and are essential to governmental functioning. The

Commission should thus steer clear of any statements that could be used to undermine a local community's right to establish and enforce I-Net requirements.

The FNPRM recognizes that the Commission cannot override a community's right to establish customer service rules. The Cable Act is clear on this point. Moreover, LFAs have consumer protection powers derived not from the Cable Act, but from other sources. The Commission should reject industry attempts to convince it to contravene the statute.

Finally, Time Warner requests a ruling concerning generally accepted accounting principles ("GAAP"), an issue not raised in the FNPRM. Even if there were a record supporting such a ruling, reference to GAAP would not provide uniformity or clarity. And Time Warner's suggestion has nothing to do with the removal of alleged barriers to entry.

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HOOD CABLE REGULATORY COMMISSION, ANNE ARUNDEL COUNTY,
MARYLAND, MONTGOMERY COUNTY, MARYLAND, AND
CARROLL COUNTY, MARYLAND**

The Cities of St. Paul, Minnesota, Dubuque, Iowa, St. Louis, Missouri, Wilmington, Delaware and Santa Clara, California, the Mt. Hood Cable Regulatory Commission,¹ and the Maryland Counties of Anne Arundel, Montgomery and Carroll (together referred to herein as the “Local Community Coalition”), respectfully submit these Reply Comments in response to the Further Notice of Proposed Rulemaking released by the Commission on March 5, 2007 (“FNPRM”), as ¶¶ 139-143 of its Report and Order and Further Notice of Proposed Rulemaking in the above-captioned proceeding, FCC 06-180 (“R&O”).²

¹ The MHCRC is the local franchising authority for Multnomah County and the cities of Portland, Gresham, Troutdale, Fairview and Wood Village, Oregon.

² *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984, as amended by the Cable Television and Consumer Competition Act of 1992*, MB Docket No. 05-311, Report and Order and Further Notice of Proposed Rulemaking (March 5, 2007).

The FNPRM proposes to extend the regulations and findings of the R&O to incumbent cable operators as well as the new entrants addressed in the R&O. The Local Community Coalition opposes such an extension for several reasons which were summarized in initial comments filed in this docket.³ *A fortiori*, the Coalition also opposes the attempts of cable operators to argue in their initial comments that the Commission should apply the R&O to incumbent cable operators immediately, despite the fact that such incumbents are contractually bound by their franchise agreements.

Given the short time allowed by the Commission for response to the initial comments, these reply comments focus on two specific issues: institutional network (“I-Net”) requirements and local customer service regulations. Industry commenters ask the Commission, in defiance of the Cable Act, to eliminate two valuable tools, authorized by the Cable Act and currently being utilized by local franchising authorities (“LFAs”) across the country to benefit cable television subscribers. The Commission cannot and should not take such a step. In addition, these reply comments briefly address a new suggestion made by Time Warner in the initial comments about generally accepted accounting principles (“GAAP”).

³ See Comments of Anne Arundel County, Maryland; the City of Carlsbad, California; the City of Dubuque, Iowa; the City of Laredo, Texas; Montgomery County, Maryland; the City of Redondo Beach, California; the City of St. Louis, Missouri; and the City of Wilmington, Delaware (April 20, 2007); Comments of the Mt. Hood Cable Regulatory Commission in Response to the Further Notice of Proposed Rulemaking (April 20, 2007); 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 in Response to the Further Notice of Proposed Rulemaking (April 20, 2007).

I. INSTITUTIONAL NETWORKS ARE LAWFUL PARTS OF CABLE FRANCHISES.

At least one cable commenter, Charter, seeks to use the FNPRM as a means of escaping its contractual obligations with respect to institutional networks (“I-Nets”), arguing for immediate “elimination of unreasonable I-Net obligations on existing cable operators.”⁴ There is, however, no basis for Charter’s claim that I-Net obligations in general are unreasonable, nor for any suggestion that they lie outside the proper scope of a franchise agreement. On the contrary, I-Nets are specifically authorized by the Cable Act. Moreover, the vital importance of I-Nets to contemporary communities requires that the Commission take great care to avoid any statements that could be construed by the cable industry as an excuse to evade I-Net obligations.

A. The Cable Act Authorizes Institutional Networks.

The Cable Act authorizes an LFA to require a cable operator, through the franchising process, to build an I-Net and to dedicate capacity on that network for educational and government use. *See* 47 U.S.C. §§ 531(b), 544(1)(b). 47 U. S. C. § 544(1)(b) permits a franchising authority to “establish requirements for facilities and equipment.” I-Nets are composed of such facilities and equipment. *See, e.g.*, H.R. Rep. No. 934, 98th Cong., 2d Sess. 1984, 1984 U.S.C.C.A.N. 4655, 4705 (“Facility and equipment requirements may include requirements which relate to . . . system configuration and capacity, including institutional and subscriber networks”). 47 U.S.C. § 531(b) permits the LFA to determine its use of the capacity provided by such networks: it can “require as part of a franchise . . . that . . . channel capacity on institutional networks be designated for educational or governmental use.” Any such PEG requirement in a franchise is enforceable. *See* 47 U.S.C. § 531(c).

This authority to require I-Nets has been in the Cable Act since the Act's inception. Even in 1984 Congress acknowledged that I-Nets fell within the scope of cable franchises. More recently, the Commission recognized in the R&O in this proceeding that a franchise can require an I-Net, expressing its opinion as to the reasonableness of certain kinds of I-Net requirements without suggesting that I-Net requirements were *per se* unreasonable. See R&O ¶¶ 110-120. Moreover, the Commission has previously recognized unambiguously that an LFA can require a cable operator to provide an institutional network. See, e.g., *Implementation of Section 302 of the Telecommunications Act of 1996: Open Video Systems*, CS Docket No. 96-46, Third Report and Order and Second Order on Reconsideration, FCC 96-334 at ¶ 146 (1996) ("OVS Order") ("we agree that institutional networks may be required of a cable operator . . . a local franchising authority may require a cable operator to provide institutional networks as a condition of the initial grant, renewal or transfer of a franchise").

The Charter Comments argue that *all* I-Nets are data networks that are "unrelated to the provision of cable service" and therefore, under the Commission's new rulings, cannot be required in a cable franchise. Charter Comments at 11. But the Commission's new rulings do not imply such a result. On the contrary, as noted above, such a finding would conflict with the Cable Act, as well as with the R&O itself.

Nor is there any basis for Charter's suggestion in the language of the Act. Charter seems to assume that if I-Nets are not used to provide cable service, they are not cable-related. But the LFA authority recognized under § 544 is not restricted to functions "related to the provision of cable service." Rather, it covers anything "related to the establishment or operation of a cable system." 47 U.S.C. § 544(b). In other words, "cable-related" here means "cable system-related,"

⁴ Initial Comments of Charter Communications, Inc. on the Further Notice of Proposed

not “cable service-related,” and I-Nets are clearly related to the cable system of which they are a part. The legislative history cited above shows that Congress understood in 1984 that a major use for I-Nets was, and would continue to be, data transport and other two-way communications. Nor is there anything in § 531 suggesting a restriction related to cable service; rather, that section refers only to “educational or governmental use” (§ 531(b)).⁵

The plain language of the Cable Act and the legislative history both demonstrate that Congress did not intend to exclude telecommunications uses of I-Nets. The Act defines “institutional network” as a “*communication network*” not generally available to residential subscribers; that general term would not have been used if Congress had intended to restrict such requirements to video programming. 47 U.S.C. § 531(f) (emphasis added).⁶ Even in 1984, Congress was aware that I-Nets were used for the provision of services other than cable services:

In addition, local cable systems began to develop the capability to provide services other than those essentially resembling television broadcast. This included two-way communications services through which subscribers could call up programming or communicate over the cable system, and institutional networks with the capacity to provide the full range of communications and data transmission services to government and educational institutions and private business.

H.R. Rep. No. 934, 98th Cong., 2d Sess. 1984, 1984 U.S.C.C.A.N. 4655, 4658. Such services were being provided well before passage of the 1984 Act. Thus, in 1982 it was already possible to say that “[c]able operators, searching for new services and sources of revenue, were able to

Rulemaking at 13 (filed April 20, 2007) (“Charter Comments”). *See generally id.* at 11-14.

⁵ In fact, the Act specifically prohibits a cable operator from attempting to control that use: *see* § 531(e).

⁶ *See* H.R. Rep. No. 934, 98th Cong., 2d Sess. 1984, 1984 U.S.C.C.A.N. 4655, 4681 (“The term ‘cable system’ is not limited to a facility that provides only cable service which includes video programming. . . . A facility would be a cable system if it were designed to include the provision of cable services (including video programming) along with communications services other than cable service”). *See also id.* at 4664-65.

take advantage of technological innovations that allowed cable systems to build high-capacity, two-way systems with computer switching capabilities.” The same source continues: “As of early 1982, a large number of institutional network commitments had been made by cable companies . . .”⁷ Thus, Congress was well aware in 1984 that I-Nets had functions extending well beyond cable service, and if it had meant to limit the types of uses to which an I-Net could be put, Congress could have said so. But, as noted above, Congress did not.⁸

Moreover, even if any credence could be given to Charter’s suggestion that only systems carrying video programming were “cable-related,” the argument would still fail, because many I-Nets are used to transport PEG video programming from the origination sites to cable headends for distribution on the subscriber network’s access channels. *See, e.g.*, Declaration of John D. Lyons at ¶ 6; Declaration of Mike Reardon at ¶¶ 6, 8; Declaration of Mary Beth Henry at ¶ 5; Declaration of Craig J. Nowack at ¶ 5; Declaration of Gaurav Garg at ¶ 6. Such examples indicate that I-Net usage ~~is~~ directly related to video service. Is Charter, then, arguing that because such I-Nets provide other communications capabilities as well, the local community is for some reason barred from requiring them? Such a logical leap would not only be unsupported; it would actually penalize a community for making efficient use of advanced multipurpose communication networks.

Charter’s argument is thus reduced to the notion that I-Net requirements are in some fashion “unreasonable.” But the comments provide no evidence that either I-Net requirements in

⁷ Thomas E. Wolfsohn, “Institutional Networks,” ch. 5 of Nancy Jesuale and Ralph Lee Smith, eds., *CTIC Cable books, Volume 1: The Community Medium* at 48 (Arlington, VA: Cable Television Information Center, 1982).

⁸ It should be noted that the 1984 Cable Act takes two different approaches toward the “regulation” of services and facilities. LFA control over services is very limited. Where

general, or any particular set of I-Net requirements in a particular case, exceed the bounds of the Cable Act. Hence there is no basis for adopting any broad rule relating to I-Nets, unrelated to the facts of any particular case, nor for any findings about individual I-Nets or franchises. The absence of such examples is not surprising: cable operators have no reason to agree to unreasonable obligations, since the Cable Act has always protected them against any need to do so.⁹

Thus, Charter's bid to have the Commission nullify its contractual obligations cannot be admitted; there is no legal basis for Charter's opposition to I-Nets.

B Institutional Networks Meet Key Needs and Interests of Local Communities.

If the Commission were incautiously to accept Charter's invitation to break cable operators' I-Net agreements, the result would be far from trivial. In many localities, I-Nets provide vital benefits to the community and are essential to governmental functioning. They are classic examples of the way in which a cable system can meet the needs and interests of a local community. Thus, the Commission should take care in addressing the issue to avoid making any statements that could be misinterpreted by cable operators to support Charter's position.

I-Nets utilized by LFAs today often provide a variety of communications capabilities, including the provision of video, voice and data. Communities across the country have benefited in numerous ways from I-Nets with such capabilities. First, as noted above, such I-Nets are used

facilities are concerned, on the other hand, local authority is much broader. *See, e.g.*, 47 U.S.C. § 544(b)(1).

⁹ Charter appears to make policy arguments at 13 that an LFA, or Charter itself, should have entered into different agreements that did not require I-Nets. But it is no part of the Commission's role to advise experienced, sophisticated parties on whether it is a good idea to enter into a contract – particularly when the contract terms in question are expressly authorized by federal law. And it is inappropriate at best for Charter, having freely entered into such

to transport PEG programming. This functionality enables local communities to originate PEG telecasts not only from a dedicated studio facility, but from any point on the I-Net: a school putting on a noteworthy play, a municipal building hosting a Fourth of July celebration, a fire station making a presentation about fire safety.

Second, the data and other capabilities of I-Nets have enhanced or enabled local governments and educational institutions to provide other benefits to the community. *See, e.g.*, Declaration of John D. Lyons at ¶¶ 5-6; Declaration of Mike Reardon at ¶¶ 6-10; Declaration of Mary Beth Henry at ¶¶ 5-6; Declaration of Craig J. Nowack at ¶¶ 5-6; Declaration of Susan Littlefield at ¶¶ 6-9; Declaration of Gaurav Garg at ¶¶ 6-7. The Commission has acknowledged that I-Nets provide such benefits. *See* R&O at ¶ 119. In many cases, I-Nets have been designed and leveraged to provide extensive and mission-critical public safety functionality, including data, voice and video communications. This backbone infrastructure can include Emergency 911 dispatch, as well as communications interoperability between municipal and state agencies. *See, e.g.*, Declaration of John D. Lyons at ¶ 7; Declaration of Mike Reardon at ¶ 6; Declaration of Susan Littlefield at ¶ 7.

So valuable are the capabilities of I-Nets that in many cases communities have carried out additional construction on their own to expand networks to reach additional sites or add capabilities over and above what may be provided as part of the consideration they receive under a cable franchise agreement. Under some franchise contracts, they may also pay for operating or maintenance costs, in addition to the equipment necessary to activate I-Net dark fiber. *See, e.g.*, Declaration of John D. Lyons at ¶ 4; Declaration of Mike Reardon at ¶¶ 3-4; Declaration of Mary Beth Henry at ¶ 3; Declaration of Craig J. Nowack at ¶ 4. In such cases a cable operator's

agreements, to try to use federal regulatory intervention to release it from the contractual

contribution made as part of its franchise cannot necessarily be separated from the network features or facilities paid for directly by the local government, with which they form a seamless integrated network.

This fact further undermines Charter's argument. A claim of "unreasonableness" assumes at a minimum that the cable operator in fact bears the cost associated with the I-Net, but that is not always true. Any ruling by the Commission adversely affecting LFAs' rights with respect to I-Nets would thus run the risk of depriving LFAs not only of the benefit of the bargains they made in their franchise agreements, but also of the benefit of their own expenditures that have become part of the integrated I-Net.

Charter also ignores the fact that an I-Net, once in place, benefits the cable operator because it enables the operator to offer new services to businesses and other institutions on a paying basis – even to the local government itself. *See, e.g.*, Declaration of Susan Littlefield at ¶ 4.

A further complication is introduced by the fact that some communities have obtained I-Nets in *settlement* of claims against a cable operator. Sometimes this occurs as a resolution of past noncompliance. *See, e.g.*, Declaration of Gaurav Garg at ¶ 4. At other times an operator and a community may mutually agree to replace the obligations originally established in a franchise agreement with new arrangements that may be preferable for both parties, in a process of mutual accommodation that illustrates the benefits of allowing parties to work out such details on a case-by-case basis, rather than attempting to control them by centralized regulation in Washington. Here, too, intrusion by Commission regulation would interfere with bargains reached by other parties and risk depriving those parties of the fruits of their bargains.

obligations it voluntarily assumed.

The Commission has no basis for interfering with contractual rights as Charter suggests, and such issues certainly cannot be resolved through a generalized nationwide rule without attending to the specifics of a given contract (particularly a rule adopted after only seventeen days' notice). The Commission should thus steer clear of any statements that could be used to undermine a local community's right to establish and enforce I-Net requirements, which is guaranteed by the Cable Act. The cable franchising process – and in particular the renewal process that gave rise to most incumbents' current franchises – is designed to result in a franchise that reasonably meets the future cable-related needs and interests of the community. If the Commission were to eliminate a requirement that all parties understood to apply in negotiating the franchise agreement, the Commission would upset that balance; and there is no justification in the record for such an action, even if it were lawful.

II. THE CABLE ACT GUARANTEES LOCAL COMMUNITIES' RIGHT TO ESTABLISH CUSTOMER SERVICE REGULATIONS TO PROTECT CONSUMERS.

The Cable Act expressly recognizes the authority of LFAs to establish customer service rules. 47 U.S.C. § 552. The FNPRM recognizes that the Commission cannot override a community's right to establish customer service rules, which flows from its basic governmental powers and is guaranteed by the Cable Act. R&O at ¶¶ 141-143. In fact, in the face of such clear statutory language, it is surprising that the Commission felt compelled to raise the issue at all. However, certain of the initial comments in this proceeding have essentially asked the Commission to ban local customer service rules or at least drastically limit them. There is, however, nothing in the Cable Act or in the record that would suggest that the Commission should reverse its initial tentative conclusion.

The Commission has no basis for construing the Cable Act in a manner that would impair an LFA's exercise of its independent authority to protect consumers. As local governments, LFAs are charged with the protection of the health, safety, and welfare of their citizens. In this capacity they have broad authority to adopt regulations to protect their citizens. And it is under this authority that local communities establish general consumer protection regulations that apply to all providers of services to citizens in the LFA. For example, the state of Maryland expressly urges local governments to adopt standards to protect consumers in their jurisdictions. Md. Code, Commercial Law, § 13-101 *et seq.* See, e.g., Md. Code, Commercial Law, § 13-102 (a)(1) ("The General Assembly of Maryland finds that consumer protection is one of the major issues which confront all levels of government..."). Thus, such LFAs have consumer protection powers not *derived from* the Cable Act, but derived from other sources and *recognized* by the Cable Act.

Commenter Verizon acknowledges that the Commission cannot override the express consumer protection authority provided by § 552(d)(2) of the Cable Act, but would have the Commission rely on other provisions to narrowly constrain *all* LFA authority to impose local consumer protection rules on cable operators.¹⁰ Such an approach would, however, take the Commission well beyond the confines of the Cable Act. While the Cable Act may limit an LFA's authority *pursuant to its federal cable franchising authority*, it does not purport to prohibit LFAs from exercising the authority they may have *independent of the Cable Act* to establish customer service regulations by ordinance to govern service providers in their

¹⁰ See Comments of Verizon on Franchising Further Notice at 2-9 (April 20, 2007) ("Verizon Comments"). AT&T also invites the Commission to exceed the bounds of its authority under § 552, but offers primarily policy arguments, without making clear why it believes the Commission can ignore § 552. See Comments of AT&T Inc. at 5-7 (April 20, 2007).

jurisdiction, which is not restricted to cable operators or cable services.¹¹ In other words, the Cable Act cannot be read to exempt a cable operator from duly adopted general consumer protection regulations to the extent that the rules are adopted under the community's state law-based authority.

This tallies with the language of Section 552(d):

(1) Consumer protection laws

Nothing in this subchapter shall be construed to prohibit any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted by this subchapter.

(2) Customer service requirement agreements

Nothing in this section shall be construed to preclude a franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards established by the Commission under subsection (b) of this section. Nothing in this subchapter shall be construed to prevent the establishment or enforcement of any municipal law or regulation, or any State law, concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under this section, or that addresses matters not addressed by the standards set by the Commission under this section.

Verizon also argues that the Cable Act prohibits LFAs from imposing any local customer service standards on cable operators' provision of anything but "cable service." Verizon Comments at 4. But that is not what the Cable Act says. Section 552(a) authorizes LFAs to "establish and enforce — (1) customer service requirements *of the cable operator.*" Even the Act's own authority extends to cable operators, not merely cable service. And as noted above, Congress was aware that cable operators might engage in activities other than cable service over their systems. *See* 47 U.S.C. § 522(5), (7).

¹¹ This is not to say that LFAs have unlimited or unfettered authority to regulate customer service. State law itself contains any necessary limitations on localities' consumer protection powers. There is no need for the Commission to intrude into this area of state-local relations with the heavy hand of federal regulation.

Moreover, Verizon's approach would be impossible to apply in practice. The industry might have a more plausible argument if entirely different staffs were responsible for customer service for each of the services offered via a cable system, and entirely different people and facilities were involved in the operation or maintenance of the facilities. But typically, activities affecting subscribers are not segregated based on service. For example, if maintenance requires an operator to remove a line from service, the resulting outage will affect telephone, cable and Internet customers on that line. If the operators then fails to answer calls about the outage – and as a result, fails to satisfy telephone answering standards – it makes little sense to require either the operator or the regulator to try to identify each service call by whether a customer purchases a bundle of services, cable service alone, or only voice or Internet service. Drawing the line suggested by the industry is not only inconsistent with the law; it may also result in more costs and more complications. And from the subscriber's standpoint, the problems associated with inadequate service do not depend on the particular services received.

As with I-Nets, the public interest that the industry is asking the Commission to sacrifice to its convenience is far from trivial. Consumer protection rules continue to be needed, even in areas where two cable operators compete. See, *e.g.*, Declaration of John D. Lyons at ¶¶ 8-13. Where the Bells' leisurely rollout of service does not yet reach, the need for effective and enforceable customer service standards is still greater.¹²

¹² As an example of the build-out progress anticipated by industry-supported state laws, even the state with the best rollout requirement to date permits the telephone company entrants six years to reach their entire service areas – which service areas typically leave large numbers of consumers unserved even at full built-out. See N.J.S.A. §48:5A-25.2(2).

III. THE COMMISSION SHOULD NOT MAKE A RULE REGARDING GAAP

Time Warner, at page 9 of its initial comments in this proceeding, asks the Commission to decree that gross revenues should be determined in accordance with generally accepted accounting principles (“GAAP”).¹³ A brief reply must be made to this suggestion.

First, this issue was not raised in the FNPRM. The record is not in a position to support a ruling on a casual suggestion by a cable operator at a stage that allowed for all of seventeen days for the public to respond in a proceeding already choked with major issues. If the Commission believes there is merit in Time Warner’s suggestion, it should issue a notice of proposed rulemaking allowing a reasonable time for comment.

Second, Time Warner is seeking (as Charter did with respect to I-Nets) to have the Commission rewrite its contractual obligations. Franchises already contain definitions of the basis for franchise fee payments, negotiated and agreed to by the cable operator and the LFA. Time Warner is asking the Commission to change the terms of its contracts by imposing federal regulations – terms to which Time Warner agreed as part of an overall bargain reached on many different issues with a local franchising authority.

Third, Time Warner claims that it raises this issue because it seeks uniformity and clarity in the determination of gross revenues. See Time Warner at 11. But GAAP will not provide such uniformity or clarity. See attached Declaration of Garth T. Ashpaugh.

Finally, Time Warner’s suggestion has nothing to do with the ostensible purpose of this docket – the removal of alleged barriers to entry. Apparently Time Warner, like Charter, sees this proceeding as a mere grab bag from which it hopes to get favorable rulings on unrelated issues, riding on the coattails of the Commission’s desire for competitive entry – even though

¹³ See Comments of Time Warner Cable Inc. (April 20,2007).

handing out such benefits to the cable industry would accomplish nothing at all toward accelerating market entry.

For more detailed discussion of these and other issues, please see the comments of the National Association of Telecommunications Officers and Advisors (NATOA) *et al.*

Respectfully submitted,



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May 7, 2007

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CERTIFICATION PURSUANT TO 47 C.F.R. § 76.6(a)(4)

The below-signed signatory has read the foregoing Reply Comments of the City of Dubuque, Iowa, the City of St. Louis, Missouri, the City of Santa Clara, California, the City of Wilmington, Delaware, the City of St. Paul, Minnesota, the Mt. Hood Cable Regulatory Commission, Anne Arundel County, Maryland, Montgomery County, Maryland, and Carroll County, Maryland to the best of my knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and it is not interposed for any improper purpose.

Respectfully submitted,

May 7, 2007

Date

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DECLARATION OF JOHN D. LYONS

Before the
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MB Docket No. 05-311

DECLARATION OF JOHN D. LYONS

I, John D. Lyons, declare as follows:

1. I submit this declaration in support of the Reply Comments of the Local Community Coalition submitted in response to the Further Notice of Proposed Rulemaking released by the Commission on March 5, 2007 ("FNPRM"), as ¶¶ 139-143 of its Report and Order and Further Notice of Proposed Rulemaking in the above-captioned proceeding, FCC 06-180 ("R&O"). I am fully competent to testify to the facts set forth herein.

2. I am the Cable Television Administrator of Anne Arundel County, Maryland. I have served in this position since 1995. My job duties include managing cable television franchises, investigating consumer complaints and managing construction projects.

CONSTRUCTION AND OPERATION OF ANNE ARUNDEL COUNTY'S INSTITUTIONAL NETWORK (I-NET)

3. The County has had an I-Net since 1994. The I-Net was designed and constructed by Anne Arundel County pursuant to franchise agreements with North Arundel Cable, TCI Cable and Comcast.

4. Under these agreements, the County was obliged to bear a significant part of the costs of the I-NET. Costs borne by the County include construction costs paid partially by PEG funds, the County Government, the school system, and the Community College (in addition to some funding that was provided by the State of Maryland). Operating costs are paid by the County government, the school system and the community college. Some parts of the I-Net were built using capital funds derived from the cable franchises. Other parts were built using independent funding from the County's general budget, not associated with the cable franchises. For this purpose the County set up a capital project involving \$4 million from the County's general fund, plus comparable amounts from the agencies described above. By contrast, Comcast's I-Net contribution totaled \$2.7 million, and earlier cable operators North Arundel and TCI had contributed \$1.2 million. Thus, the County's own funding actually outstripped that of these cable operators.

5. The I-Net links approximately 128 sites in the County, including high schools, middle schools, vocational and special schools, community colleges, libraries, fire stations, police stations, training academies, detention centers, courts and County and State office buildings. The County achieves great advantages through the use of this single integrated system that is linked with those of all the cable operators in the County.

COUNTY'S USE OF THE I-NET

6. The County uses the I-Net to videoconference court proceedings between detention centers and court buildings, to distribute PEG programs to the headends of Comcast, Millennium Digital Media and Verizon, for ultra-broadband data traffic, for intersection video cameras and remote systems monitoring, among other things.

7. The County's I-Net has been designed and leveraged to provide extensive and mission-critical public safety communications functionality (data, voice and video). This backbone infrastructure provides Emergency 911 dispatch, as well as communications interoperability between County and state agencies.

CUSTOMER SERVICE

8. The County has had extensive experience with competition between two cable operators. Approximately 65% of the County's cable subscribers, located in the central part of the County, have had a choice of two wireline cable providers for the last fifteen to twenty years.

9. Despite this level of competition, the County receives complaints about cable company actions from subscribers on a regular basis. These complaints normally come from customers who have sought to resolve their issues with the cable operators, but have failed to achieve a satisfactory resolution. The complaints received by the County are thus over and above those of customers whose problems are adequately dealt with by the cable operators' internal complaint procedures, or who fail to reach a satisfactory solution with the operators but do not take the further step of invoking the County's assistance.

10. In reviewing a consumer complaint, the County seeks to determine whether or not the complaint is well-founded. In some cases the County concludes that the subscriber does not have grounds for complaint, and so informs the subscriber. In other cases the County concludes that the complaint may be valid, and takes it up with the cable operator or operators involved.

11. Many complaints arise out of mistakes or problems in areas such as billing or service ordering. Others arise as a result of the competitive environment itself. For example, if a citizen comes home and finds that someone has dug a hole in the yard to reach buried lines, it is necessary first to determine which company was responsible – particularly when both initially deny responsibility.

12. Another such area is that of promotional offers made by one company to attract customers from another. Such offers frequently involve a reduced price for certain services that lasts for a limited time. The terms of such an offer may be unclear, or may not have been clearly disclosed to the customer, giving rise to a customer dispute with the cable company.

13. Many consumer problems with a cable operator are not resolved until a local official intervenes to focus the operator's attention on the problem. Moreover, a cable operator's awareness that a customer can take a problem to a local authority provides an incentive for the operator to make greater efforts to resolve such problems.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief, and that this declaration was executed on May 7, 2007, at Annapolis, Maryland.

 5-7-07

John D. Lyons

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DECLARATION OF MIKE REARDON

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

In the Matter of

MB Docket No. 05-311

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

DECLARATION OF MIKE REARDON

I, Mike Reardon, declare as follows:

1. I submit this declaration in support of the Reply Comments of the Local Community Coalition submitted in response to the Further Notice of Proposed Rulemaking released by the Commission on March 5, 2007 ("FNPRM") as ¶¶ 139-143 of its Report and Order and Further Notice of Proposed Rulemaking in the above-captioned proceeding, FCC 06-180 ("R&O"). I am fully competent to testify to the facts set forth herein.

2. I am the Cable Communications Officer for the City of Saint Paul, Minnesota. I have served in this position since 2005. My job duties include oversight and administration of the Cable Communications Office which includes the City's cable franchise/ordinance, government video production staff and the City's Institutional Network as well as staff to the City's Broadband Advisory Committee.

CONSTRUCTION AND OPERATION OF THE CITY OF SAINT PAUL'S
INSTITUTIONAL NETWORK (I-NET)

3. The City has had an I-Net since 1988. The I-Net was designed and constructed by Continental Cablevision pursuant to the Cable Communications Franchise. Continental Cablevision paid the initial costs of construction. Since 2002, following its merger with previous owner AT&T Corporation, the I-Net has been owned and operated by Comcast Corporation. Since the I-Net's upgraded construction was completed in 2001, the City will have added by the end of this year 13 additional sites to it. The City will have paid Comcast an additional \$123,000 to extend the I-Net to these 13 sites. Per the franchise agreement, Comcast provides extensions at a reduced cost compared to the cost the City would have incurred if the City had to use a non-franchised fiber contractor.

4. Other than the cost of extensions to new sites, under its franchise agreement Comcast provides the I-Net at no cost to the City for the duration of the franchise agreement and for any period that Comcast continues to operate in the City of Saint Paul. The franchise agreement will expire in 2013. The Franchise states in Section 301(A) that the obligation to construct, maintain and operate the I-Net applies *through* the term of the Franchise and continues for any time the company continues to operate in the City of Saint Paul. While the vast majority of I-Net related costs are covered by the franchise and the cable operator, the City is responsible for replacement of end user equipment and all other internal costs from the I-Net's demarcation point. Additionally, the City has staff dedicated to the oversight of the I-Net's daily operations and coordination of it with City departments.

5. At present, the I-Net connects approximately 250 sites, of which approximately 120 sites are active. These sites are mainly City facilities, 'but it is important to mention that the I-Net also connects the City to various sites owned by Ramsey County and the State of Minnesota. The I-Net sites include most of the City of Saint Paul's buildings, including all police and fire stations, libraries, parks and recreation, public works and City Hall. In addition, the I-Net is connected to the Saint Paul School District's schools, some Saint Paul churches, private schools, higher educational institutions, Ramsey County and State of Minnesota facilities.

SAINT PAUL'S USE OF THE I-NET

6. The City uses the I-Net for many critical video and cable-related uses. For example, the City uses the I-Net as the backbone to transmit to Comcast the video signal for the City's coverage of City and Ramsey County government meetings. Annually, the City transmits coverage of more than 100 City and County government meetings to Comcast's headend via this I-Net for transmission on the subscriber network

7. The City also uses the video *transmission* capabilities of the I-Net for public safety purposes. For example, the I-Net is regularly used to transmit video **training** programs to the fire, police and other City departments. In addition, the I-Net is used for EOC/Homeland Security operations when and where necessary throughout Saint Paul.

8. The City and the Saint Paul Neighborhood Network (the City's PEG non-profit agency) also makes extensive use of the I-Net to originate live-shoots throughout the City. Some examples of this PEG use of the I-Net include live transmission of (i) the Mayor's annual State of the City and Budget addresses; (ii) parades for community celebrations such as Cinco de Mayo, Rondo Days, Winter Carnival, and Saint Patrick's Day; (iii) numerous high school sporting events; (iv) election debates; and (v) religious events such as Rosh Hashanah and Yorn Kippur services.

9. Also, the I-Net's City-Link, which has its o m headend at the City of Saint Paul City Hall, was originally built as a pilot project for video and data, but is now used exclusively as a low cost way to provide a limited number of video channels to City and county departments.

10. In addition to these numerous video and cable-related uses of the I-Net, the City also uses the I-Net for data, which saves the City an estimated \$350,000 annually in telecom/internet service and carrier costs.

I declare under penalty of perjury that the foregoing is true **and** correct to the best of my knowledge and belief, and that ~~this~~ declaration was executed on the 4th of May, 2007, at Saint Paul, Minnesota.



Mike Reardon

DECLARATION OF MARY BETH HENRY

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

In the Matter of

MB Docket No. 05-311

Implementation of Section 62I(a)(1) of the
Cable Communications Policy Act of 1984 as
amended by the Cable Television Consumer
Protection and Competition Act of 1992

DECLARATION OF MARY BETH HENRY

I, **Mary Beth Henry**, declare as follows:

1. I submit this declaration in support of the Reply Comments of the Local Community Coalition submitted in response to the Further Notice of Proposed Rulemaking released by the Commission on March 5, 2007 (“FNPRM”) as ¶¶ 139-143 of its Report and Order and Further Notice of Proposed Rulemaking in the above-captioned proceeding, FCC 06-180 (“R&O”). I am fully competent to testify to the facts set forth herein.

2. I am the Deputy Director of the Office of Cable Communications and Franchise Management and serve as staff to the Mt. Hood Cable Regulatory Commission (MHCRC). My job duties include planning, budgeting, directing and integrating the daily operations of the MHCRC; developing and managing MHCRC policies; serving as senior advisor to the MHCRC Director and carrying out sensitive and complex assignments.

CONSTRUCTION AND OPERATION OF MHCRC INSTITUTIONAL NETWORK (I-NET)

3. The MHCRC is the local franchising authority for Multnomah County and the cities of Portland, Gresham, Troutdale, Fairview and Wood Village, Oregon. Comcast currently is the only franchised cable operator within our jurisdiction. Comcast operates under three separate but substantially similar franchise agreements which expire on December 31, 2010. The MHCRC has had an I-Net since 2002. The I-Net was designed and constructed by Comcast or its predecessors pursuant to the East Portland and East County franchise agreements. Under these agreements, Comcast dedicates 3% of its gross revenues to public, educational and government (PEG) and I-Net capital investments. Comcast retains 1% of the 3% for the I-Net Capital Fund. Comcast also charges a fee for I-Net use based on its (Comcast's) operating and maintenance costs. Costs borne by the MHCRC include: construction, maintenance and equipment costs of approximately \$6.6 million dollars. The 1% I-Net Capital Fund is dedicated (and restricted) funding to meet ascertained community PEG needs in MHCRC Jurisdictions. It was agreed to because of the financial capabilities of the cable operator, the demonstrated needs of the community, and the statutory provisions of Title VI

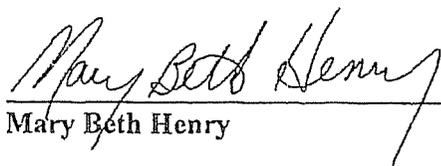
4. The I-Net links approximately 270 sites in the MHCRC, including public libraries, schools, community colleges, local government, police, fire, PEG access providers and non-profit organizations.

MHCRC USE OF THE I-NET

5. The MHCRC Jurisdictions use the I-Net to transport video feeds from remote sites on the I-Net to the PEG access providers' sites, where the PEG providers schedule community programming on eight access channels. The I-Net also provides the transport of the access programming from the PEG providers' headends to the cable company headend for insertion in the cable programming service delivered to subscribers. For example, the live programming includes city, county and metro council meetings, planning commission meetings, public development commission meetings, charter review meetings, public hearings, community events, local sports, arts and cultural performances, etc.

6. In addition, the public libraries, schools, community colleges, local governments and public safety agencies also use the I-Net for gigabit Ethernet data transport among their sites.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief, and that this declaration was executed on May 4, 2007, at Portland, Oregon.



Mary Beth Henry

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DECLARATION OF CRAIG J. NOWACK

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 by the Cable Television Consumer
Protection and Competition Act of 1992

MB Docket No. 05-311

DECLARATION OF CRAIG J. NOWACK

I, **Craig J. Nowack**, declare as follows:

1. I submit this declaration in support of the Reply Comments of the Local Community Coalition submitted in response to the Further Notice of Proposed Rulemaking released by the Commission on March 5, 2007 (“FNPRM”) as ¶¶ 139-143 of its Report and Order and Further Notice of Proposed Rulemaking in the above-captioned proceeding, FCC 06-180 (“R&O”). I am fully competent to testify to the facts set forth herein.

2. I am the Cable Television Coordinator for the City of Dubuque, **Iowa**. I have **served** in this position since 2006. My job duties include overseeing the City’s cable franchise agreement with the **local** cable company, promoting public, educational, and governmental access programming, and running the City of Dubuque’s government cable access channel.

CONSTRUCTION AND OPERATION OF THE CITY OF DUBUQUE'S INSTITUTIONAL NETWORK (I-NET)

3. The City of Dubuque's current I-Net was designed and constructed by Mediacorn pursuant to the 2005 cable television franchise agreement. The I-Net links approximately 77 sites in Dubuque including City government buildings including police and fire departments, selected county and state buildings, public and parochial schools, colleges, hospitals and medical clinics, and some cultural sites.

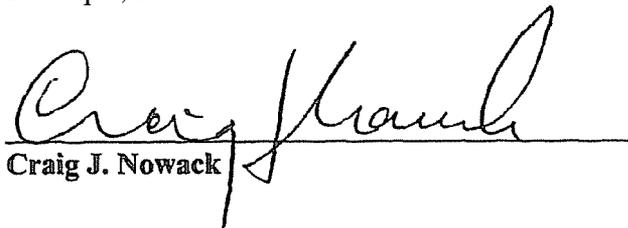
4. Under this agreement, the City of Dubuque and other **Authorized** I-Net users are obligated to bear a significant part of the costs of the I-NET. Costs borne by the City of Dubuque and other Authorized I-Net users include: the purchase and maintenance of any equipment necessary to activate the I-Net. These costs amount to between \$5,000 and \$10,000 per site. Additionally, in 2006 the City and Mediacorn negotiated an amendment to the franchise agreement with Mediacorn to share equally the cost of adding some additional sites to the I-Net in exchange for foregoing penalties for Mediacorn cable franchise agreement violations. The share of the costs for these additional sites borne by the City and other Authorized I-Net users **was** approximately \$54,700. In addition, the City budgeted approximately \$180,000 over the next two fiscal years for I-Net management. The I-Net management costs are above and beyond the equipment and maintenance costs of activating the I-Net (i.e., lighting the **dark** fiber). **This** budget will be used for identifying individual Authorized User needs, best practices, and bandwidth management to enable us to fully utilize this valuable community resource.

THE CITY OF DUBUQUE'S USE OF THE I-NET

5. The City of Dubuque uses the I-Net to send the signals of the government cable access channel and the public school educational access channel to the cable company's head-end for transmission to local residents over the cable company's subscriber network. In addition, local public access users have discussed the possibility of live public access telecasts from certain I-Net sites using the I-Net to route to telecast to the cable company's head-end for re-transmission over the subscriber network.

6. The City of Dubuque also plans to use the I-Net for network communications with other City buildings, a shared telephone system with the County, remote operations to fire stations, and as part of a fiber backbone for an emergency responders mobile data terminal network.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief, and that this declaration was executed on May 4, 2007, at Dubuque, Iowa.


Craig J. Nowack

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DECLARATION OF GAURAV GARG

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

In the Matter of

MB Docket No. 05-311

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

DECLARATION OF GAURAV GARG

I, **GAURAV GARG**, declare as follows:

1. I submit this declaration in support of the Reply Comments of the Local Community Coalition submitted in response to the Further Notice of Proposed Rulemaking released by the Commission on March 5, 2007 ("FNPRM") as ¶¶ 139-143 of its Report and Order and Further Notice of Proposed Rulemaking in the above-captioned proceeding, FCC 06-180 ("R&O"). I am competent to testify to the facts set forth herein.

2. I am the Director of Information Technology for the City of Santa Clara, California. I have served in this position since 2006. My job duties include overseeing all local Cable Franchise and Related I-Net Lease Agreements compliance issues.

**CONSTRUCTION AND OPERATION OF CITY OF SANTA CLARA,
CALIFORNIA'S INSTITUTIONAL NETWORK (I-NET)**

3. The City of Santa Clara, California has had an I-Net since 1999. In 1996, the City entered into a franchise agreement and a separate I-Net lease agreement with Brenmor Cable Partners, L.I (then controlled by TCI; the current franchisee is Comcast). The franchise described the general characteristics of an I-Net and required the franchisee to construct an I-Net in accordance with the Lease Agreement. The Lease Agreement included a more detailed technical description of the I-Net, and what the City would pay the franchisee for the work performed. The I-Net, which was designed specifically for video and data transport purposes, and was required to be integrated with the rest of the cable system, including the portion serving residential subscribers.

4. Under these agreements, the City of Santa Clara, California agreed to pay the incremental cost of constructing the network upon completion of the network. As it happens, the franchisee failed to upgrade its cable system by an agreed deadline; the City notified the company that it owed substantial liquidated damages as a result. That dispute was settled, and the City agreed to forego liquidated damages that were owed and the company agreed that the City would not be required to pay for the I-Net.

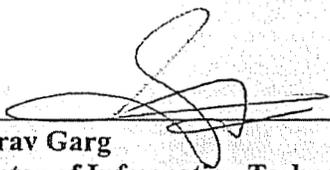
5. The I-Net links approximately 30 sites in the City of Santa Clara, California, which are connected via fiber for both video and data Services. These I-Net sites include our Fire, Police, Libraries, Schools, Community Service Centers, Convention Center, Communication Center/EOC and City Hall.

CITY OF SANTA CLARA'S USE OF THE I-NET

6. The City of Santa Clara, California uses the I-Net for several video and cable-related purposes. For example, the 5 high schools and the School District office connected to the I-Net transmit video programming to the City Municipal Building via the I-Net. The programming is then transmitted from the City Municipal Building (a PEG origination point) to the cable provider's head-end and on to the subscriber network. The programming can be delivered in a Live, Tape and Bulletin Format.

7. In addition, the City of Santa Clara, California also uses the I-Net to connect some 30 sites via fiber that transmits Data Services throughout the City. This I-Net serves as a critical communication pathway for all city municipal government sites, as mentioned in section 5.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief, and that this declaration was executed on **May 7, 2007**, at
City of Santa Clara, California.



Gaurav Garg
Director of Information Technology
City of Santa Clara, California

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DECLARATION OF **SUSAN LITTLEFIELD**

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 by the Cable Television Consumer
Protection and Competition Act of 1992

MB Docket No. 05-311

DECLARATION OF SUSAN LITTLEFIELD

I, Susan Littlefield, declare as follows:

1. I submit this declaration in support of the Reply Comments of the Local Community Coalition submitted in response to the Further Notice of Proposed Rulemaking released by the Commission on March 5, 2007 ("FNPRM") as ¶¶ 139-143 of its Report and Order and Further Notice of Proposed Rulemaking in the above-captioned proceeding, FCC 06-180 ("R&O"). I am fully competent to testify to the facts set forth herein.

2. I am the Regulatory Manager of the City of St. Louis Communications Division, serving continuously in this capacity since December 1987. The Board of Aldermen (the Franchise Authority for the City of St. Louis) has designated this Division as its Franchise Agency, delegating and empowering the Division to administer and enforce on its behalf. Therefore, my responsibilities include cable tv franchise administration and compliance, cable complaint resolution, renewal negotiations, I-Net deployment and compliance, franchise fee

reviews,, rate regulation, other telecom provider licenses and billings, compliance with applicable state and federal law, PROW permits, electrical code compliance, inspection and oversight of of telecom/cable system construction in the PROW, research, and recordkeeping, among the many functions related to use of public property by cable and telecom providers.

**CONSTRUCTION AND OPERATION OF THE INSTITUTIONAL NETWORK
(I-NET) IN THE CITY OF ST. LOUIS**

3. Both parties have benefited from the institutional network, the existence of which results from particular local circumstances and needs. The provision of I-Net services was freely and mutually negotiated by the City and Tele-Communications Inc (TCI) in a 2001 settlement agreement for certain of TCI's past non-compliances during its original 1984 - 1999 franchise and 1999 - 2001 extensions. Obligation for provision of I-Net services became the responsibility of Charter Communications when it purchased the St. Louis system from TCI in June 2001.. The I-Net facilities are designed, constructed and owned by Charter Communications. Further, Charter Business Systems uses the same platform that provides the City with I-Net services to offer commercial customers voice, video and/or data services.

4. The Cable Operator does not bear the sole financial burden for the I-Net and has already profited commercially from its existence. While the City has neither ownership nor equity interest in the I-Net and only receives services, the Settlement Agreement specifies certain City's obligations in this matter as follows:

(a) space in City buildings made available for Charter's network elements to serve other commercial customers as needed; and,

(b) City bears cost for construction and operation of any additional sites beyond

those designated in the original settlement, should the City request that sites be changed or added to the I-Net after initial deployment.

Because of the inclusion of their facilities on the I-Net, the Police Department chose to separately purchase *additional* services ~~from Charter~~ Business Systems, generating substantial new annual revenue to Charter as a result of its I-Net construction.

USE OF THE I-NET IN THE CITY OF ST LOUIS

5. Because I-Net services did not have to be provided in advance of the planned Charter system upgrade to 760 MHz, the City first began receiving I-Net services in 2005.

6. The I-Net links City Hall and 13 other major sites with fiber optic-based OC-12c and Ethernet connectivity and approximately 60 secondary sites in the City via Charter's cable modem network connections. All are located on the existing cable system. Facilities linked via the I-Net include City Hall, Street Department, Water Department headquarters and facilities, Parks & Recreation Department, Fire Department Headquarters and 30 individual Engine Houses, Police Headquarters and three regional stations, neighborhood community centers, Communications Division, Refuse facilities, Air Pollution Control Center, Health Department and remote sites, and other city offices spread throughout our 63 square mile city.

7. The I-net supports 'first responders'. The City uses the I-Net to provide data exchange between City facilities and departments, including secure encrypted transmissions (as required by federal law) between Police facilities. The Fire Department is able to access critical information about fire sites as engines are deployed. In periods of emergency, remote "live" video or data can also be sent from City Hall, Fire Department Headquarters or the City Emergency Management Agency (CEMA) Operations Center. Instantaneous communications

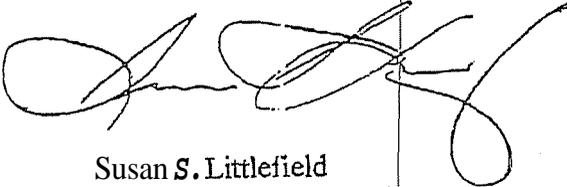
between first-responders and other city department employees is a key benefit of the I-Net for a city such as St. Louis, located in 'tornado alley' and along the New Madrid fault.

8. The I-Net contributes to city efficiency. The Information Technology Systems Agency uses the I-net to link its wide area network (WAN) . They are able to remotely program, support and trouble-shoot every computer on the WAN, reducing down time, and increasing productivity. They have set up "Call Central" which allows instantaneous email communication among all city departments and computers, which has proved enormously useful for the Mayor's emergency directives during severe weather (for example the December 2006 ice storm which knocked out electric power in many residential areas of the city and created extremely dangerous traffic conditions) .

9. Linked City Departments use the I-Net to facilitate faster and improved services and deliver electronic information to the public. Web pages are quickly updated in coordination with the City's Community Information Network Department. Property tax assessment records or Recorder of Deeds documents and permit applications are readily available on-line. While in the field, Neighborhood Stabilization Officers and building inspectors plug in their laptops at any I-Net site, including community centers, and access statistics, status reports or housing profiles physically located at City Hall. Our Communications Division intakes cable subscriber email complaints/comments, and web-streams City TV 10 (the government access channel) video programming. Our recent introduction of live web-streaming of Board of Aldermen meetings over the I-Net was extremely well-received.

10. I declare under penalty of perjury that the foregoing is true and correct to the best of

my knowledge and belief, **and** that this declaration **was** executed on May 4, 2007, at the Communications Division of the City of St. Louis, 4971 Oakland Avenue, St. Louis, Missouri 63112.



Susan S. Littlefield

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DECLARATION OF GARTH T. ASHPAUGH

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

In the Matter of:)

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

DECLARATION OF GARTH T. ASHPAUGH

I, GARTH T. ASHPAUGH, hereby declare, as follows:

1 I submit this declaration in support of the Reply Comments of the Local Community Coalition submitted in response to the Further Notice of Proposed Rulemaking released by the Commission on March 5, 2007 (“FNPRM”), as ¶¶ 139-143 of its Report and Order and Further Notice of Proposed Rulemaking in the above-captioned proceeding, FCC 06-180 (“R.&O”) I am fully competent to testify to the facts set forth herein

2 I have served as President and Member of Ashpaugh & Sculco, CPAs, PLC (“A&S”), since December 1999 I am licensed as a Certified Public Accountant in the States of Florida and Missouri I previously served as an Audit Supervisor fox the Missouri Public Service Commission I earned my Bachelor of Science in Business Administration from the University of Missouri in 1977. **All** statements in this Declaration are based upon my personal knowledge

3. I have over twenty years of experience in cable and utility rate regulation matters. Since 1992, I have worked with over 200 cities and counties in cable television related matters. I have performed franchise fee reviews of cable operators (including, but not limited to, Comcast Cable Communications, Inc., Time Warner Cable, Inc., Cox Communications, and Millennium Digital Media), financial analyses and reviews of cable television operator rate and equipment filings, and reviews of renewal proposals and transfer applications in Arizona, California, Colorado, the District of Columbia, Florida, Illinois, Kentucky, Maryland, Michigan, Minnesota, Nebraska, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Virginia, Washington, Wisconsin and Wyoming. I have also assisted clients in evaluating mergers and purchases including Kansas City Power and Light and UtiliCorp, Baltimore Gas and Electric Company and Potomac Electric Power Company, SBC Media and Prime Communications, Prime Communications and Comcast, AT&T Communications and Tele-Communications Inc., and AT&T Broadband and Comcast Communications.

4. I have performed reviews of the FCC Forms 393, 1200, 1205, 1210, 1220, 1235 and 1240 filed by cable operators with local franchising authorities for over ten years.

5. Time Warner at page 9 of its comments asks the Commission to rule that gross revenues should be determined in accordance with generally accepted accounting principles ("GAAP"). Time Warner states that it brings this to the Commission's attention because it seeks uniformity and clarity in the determination of gross revenues. See Time Warner at 11.

6. The financial community has set up GAAP not to determine what kinds of franchise fee payments are proper, but to govern the disclosure of financial information to investors and stockholders. Because these two purposes are different, GAAP may permit revenues to be recharacterized in ways that may be useful to investors, but would deprive a cable operator's contractual partner of revenues due under the contract.

7.. To the extent the contractual terms of any existing franchise agreements may be unclear, clarity will not be provided by GAAP.. GAAP does not create bright-line rules about gross revenues. On the contrary, GAAP is a set of guidelines to be interpreted by professionals. Accounting professionals' interpretations will vary. Thus GAAP will not provide clarity, but will provide fertile ground for disputes.

8 In particular, GAAP does not render a specific result in many cases. Rather, different ways of characterizing revenues may all be described as "consistent with GAAP". Thus, GAAP cannot generally be used to resolve disputes between cable operators and franchising authorities about what should be counted in the franchise fee base.

9. Cable operators typically calculate franchise fees without fully disclosing to franchising authorities their accounting guidelines or practices. The franchising authority discovers areas of concern only if it conducts an in-depth review of the cable operator's financial data. There will be no gain in clarity if the cable operator states that it has done its calculations "consistent with GAAP". It will still be necessary to review the specific accounting practices used by the operator and to determine whether they are in accordance with the terms and conditions of the franchise agreement.

10. Different franchise agreements define the relevant terms differently. For example, some definitions of “gross revenues” include non-subscriber revenue, some do not. Since these terms define the cable operator’s payment obligations, reference to *GAAP* will not create uniformity.

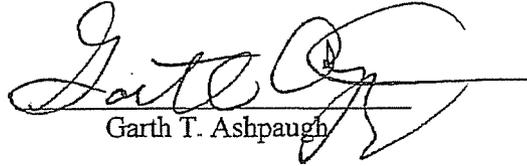
11. In addition, *GAAP* is not a fixed standard. It changes and evolves.. This is illustrated by the Sarbanes-Oxley legislation and by the fact that the Financial Accounting Standard Board (FASB) currently has under consideration a standard for revenue recognition based on changes in assets and liabilities. It is influenced by legislation, by litigation, by the financial community, by regulatory bodies such as the Securities and Exchange Commission and by governing bodies such as FASB and the International Accounting Standards Board. Thus, allowing a cable operator to manipulate the definition of gross revenues by reference to **GAAP** would not simplify, but complicate, the matter.

12. In franchise fee reviews conducted by A&S, Time Warner has sought to use *GAAP* arguments to reduce gross revenues by amounts that are **paid** to Time Warner affiliates for advertising expenditures. Time Warner, like other cable operators, has affiliates that represent Time Warner in advertising. Time Warner records the affiliate’s fees **as** a reduction to advertising revenue, rather than as an expense, thus reducing *the* revenues subject to franchise fees. Such representative fees can *decrease* the total revenue *from* the placement of an advertisement or a cable channel by **up** to 39.95%. Time Warner has argued that because it is permitted under *GAAP* to record its revenues as “contra-expenses” rather than revenues, it is therefore permitted to manipulate its

books to reduce the franchise fee base, notwithstanding the economic realities of the transactions.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief, and that this declaration was executed on May 4, 2007, at Winter Park, Florida.

Dated: May 4, 2007


Garth T. Ashpaugh