

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

In the Matter of)	
)	
Annual Assessment of the Status of)	MB Docket No. 07-207
Competition in the Market for the)	
Delivery of Video Programming)	

REPLY COMMENTS OF AT&T INC.

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TABLE OF CONTENTS

1.	The Program Access Rules Remain Necessary to Enable Competition.....	2
2.	Statewide Franchising Has Facilitated Competition.....	4
3.	Bundling Advances Competition	6
4.	More Stringent Customer Service Requirements Are Unnecessary	7
5.	The Commission Should Not Allow Local Governments to Regulate Internet Access Customer Service Matters	8
6.	The Commission Cannot and Should Not Adopt National PEG Requirements.....	9

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In the opening comments, parties generally agreed that wireline competition to incumbent cable operators finally has begun to emerge in video markets across the country. A large majority of commenters further agreed that this competition has benefitted consumers through lower prices, improved service quality, and greater variety of video programming. And because video deployment is intrinsically linked with broadband, as NTCA aptly observes,² the growth in video competition also has resulted in faster and better broadband Internet access for consumers.³ AT&T submits these limited reply comments to respond to certain proposals that would undo these benefits by depriving competitive providers of video programming services of essential inputs – that is, must have programming, and/or impose unnecessary and onerous burdens that would significantly hinder their ability to offer a competitive video product. Specifically, AT&T responds to NCTA’s claim that, in light of growing video competition, the Commission’s program access rules are no longer necessary. We also respond to claims

¹ AT&T Inc. submits these comments on behalf of itself and its wholly owned subsidiaries.

² NTCA Comments at 2.

³ See Cable and Telecommunications Committee of the New Orleans City Council Comments at 7-8 (New Orleans Comments).

by Montgomery County, Maryland, that: (1) adoption of statewide franchising has not advanced competition or benefitted consumers; (2) bundling does not advance competition; (3) the Commission should adopt more stringent customer service requirements for video; (4) it should permit local government regulation of Internet customer service issues; and (5) national standards for PEG are necessary.

1. The Program Access Rules Remain Necessary to Enable Competition.

In its comments, NCTA contends that, in light of marketplace developments, the Commission's program access rules are no longer necessary to ensure that incumbent cable operators cannot abuse their control over critical video programming assets to prevent or significantly impede competitors from offering a viable competitive alternative.⁴ Specifically, it claims that, with the proliferation of video programming channels, vertical integration is no longer a meaningful issue in the video marketplace.⁵ That is so, the theory goes, because, even if incumbent cable operators were to deny competitors access to affiliated programming networks, those competitors still would have access to myriad alternative programming networks.⁶ It further claims that, even if cable operators continued to own a significant portion of the networks and programming most viewed by MVPD customers, the dramatic growth in video competition, and Internet video competition, has mooted any concerns that those cable operators retain the incentive and ability to hinder competition by depriving competitors of access to programming.⁷

⁴ NCTA Comments at 33-35.

⁵ *Id.*

⁶ *Id.* at 34-35.

⁷ *Id.* at 34.

These claims are meritless. As AT&T, Verizon and others have exhaustively documented, cable incumbents continue to control “must-have” programming that is essential to attract and retain subscribers, and have used that control to undermine their competitors’ ability to offer consumers a viable, competitive alternative.⁸ For example, cable incumbents continue to control regional sports programming, which, as the Commission correctly has concluded, is “non-substitutable programming [that is] necessary for competition in the video distribution market to remain viable,” and, without which, an “MVPD’s ability to compete will be significantly harmed.”⁹ Now that new wireline entrants, like AT&T and Verizon, have begun to establish a foothold in video markets dominated by former monopoly cable operators, the incumbents’ incentives to deny competitors access to such programming is greater than ever.¹⁰ And, as the record plainly shows, cable incumbents have acted on those incentives, with the predictable result of hindering significantly their competitors’ ability to offer a viable competitive alternative.¹¹ Thus, irrespective of whether the number of programming networks controlled by incumbent cable operators as a percentage of all national cable programming networks has declined, incumbents continue to have both the incentive and ability to abuse their control over critical video programming assets to prevent or

⁸ Verizon Comments at 16-20; AT&T Comments at 5; and DIRECTV Comments 17.

⁹ *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, et al.*, MB Docket Nos. 07-29, 07-198, Report and Order and Notice of Proposed Rulemaking, 22 FCC Rcd 17791, ¶ 39 (2007) (*Program Access Extension Order*).

¹⁰ *Id.*, Statement of Commissioner Michael J. Copps, Approving in Part and Concurring in Part.

¹¹ See AT&T Comments at 4, citing *AT&T Services Inc. and Pacific Bell Telephone Company d/b/a SBC California d/b/a AT&T California v. CoxCom, Inc.*, CSR-8066-P, Memorandum Opinion and Order, DA 09-530 (rel. Mar. 9, 2009) (*AT&T Program Access Complaint Order*), application for review pending. See also Verizon Comments at 16-20; DIRECTV Comments at 17.

significantly impede video competition. As a consequence, the program access rules are more important than ever, and the Commission should reject NCTA's proposal to jettison those rules. Indeed, if anything, the Commission should strengthen those rules by extending them to terrestrially delivered programming in light of cable operators' increasing reliance on terrestrial delivery for, *inter alia*, regional sports programming,¹² and thus fulfill its congressionally-mandated obligations to promote video competition and, concomitantly, further deployment of broadband.

2. Statewide Franchising Has Facilitated Competition.

In its comments, Montgomery County, Maryland, claims that adoption of statewide franchising has not advanced competitive entry or benefitted consumers.¹³ In support, Montgomery County cites, *inter alia*, a Texas law adopting statewide video franchising in 2005, which it claims has had no significant effect in Austin, Texas.¹⁴ Specifically, it asserts that only one competitor, AT&T, has begun providing service in Austin since statewide franchising was adopted, and that AT&T serves only a relative handful of subscribers in the city and has shown no interest in competing vigorously.¹⁵

Montgomery County's claim that statewide franchising has not promoted competition and benefitted consumers is incorrect. Indeed, earlier this year, the state of Texas reached precisely the opposite conclusion. Specifically, in its 2009 Report on the Scope of Competition in Telecommunications Markets, the Public Utility Commission of Texas concluded that the adoption of statewide franchises has "eased the entry of new

¹² See Verizon Comments at 16-20; AT&T Comments at 5.

¹³ Comments of Montgomery County Maryland at 16-17.

¹⁴ *Id.*

¹⁵ *Id.*

participants (such as the ILECs) into the video market in Texas,” encouraging a significant increase in investment and competition among cable and other video service providers.¹⁶ In this regard, it found that 50 companies, including AT&T, Verizon, Grande Communications, Time Warner, and Cox have obtained statewide franchises, and that in 69 counties in Texas there are at least two video service providers, and, in 17, there are at least four providers certificated to provide video services.¹⁷ As a consequence, more than 900 cities and other communities in Texas are served by a state-issued franchise holder, and more than 200 are served by two or more state-issued franchise holders.¹⁸ The Texas PUC further found that, in 2007, cable and video service providers had spent over \$1.5 billion in Texas to improve and expand their cable and broadband infrastructure,¹⁹ providing consumers more choices among providers, plans and packages than ever before.

In AT&T’s case, statewide franchising has enabled AT&T to roll out its U-verse video service far more quickly and in more communities than it could have if it had been forced to negotiate individual franchises with multiple municipalities across the state. In addition, Montgomery County is simply wrong when it claims that AT&T is not competing vigorously in Austin. AT&T is actively marketing U-verse in every market in which it has launched that service, and is competing vigorously with cable incumbents not only for video, but also voice and data services as well. In light of cable’s well-

¹⁶ Public Utils. Comm’n of Texas, *2009 Report on the Scope of Competition in Telecommunications Markets in Texas* at 1, 20 (Jan. 15, 2009).

¹⁷ *Id.* at 4, 21.

¹⁸ Texas PUC Directory of Franchise Holders.

¹⁹ *Id.* at 20.

documented lead in the market for broadband services, and its growing incursions into the market for voice services, AT&T must compete vigorously for all services – voice, video and data – if it is to survive in today’s increasingly competitive, all-communications marketplace.

3. Bundling Advances Competition.

Montgomery County also is wrong when it incongruously claims that “while bundling gives consumers more choices, it does not advance competition.”²⁰ It concedes that bundling has resulted in lower prices, but asserts that consumers do not benefit because, in order to purchase a discounted bundled offering, consumers actually must purchase the bundle.²¹ It further claims that bundling limits competition because consumers that purchase a bundle “cannot readily buy different services from different providers.”²² In this regard, it concedes that consumers could do so, but claims that “the cost differential makes this irrational for the vast majority of customers.”²³

Apart from being patronizing in the extreme, Montgomery County’s claim that providing consumers more options and lower prices through service bundles neither promotes competition nor benefits consumers is patently absurd. Indeed, greater choice and lower prices are the very hallmark of competition. In addition, consumers themselves plainly do not agree that service bundles are of no benefit to them. Although AT&T makes available stand-alone voice, video and data services, only a very small percentage of customers subscribe to such services on a stand-alone basis. The vast

²⁰ Montgomery County Comments at 12.

²¹ *Id.* at 14.

²² *Id.*

²³ *Id.*

majority prefer to purchase some combination of voice, video and data services. Plainly, bundles offer significant benefits that consumers want.

4. More Stringent Customer Service Requirements Are Unnecessary.

Montgomery County contends that the Commission's customer service rules are out-of-date and that more stringent customer service standards are necessary.²⁴ It acknowledges that the Cable Act and the Commission's rules permit more extensive regulation, but claims that the Commission has discouraged independent local action by permitting the costs of stricter regulation to be passed through to subscribers.²⁵

Montgomery County's claims that more extensive and stringent customer service requirements are necessary in an era of rapidly growing competition for video services are specious. The existing standards were adopted in 1982, when multichannel video programming services were provided by incumbent cable operators with monopoly franchises. In today's increasingly competitive video marketplace, such standards are no longer necessary because consumers can and will switch service providers if they provide poor quality services. As the Commission itself recognized almost thirty years ago, regulation of competitive markets is not only unnecessary but also counterproductive because market forces will far better protect consumers and assure that firms will provide the types and quality of services demanded by their customers than regulation ever could.²⁶ States too have recognized as much, and thus have eliminated customer service

²⁴ *Id.* at 25-30.

²⁵ *Id.* at 28.

²⁶ See *Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorization Therefor*, CC Docket No. 79-252, Further Notice of Proposed Rulemaking, 84 F.C.C.2d 445, 448-55 (1981) (*Competitive Carrier FNPRM*); See *Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorization Therefor*, CC Docket No. 79-252, Second Report and Order, 91 F.C.C.2d 59, 60-62 (1982) (*Competitive Carrier Second Report and Order*) (concluding that

standards in video markets in which competition has developed.²⁷ The Commission therefore should reject Montgomery County’s claim that additional customer service standards are necessary.

In any event, as Montgomery County itself concedes, the existing federal standards are a baseline – franchising authorities are explicitly authorized to adopt more stringent standards, and some have done so. The fact that some franchising authorities may have been dissuaded from adopting additional requirements because the cost of complying with those requirements may be passed on to consumers is beside the point. Simply put, if a franchising authority believes it is appropriate to impose additional customer service standards or other regulatory burdens on service providers, it should be prepared to withstand public scrutiny of the costs those requirements impose on service providers and consumers alike.

5. The Commission Should Not Allow Local Governments to Regulate Internet Access Customer Service Matters.

The Commission also should reject Montgomery County’s request that it permit local franchising authorities to regulate Internet access customer service matters.²⁸ As an initial matter, the Commission has long and correctly recognized that Internet access is an interstate service, and thus within the exclusive jurisdiction and regulatory authority of the Commission. If the Commission were to permit local franchise authorities to regulate

comprehensive Title II regulation was intended to constrain the exercise of substantial market power, and, when applied to carriers without such power, is contrary to the goals of the Act).

²⁷ Tex. Pub. Util. Code § 66.008 (providing that a holder of a state-issued video franchise shall comply with the Commission’s customer service requirements until there are two or more providers offering service in the relevant municipality); Wis. Stat. Sec. 66.0420(9)(b) (providing that no video service provider may be subject to municipal customer service standards if there is at least one other person providing cable or video service in the municipality or if the video service provider is subject to effective competition).

²⁸ Montgomery County Comments at 30-31.

Internet access customer service issues, it would effectively cede that authority to those franchise authorities. Moreover, allowing franchise authorities to regulate Internet access services could potentially saddle service providers with literally thousands of different, and potentially conflicting, regulatory requirements. In addition, service providers, like AT&T, that have deployed regional and national networks without regard to municipal boundaries simply could not comply with such varying requirements.

6. The Commission Cannot and Should Not Adopt National PEG Requirements.

Finally, the Commission should reject proposals by Montgomery County and New Orleans to establish new federal requirements for PEG programming.²⁹ As AT&T previously has explained, the Cable Act narrowly circumscribes the Commission authority with respect to PEG programming.³⁰ Indeed, the Act does not even require that PEG programming be made available; rather, it simply *permits* franchising authorities to require cable operators to set aside capacity on their cable systems for PEG channels.³¹ To the extent they do, the Cable Act establishes only one federal obligation with respect to how that programming is provided. Specifically, it requires each cable operator of a cable system that is subject to rate regulation to provide PEG programming on the basic service tier.³² But, even this requirement is not absolute. Rather, as the Commission

²⁹ Montgomery County Comments at 24 (urging the Commission to amend its rules to address the treatment of PEG programming in the digital environment); and New Orleans Comments at 16-17 (claiming that AT&T should be required to provide PEG programming in the same manner as incumbent cable providers).

³⁰ AT&T Comments Opposing Petitions for Declaratory Ruling in MB Docket No. 09-13 at 32-35.

³¹ 47 U.S.C. § 531(a) (emphasis added).

³² 47 U.S.C. § 543(b)(7)(A)(i); 47 C.F.R. § 76.920 (“Every subscriber of a cable system must subscribe to the basic tier in order to subscribe to any other tier of video programming.”).

previously has held, a franchise authority and cable operator may provide in a franchise agreement for PEG to be carried on another tier.³³ Moreover, as AT&T has explained, the basic tier PEG requirement no longer applies where the Commission finds a cable system is subject to effective competition, and thus no longer subject to rate regulation.³⁴ The Commission thus lacks authority to establish the PEG requirements proposed by Montgomery County and New Orleans.

Respectfully submitted,

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³³ *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 – Rate Regulation*, MM Docket No. 92-266, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, ¶ 160 (1993).

³⁴ AT&T Comments in MB Docket No. 09-13 at 33-35.