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

In the Matter of Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming	MB Docket No. 07-269

ERRATA

Attached at Exhibit A is a corrected version of the comments of Anne Arundel and Montgomery Counties, Maryland, and the Cities of Boston, Massachusetts, and Laredo, Texas, which were filed in this docket on June 8, 2011. This version corrects two errors:

- Page 10, n.24, omitted a citation to Virginia law. The correct cite is: Va. Code Ann. § 15.2-2108.21.
- Exhibit 1 incorrectly identified the title of Frederick E. Ellrod, III, as Cable Administrator in Fairfax County, Virginia. Mr. Ellrod's title is Director, Communications Policy and Regulation Division.

We regret the errors.

/s/ Matthew K. Schettenhelm

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June 9, 2011

EXHIBIT A

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

In the Matter of

Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming

MB Docket No. 07-269

COMMENTS OF ANNE ARUNDEL AND MONTGOMERY COUNTIES, MARYLAND, AND THE CITIES OF BOSTON, MASSACHUSETTS, AND LAREDO, TEXAS

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June 8, 2011

SUMMARY

The Counties of Anne Arundel and Montgomery County, Maryland, and the cities of Boston, Massachusetts, and Laredo, Texas (the "Communities") submit these limited comments in response to the Commission's Video Competition Notice of Inquiry. The Communities urge the Commission to recognize that over the period under review, local cable franchising has not impeded video competition, and state franchising has not served as the panacea promised by its proponents. Indeed, among the Communities, those that have *retained* local franchising authority have *more* choice in video providers than those that have had their authority replaced with a statewide regime.

The Communities further urge the Commission to consider a number of troubling changes in the video market over this period. Cable rates continue to go up, even in areas where the FCC has declared "effective competition." At the same time, public interest programming is experiencing significant challenges. And—despite the recent wave of deregulation—AT&T's and Verizon's leadership have recently suggested that they will not be expanding their cable systems further.

In light of these developments, the Commission should use this proceeding to carefully reexamine its past assumptions about the nature, scope, and effectiveness of competition in the video market, and to reassess its policies accordingly. The Commission's standards for determining what competition is "effective" are clearly inadequate, and must be revisited. Moreover, the Commission should recognize that recent efforts to remove and limit local franchising authority have not led to the promised competitive entry, and have deprived many communities of important community benefits.

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I. INTRODUCTION.

The Counties of Anne Arundel and Montgomery County, Maryland, and the cities of Boston, Massachusetts, and Laredo, Texas (the "Communities"), by their attorneys, submit these limited comments in response to the Commission's Notice of Inquiry (the "NOI").[1] The Communities seek to specifically address the Commission's questions regarding the regulatory conditions that affect entry into MVPD markets,[2] the resulting impact these conditions have had on public interest programming,[3] and the meaningfulness—or lack thereof—of certain forms of effective competition on rates.[4]

The NOI requests comment on issues related to the regulatory environment and barriers to entry, and the Commission's belief that lowering regulatory barriers promotes consumer

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[1] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, MB Docket 07-269 (rel. April 21, 2011). Communities also incorporate by reference the Comments of Montgomery County filed on May 20, 2009, in response to *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, MB Docket 07-269 (rel. Jan. 16, 2009), and on July 29, 2009, in response to *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Supplemental Notice of Inquiry, MB Docket 07-269 (rel. April 9, 2009).

[2] NOI at ¶¶ 20, 21.

[3] *Id.* at ¶ 24.

[4] *Id.* at ¶ 11.

welfare by encouraging competition. The Communities file to demonstrate that local cable franchising has not impeded competition, and state franchising has not served as the panacea promised by its proponents. Among the Communities, those that have retained local franchising have more choice than those that have had local franchising replaced by a state-wide regime. And regardless of the form of franchising or the number of providers, the Communities have experienced very few price reductions, aside from those linked to a bundled package.

The Communities hope that in light of their comments, the Commission will re-examine the premises of its prior analysis of video competition issues, most especially its assumptions that local franchising has impeded video service competition, and that such competition alone will reduce costs to consumers. The Communities also call on the Commission to act on the three pending Petitions for Reconsideration of the Commission's Second Report & Order.[5]

II. SNAPSHOT OF COMMUNITIES FROM 2007 TO TODAY[6]

A. Laredo, Texas

Laredo, Texas, currently has one wireline video programming provider, Time Warner, despite the fact that Texas adopted statewide franchising in 2005. Although AT&T, the incumbent local exchange carrier, has the legal right to provide service within the City, it never has shown an interest in competing vigorously in the City, despite the City's invitations to do so. Thus, in Laredo, statewide franchising has had no significant effect on competition. But this is not to say that the state law has had no effect. Within three months of the law's passage, the City

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[5] *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, Second Report and Order*, FCC 07-190, MB Docket No. 05-311, 72 Fed. Reg. 65670 (November 23, 2007). The Petitions for Reconsideration were filed by NATOA *et al*, Albuquerque *et al* and City of Breckenridge Hills, Missouri. All three petitions were filed on December 21, 2007.

[6] In addition to the following narrative, Exhibit 1 provides a table with information provided by a community representative that provides a summary of the current state of competition, the number of providers, overlap of competitors, PEG channels and PEG support, and how these mattes have changed since 2007.

lost its ability to require Time Warner to meet the community's continuing needs and interests through a franchise renewal proceeding under the Cable Act. Instead, the state law ignores these needs and interests, locking the City into a state-wide standard for PEG and PEG support.

In October of 2010, Time Warner informed the City that it would cease to provide PEG channels in an analog format, and would solely provide these channels in a digital format. The company planned to continue to provide other basic service tier programming, including broadcast channels, in an analog format. The City was forced to join other South Texas communities before the Commission and the courts to ensure that as Time Warner converted the PEG channels to a digital format, it also provided free equipment to allow basic service consumers and institutional users such as schools and city offices to continue to receive the channels at no additional cost.

B. Fairfax County, Virginia

Fairfax County, Virginia, is served by three providers. Cox Communications serves most of the County, and Comcast is the incumbent cable operator in the Reston area; the two do not compete head-to-head. Verizon has held a cable franchise from the County since 2005. Verizon actually sought and received that franchise before the Virginia General Assembly amended Virginia state law to limit local authority and expedite entry. Verizon has not actually sought franchises under the new law.[7] Instead, Verizon has used the threat of the new law to force franchising authorities to accept Verizon's terms.[8] Furthermore, Verizon has only approached

[7] Verizon did rely on the new "ordinance franchise" mechanism to obtain a franchise in the City of Virginia Beach – but that was only an interim measure, and within a matter of months that franchise was replaced with a traditional negotiated agreement. Commenters are not aware of a single jurisdiction in the country, outside of New Jersey, where Verizon holds a franchise that has not been negotiated with the local government. And the New Jersey franchises are not greatly dissimilar to what the franchise practice in New Jersey has always been.

[8] For example, Verizon's franchise in Powhatan County, to the west of Richmond, only covers the eastern third of the County, which abuts fast-growing Chesterfield County.

the most populous jurisdictions in the state: Verizon's franchises run from the Washington, D.C., suburbs down Interstate 95 to Richmond, and from the Richmond suburbs down Interstate 64 to the Hampton Roads area. Verizon has expressed little interest in building its new network in less densely populated areas. The state law may have given Verizon more favorable terms, but that does not mean that without the law the company would not have sought and obtained franchises from the same Virginia jurisdictions where it is active today.

Cavalier notified Fairfax County that it was "on the clock" under the Commission's cable franchising order.[9] But after the County devoted time and effort to the issue, Cavalier withdrew from negotiations.[10]

C. Anne Arundel County, Maryland

Anne Arundel County, Maryland, is home to Annapolis, the state's capital, the National Security Agency, the United States Naval Academy, the Chesapeake Bay Bridge, the Baltimore - Washington International Airport, and 533 miles of the Chesapeake shoreline. Anne Arundel County was one of the first communities in America to lose rate regulation upon a finding of effective competition under the competitive provider test.[11] In 2006, the County renewed its franchise agreements with both Comcast and Millennium (now Broadstripe), and it reached

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[9] *In re 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*, 22 FCC Rcd. 5101 (2007) ("*Franchising Order").*

[10] One of the inequities imposed by the *Franchising Order* is that franchising authorities must expend time and money in responding to applications within set time periods, whereas providers have no obligation to follow through on their applications. Shortly after the Commission released the Franchising Order, Cavalier embarked on a campaign to gain access to numerous jurisdictions in Maryland and Virginia, explicitly relying on the rights it claimed to have been granted by the Commission. Of the commenting Communities, both Fairfax and Montgomery Counties were placed on notice and worked diligently to allow Cavalier to join the three incumbent providers in their respective communities at considerable expense in County staff time and outside counsel fees. Unlike in Anne Arundel County, Cavalier never completed negotiations In Fairfax and Montgomery Counties, and both communities were forced to absorb the costs.

[11] *In the Matter of Jones Intercable Inc*, 11 FCC Rcd. 3583 (1996); *see also In the Matter of InterMedia Partners L.P.*, 12 FCC Rcd. 2425 (1997).

agreement with the state's incumbent local exchange carrier, Verizon, on a franchise.[12] Today, the County is served by three separate wireline cable operators. As a result, almost every citizen in the County has at least two choices of cable operator and—with Broadstripe's plant passing over 100,000 homes—a large part of the population has a choice of three wireline providers.

Anne Arundel County also issued a franchise to Cavalier Telephone Mid Atlantic on December 28, 2007. While Cavalier has never provided cable service within the County, the company does have a franchise from the County permitting such services should it change its mind.[13]

D. Montgomery County, Maryland

Montgomery County, Maryland, has a population of 952,500, and comprises 497 square miles and 356,400 households. Montgomery County also manages cable franchise matters for approximately 18 municipalities within its borders. Montgomery County was one of the first jurisdictions in the country to introduce wireline competition for video service, with the grant of a cable franchise to Starpower Communications (now RCN) in 1999. In 2006, the County became one of the first large jurisdictions to grant Verizon a cable franchise.[14] Today, Comcast, Verizon, and RCN are all providing voice, video, and Internet service to County residents; over 50% of County residents have a choice of at least two providers. This competition arrived without any regulatory mandate from the state or federal governments. Indeed, in 2009, the Maryland General Assembly rejected a proposal to alter the local franchising process.[15] RCN's

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[12] Copies of all three franchises as well as the County's Needs Assessment are available on line at http://www.aacounty.org/OIT/CableTV.cfm

[13] A copy of the franchise may be found at http://www.aacounty.org/OIT/Resources/CavTel.pdf.

[14] At the time that the franchise was granted, Verizon had been awarded approximately 60 franchises, most by relatively small communities. Fairfax County is another of the first large jurisdictions to grant Verizon a franchise.

[15] Maryland House Bill 1182 as drafted would have replaced franchise fees and taxes on cable and telecommunications services with a sales and use tax on a newly defined category of service, "communications

franchise was awarded long before the recent wave of intervention in the franchising process began, and Verizon's franchise was awarded before the Commission adopted its franchising order.

One potential competitor, Cavalier, did claim to rely on the *Franchising Order* to impose a deadline on the County, but never completed negotiations.

E. Boston, Massachusetts

The City of Boston, Massachusetts, is served by two wireline competitors, neither of which is the incumbent local exchange carrier. Comcast Corporation ("Comcast") is the incumbent cable operator in the City. Cablevision of Boston ("Cablevision") and AT&T Broadband of Boston are Comcast's predecessors-in-interest.[16] In February 1997, RCN-BecoCom, LLC ("RCN") also began to provide multichannel video service in limited areas of the City.

Comcast and its successors have provided cable service in the City since 1982. For most of that period, this has been the only cable service available to City residents. In 1999, seeking to enable and encourage competition in the multichannel video market, the City entered into an agreement with RCN to authorize the construction of a competing system

service." The bill would have required local cable franchise fees to be paid not to a locality but to the Maryland Comptroller, and, after a fixed date, would have deprived localities of the power to obtain any new cable franchise fees or even to recover a portion of the sales and use tax collected by the Comptroller. H.B. 1182 also would have empowered the Maryland Public Service Commission ("PSC") to issue a "statewide cable franchise." The bill has been removed from the actively considered agenda of the Ways and Means & Economic Matters Committee. It is unclear whether the bill will be assigned a study committee status this summer.

[16] The City renewed Cablevision of Boston, Inc.'s nonexclusive, revocable license to construct, install, operate, and maintain a Cable Television System in Boston on May 11, 1998. Cablevision transferred its right, title and interest in the License to AT&T Broadband on or about January 5, 2001. The City approved a transfer of the Boston license to AT&T Comcast on July 17, 2002. AT&T Comcast subsequently changed its name to Comcast in the New England area on February 18, 2003. "*Comcast Brand Officially Takes Over AT&T*," Boston Business Journal, Feb. 18, 2003, *available at* http://boston.bizjournals.com/boston/stories/2003/02/17/daily15.html (last visited Sept. 29, 2003). On October 8, 2010 Comcast's franchise was renewed for an additional five years (October 8, 2015).

The City's efforts to promote competition have been hampered by the cable industry's continued resistance. On November 7, 1997, Cablevision commenced litigation in state court seeking to invalidate the formation of the RCN joint venture. Dismissal of Cablevision's suit was affirmed by the Massachusetts Supreme Court on December 8, 1998.[17] One week later, Cablevision filed a motion for preliminary injunction in federal court seeking to prohibit the City from granting RCN permission to construct a cable system within the City. The District Court dismissed Cablevision's motion, and the U.S. Court of Appeals for the First Circuit affirmed the decision.[18] These legal actions helped to delay the arrival of a competitive cable service provider in Boston.

Delay of a different sort has been the reason many Boston residents do not have choice in video from their local telephone company. Verizon, which Boston believes to hold 110 cable licenses,[19]has chosen not to offer its FIOS service in Boston. According to May 18th, 2011 testimony delivered by Michael Lynch, Director of the Mayor's Office of Cable, Video and Web Services to the Committee on Telecommunications, Utilities and Energy of the Massachusetts General Assembly[20]:

> …Boston's mayor and other city officials have met a number of times over the last six years with Verizon of Massachusetts to discuss system upgrades, new services and the potential for cable franchising. The purpose of these meetings has been a mutual dialogue on how best to assist Verizon as they enter their new video market and provide competitive service in Boston . . . . We have invited Verizon to engage in a Boston cable franchising process that will result in access for <u>all</u> our city residents to the advanced broadband network FiOS that Verizon is building elsewhere in the Commonwealth.

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[17] *Cablevision Systems Corp. v. Dep't of Telecomm. & Energy*, 702 N.E.2d 799 (Mass. 1998).

[18] *Cablevision v. Pub. Improvement Comm'n,* 38 F. Supp. 2d 46 (D. Mass. 1999); *Cablevision v. Pub. Improvement Comm'n*, 184 F.3d 88 (1st Cir. 1999).

[19] Under Massachusetts law a cable operator holds a license, not a franchise.

[20] A copy of the testimony is attached hereto as Exhibit 2.

III. Statewide Franchising and Other Restrictions on Local Authority Have Not Advanced Competitive Entry or Benefited Consumers.

In recent years, the Commission and many state legislatures have taken steps to reduce or eliminate local franchising authority, in the mistaken belief that local franchising impedes competition. The NOI seeks comment on franchising and other local and state regulations and the effect on the marketplace, and on the effects of the local franchising prices on entry by new providers.[21]

The Communities believe that their experience demonstrates that local franchising does not restrict competitive entry, and offers substantial benefits to the public. Competitive providers enter individual markets when they believe that local conditions will allow them to earn a reasonable return on their investment in infrastructure, and local authority over franchising has little, if anything, to do with that analysis. To illustrate this, the Communities offer examples and experiences of jurisdictions in four different states: Texas, which has adopted statewide franchising; Virginia, which has retained local franchising while restricting local authority; and Massachusetts and Maryland,[22] which have done neither. The Communities urge the Commission to conduct a similar comparison on a larger scale.[23]

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[21] NOI at ¶ 21 "What underlying regulatory, technological, and market conditions affect market structure and influence the total number of firms that can compete successfully in the market. *Id.* at ¶ 20. "A number of provisions of the Communications Act and the Commission's rules affect MVPD operators in the market for the delivery of video programming. These include, for example …franchising, access to multiple dwelling units, [and] inside wiring…." *Id.* at ¶21.

[22] Verizon has franchises from Anne Arundel, (pop. 512,790), Baltimore (pop. 785,618), Harford (pop. 240,351), Howard (pop. 274,995), Montgomery (pop. 950,680) and Prince George's (pop. 820,852) and Charles County (pop. 140,764). Altogether that comes to just over 61% of the state's population. Population Division, U.S. Census Bureau, Table 1: Annual Estimates of the Resident Population for Counties of Maryland: April 1, 2000 to July 1, 2008 (CO-EST2008-01-24) (Release Date: March 19, 2009).

[23] Work is already being done in this area. The Alliance for Community Media ("ACM"), the Benton Foundation, and the Alliance For Community Democracy have conducted surveys regarding the effects of franchising reform, which conclude, among other things, that new state legislation has led neither to lower prices nor improved customer service. Barbara Popovic, *Assessing the Damage: Survey shows that state video franchise laws bring no rate relief while harming public benefits*, available at:

www.ourchannels.org/wpcontent/uploads/2008/09/harmsurveyreportacm08.pdf.

The Commission's actions in recent years have implicitly assumed: statewide franchising or local franchising pursuant to a shot clock would lead to greater choice; companies that can provide video competition will provide that competition; the presence of more than one provider in a marketplace is enough to create a fully competitive marketplace; and a competitive market place would increase consumer choice and reduce prices. In reality, the experience of the Communities is that neither state franchising nor the FCC's shot clock has led to greater choice. In fact, the greatest choice available among the Communities is in states that have preserved local franchise authority (see Table 1), while the smallest number of consumers with choice in the commenting Communities is in the municipality located in state franchise state.

Regulatory regime is not the determining factor for market entry. In both state and local franchise regimes, the incumbent local exchange carrier has refused to offer services in some communities. This is the case in Laredo and Boston. In Laredo, AT&T has the right to provide service pursuant to a state franchise and today—approaching the sixth anniversary of that right—has still not provided service or made any offers to do so. In Boston, Verizon has been asked by the City to provide cable and Verizon provides service to many of the surrounding communities in Massachusetts, but has chosen to by-pass the City itself. In contrast, Verizon is providing

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Another example is a report prepared at the request of the Minnesota General Assembly which compares the choice and consumer benefits in California, Michigan and Texas. *See, e.g.*, Hubert Humphrey Institute of Public Affairs, *Statewide Video Franchising Legislation: A Comparative Study of Outcomes in Texas, California and Michigan* (Mar. 2009) ("Minnesota Report"), at 25. *See also* Oligopoly: George Hay, *Oligopoly, Shared Monopoly, and Antitrust Law,* 67 CORNELL L. REV. 439 (1982), at 441:

> The traditional economic analysis of oligopoly, on the other hand, portrays the process of achieving a noncompetitive end as involving separate, albeit interdependent, decisions by each firm. Because the number of firms in an oligopolistic industry is small, each firm recognizes that its own actions will have a substantial impact on the economic well-being of its rivals and will probably provoke some reaction from them. If one firm cuts prices in an effort to boost sales, rivals may be compelled to match the price cut, not only rendering the initial effort to secure additional volume unsuccessful, but making all firms worse off than before. When all firms anticipate this chain of events and recognize that a price reduction is against their self-interest, no price cutting will occur and they can achieve and maintain a noncompetitive price.

See also National Association of Telecommunications Officers and Advisors, *Understanding the Impact of State Video Services Legislation, available at* http://www.natoa.org/Documents/StateLegSurveyExecSummFinal.pdf.

robust competition and choice to consumers throughout Anne Arundel, Fairfax, and Montgomery Counties, all pursuant to negotiated local cable franchises.

Table 1

Community	# of Providers	Is ILEC a Provider	State or local franchise
Anne Arundel	3	Yes	Local
Montgomery	3	Yes	Local
Fairfax	3	Yes	Local[24]
Boston	2	No	Local
Laredo	1	No	State

A. Rate reductions have not followed deregulation or competition.

Despite passage of twenty (20) statewide franchise laws and the Commission's own *Franchising Orders*, the market for video service continues to be best described as an oligopoly; it is not fully competitive.[25] Indeed, the behavior of multichannel video programming distributors described in the Commission's most recent competition report, and further illustrated by the Commenters' experiences, demonstrate this point. Providers have added to their service offerings, bundled services together, and taken other steps to make their services more attractive to subscribers. But subscriber rates continue to go up faster than the rate of inflation, and the providers' marketing often makes it difficult for consumers to compare service offerings.

The City of Boston recently provided the Commission with a study that found Comcast collected from basic service customers within the City of Boston approximately $24 million

[24] Virginia providers have the ability to employ an "ordinance franchise" under state law, Va. Code Ann. § 15.2-2108.21, but all three providers in Fairfax County have chosen to negotiate their franchise with the County.

[25] *See, e.g.*, S. Derek Turner, DISMANTLING DIGITAL DEREGULATION: TOWARD A NATIONAL BROADBAND STRATEGY (2009) at 20 (broadband market is a duopoly) *available at* http://www.freepress.net/files/dismantling-digital-deregulation.pdf. This discussion pertains to broadband service, but since exactly the same companies are providing video service, the conclusion still holds.

more than it charged its neighboring basic service customers from 2008 through 2011.[26] The study documents a single difference between Boston and these surrounding areas: the other areas are still subject to rate regulation. The Commission's 2002 decision to free Comcast's predecessor from rate regulation appears to be the only reason Boston residents have paid $24 million more in basic cable service fees in just the past three years.

Choice is not the same as competition. Because market forces alone are inadequate, the Commission and other bodies with regulatory authority—including local governments—must act in a range of areas to protect the public interest.

IV. PUBLIC INTEREST PROGRAMMING

Communities are grateful for the Commission's characterization of public, educational and governmental ("PEG") channels as "public interest programming."[27] The Communities suggest that the Commission needs to take additional steps to provide such programming with the protections it deserves.

The Communities have made substantial investments in PEG,[28] and—other than Laredo[29]—have not experienced the PEG challenges suffered by many other communities. Still, as the Commission notes, the franchising authority may require a cable operator to provide

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[26] The study was conducted by Front Range Consulting and can be found in Exhibit 3 to Boston's Emergency Petition for Recertification, CSR –8488-R (May 9, 2011).

[27] NOI at ¶ 21 n.63.

[28] The Communities have made significant local investments in PEG programming. For instance, in Boston, the PEG operators, the Boston Neighborhood Network, operates two public access cable television channels including a nightly Neighborhood Network News program staffed with assistance from Boston University students. BNN recently opened the Beard Media Center, an LEED Silver certified facility providing state of the art connectivity and interactivity with cable systems, satellite, web, and emerging platforms. Members also have access to two television studios, digital field production and editing equipment, a multimedia lab, and a mobile production truck, as well as hands-on media training classes. Among the thousands of residents participating at BNN in 2009 were more than 900 young people who gained hands-on media experience.

[29] . As noted, *supra*, the City of Laredo had to expend considerable resources to protect its PEG channels as a result of Time Warner's digitization plans.

channel capacity for PEG use (47 U.S.C. § 531), and the Commission asks a series of questions regarding the state of public interest programming. The Communities provide answers to each of these questions in Table II below. The Communities also note that while they may not be experiencing challenges as to PEG channels and PEG support, many of their fellow local governments are.

Table II

Capacity/Tier/Equipment[30]

Community	# of Channels Today/Tier	# of Channels in 2007/Tier	Additional Equipment	State or local franchise
Anne Arundel	4/Basic	4/Basic	No	Local Franchises
Montgomery	11/Basic	11/Basic	No	Local Franchises
Fairfax	11/Basic	11/Basic	No	Local Franchises
Boston	4/Basic	4/Basic	No	Local Franchise
Laredo	4/Basic	4/Basic	Yes	State Franchise

There is ample evidence that public interest programming has suffered and will continue to suffer due to both state franchises and, to a great extent, the Commission's refusal to act on petitions for declaratory ruling pending since February of 2009 regarding the Cable Act's requirements with respect to the carriage of PEG access channels.[31] Among other things, the petitions ask the Commission to declare that a cable operator violates the Cable Act if it discriminates against PEG channels as compared to full power broadcast channels. The petitions further ask the Commission to declare, consistent with its technical standards regulations, that PEG channels should be delivered to the public in a manner equivalent to the manner in which

[30] This table seeks to answer the following three questions posed by the Commission:

- "What is the capacity being used for public, educational, and governmental ("PEG") channels by MVPDs?" (¶ 24)
- "What tier are these channels on and is extra equipment required to view them?" (¶ 24)
- "Are there more or fewer PEG channels carried on your systems than last year?" (¶ 24)

[31] *In re Petition for Declaratory Ruling Regarding Public, Educational, and Governmental Programming*, MB Docket No. 09-13.

broadcast channels are delivered. The Commission called for public comment on these petitions, and the public responded in force—filing thousands of comments, most in support of the protection of PEG channels. Had the Commission issued the requested rulings, it would have prevented incumbent cable operators from discriminating against PEG channels or exercising editorial control over the PEG channel capacity. But, some 27 months later, the Commission has not yet issued a decision in the docket.

Cable operators and video programmers are now using this delay to their advantage. Operators are moving ahead with their plans to "re-claim" PEG capacity and to use it for their own commercial purposes, regardless of how the Commission ultimately interprets the Cable Act. If the Commission does not act quickly, it risks surrendering its jurisdiction over the important questions raised in this docket. According to a research project funded by the Benton Foundation and conducted for the Alliance for Community Democracy: [32]

- PEG Access Centers in at least 100 communities across the United States have been closed since 2005.

- Hundreds more PEG Access Centers in six states affected by state franchising laws may be forced to close or experience serious threats to financial and in-kind support over the next three years.

- Almost half of the 165 survey respondents providing financial information for 2005 and 2010 reported an average funding drop of 40% during that time period.

- Of the 100 survey respondents reporting in-kind support from their cable operators, 20% indicated in-kind materials and services had been cut back or eliminated since 2005.

- The primary reasons cited for reductions in funding and in-kind resources for PEG Access Centers were new state franchising laws and/or decisions by local governments.[33]

[32] Buske, *Analysis of Recent PEG Access Center Closures, Funding Cutbacks and Related Threats, Prepared for Alliance for Communications Democracy* (April 8, 2011), *available at*: http://benton.org/sites/benton.org/files/2011%20PEG%20Access%20study.pdf

[33] *Id*.

V. MARKET ENTRY BY CORPORATE FIAT

The loss of local responsiveness through the franchise process as well as reductions in the number of PEG channels and PEG support is made even more troublesome by recent reports of statements made by leaders of both national ILECs indicating that the companies will not be building out further, if at all:

> AT&T is scheduled to reach 30 million U-verse homes passed by the end of the year with their U-Verse service, or roughly 55-60% of their homes. They will virtually stop there according to President John Stankey speaking at Citibank, who announced 55-60% [roll out of service] as their ultimate goal. He suggested that 25-30% of AT&T homes will only be offered ADSL. 20% are 'not a heavy emphasis for investment,' i.e. 5-10 million of AT&T's 50 million homes are screwed unless they have a decent cable alternative.[34]

AT&T is not alone in announcing it was close to finishing its deployment. As long as 18 months ago, Verizon was announcing its plans to complete the build out of the communities it had under franchise and no more:[35] "[I]t is not working on securing franchises for any major urban areas, [Verizon spokesman] Wilner said. For instance, it's halted negotiations for the Washington suburb of Alexandria, Va."[36]

Verizon's incoming CEO made it even more clear recently in explaining Verizon's large roll-out of FIOS and the company's future plans: "What you saw was a big push to get scale. We are at 15 million (homes passed), moving to 16 now. As you get greater penetration, you open up

[34] AT&T's Stankey: U-verse Build Virtually Over Company Comments Suggest Build Ends at 55-60% of Homes, Broadband DSL Report (May 18, 2001) available at http://www.dslreports.com/shownews/ATTs-Stankey-Uverse-Build-Virtually-Over-114279 last visited June 7, 2011.

[35] PETER SVENSSON, VERIZON WINDS DOWN EXPENSIVE FIOS EXPANSION, ASSOCIATED PRESS January 9, 2009 available at http://www.dslreports.com/forum/remark,24010348?hilite=verizon+fios . "Verizon is nearing the end of its program to replace copper phone lines with optical fibers that provide much higher Internet speeds and TV service. Its focus is now on completing the network in the communities where it's already secured 'franchises,' the rights to sell TV service that rivals cable, said spokeswoman Heather Wilner.

[36] *Id*

more areas. The ceiling for us is around 20 million. We'll be there in the next couple years."[37] Two of the commenting Communities, Boston and Laredo, note that they still await an offer from their incumbent local exchange carriers.

VI. MEASUREMENTS AND EFFECTIVE COMPETITION

The Commission asks a series of questions to ascertain whether it is measuring competition appropriately.[38] The Communities will not offer much in response to these questions as Communities believe the Commission's questions betray the Commission's erroneous belief that the current standards for effective competition are meaningful. They are not.

For example, the Commission has on numerous occasions held that DBS constitutes competition to the cable industry.[39] And yet, in various other contexts, the Commission has repeatedly ruled that DBS competition did not restrain prices for cable service.[40] For example, in the *Franchising Order*, the Commission found that "new cable competition reduces rates far more than competition from DBS."[41]

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[37] Richard Mullins, VERIZON EXECUTIVE EYES WHAT'S NEXT, The Tampa Tribune (May 14, 2011) available at http://www2.tbo.com/business/tech/2011/may/14/bznewso1-verizon-executive-eyes-whats-next-ar-207259/

[38] NOI at ¶ 11. Among the questions the Commission asks are:

- Is it appropriate to use zip code level data to evaluate the structure of MVPD markets?
- Is there a significant difference in the data collected if a 5-digit versus a 9-digit zip code is used?
- What is the feasibility and benefit of collecting MVPD data on a census tract basis.

39 *In the Matter of Time Warner Entertainment-Advance/Newhouse Partnership Petition for Determination of Effective Competition in 24 Communities in the State of New York and the Commonwealth of Pennsylvania*, Memorandum Opinion and Order, 23 FCC Rcd. 18,355 (2008) (finding effective competition exists where community is served by 2 DBS providers).

[40] *In the Matter of Implementation of Section 3 of The Cable Television Consumer Protection and Competition Act of 1992*, Report on Cable Industry Prices, 24 FCC Rcd. 259, 261 (2009) ("It does not appear from these results that DBS effectively constrains cable prices. Thus, in the large number of communities in which there has been a finding that the statutory test for effective competition has been met due to the presence of DBS service, competition does not appear to be restraining price as it does in the small number of communities with a second cable operator as reflected in Chart 1-a below."); *Thirteenth Annual Report*, 24 FCC Rcd. 542, 544-545 ("DBS competition appears to have led cable operators to add more programming services to their channel line-ups, it has not constrained cable prices as wireline competition has done").

[41] *Franchising Order* at ¶ 50.

The Communities note that the Commission has recently received inquires from Senators John Kerry and Bernard Sanders requesting guidance on the efficacy of satellite competition as a governing effect on cable rates. A copy of each of the letters is attached hereto as Exhibit 3. The Communities hope that the Commission would share insights with the Senators into why satellite competition does not offer meaningful competition.

As the Commission crafts its response to Senator Kerry's request for examples of the impact rate regulation decertification has had on rates, we urge the Commission to call upon the Communities and our research.

We also hope that the Commission will heed Senator Sanders' insight that there are two primary reasons why satellite competition is not an effective standard for choice for all cable consumers. The Senator notes that not all viewers can employ satellite dishes due to topographic challenges such as a mountain or neighboring high-rise buildings. Second, "[C]able subscribers can access a vibrant array of public access content, such as city council meetings, boards of selectmen meetings, school board meetings, and other local and community events. Satellite does not provide that service."

The Communities are case studies for Senator Sander's explanation as to why satellite service is not a meaningful test for competition. Boston and the three commenting counties dedicate substantial resources to PEG channels. This allows cable consumers to be fully engaged members of the community, allowing them to watch their government at work, to obtain after school educational programs, or to listen to their fellow community members engaged in free speech. As Senator Sanders noted, the result has been that most consumers remain with the cable operator regardless of price.

In essence, the Commission is telling citizens of communities such as those filing comment here that the only way to send a market signal to an incumbent cable operator is to surrender those rights. But experience shows that even that approach does not work: cable operators' investment follows economic opportunity, not regulatory conditions.

VII. THE NOI PROVIDES AN IDEAL TIME TO EVALUATE CHANGES.

Finally, the Communities note that the time period covered by this NOI (2007 to 2010)[42] presents the Commission with an ideal snapshot of the world of franchising pre- and post- its *Franchising Orders* and state franchise laws. Only a few states had state franchise laws in place on December 31, 2006, and of those that had been enacted, most (other than Texas's) were less than six months old. Of the 20 state-wide franchise regimes that were enacted in response to the ILEC-led efforts, all have effective dates post-September 1, 2005, and 13 adopted legislation that would have been effective on January 1, 2007, or later.[43] Except for Texas, none of the 20 state laws would have been in place for more than 8 months as the review period covered by this NOI commences.

If the comments in this proceeding reveal that PEG channels and PEG support have been reduced over the time period covered in this notice, the Commission must examine what role the FCC's *Franchising Orders* and state franchise laws have had in that reduction. Likewise, if the Commission finds that prices for cable services continue to outpace inflation despite "competition" from satellite and other providers, it is likewise incumbent on the Commission to

[42] NOI at ¶ 53.

[43] States that adopted statewide franchise regimes with an effective date of January 1, 2007 or later are North Carolina, Michigan, Missouri, Florida, Iowa, Georgia, Nevada, Ohio, Illinois, Wisconsin, Connecticut, Tennessee, and Louisiana. No state has adopted a state wide franchise regime since Louisiana in 2008, and Texas (2005), Virginia, Indiana, Kansas, South Carolina, New Jersey and California state laws were enacted and effective prior to January 1, 2007.

make that fact known to Congress and to request that it reconsider the current standards for a finding of effective competition.

CONCLUSION

For all the foregoing reasons, Communities urge the Commission to carefully reexamine its past assumptions about the nature, scope, and effectiveness of competition in the video market, and to reassess its policies in light of a more accurate understanding of the market.

Respectfully submitted,

/s/ Gerard L. Lederer

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Attorneys for Anne Arundel County, Maryland; Montgomery County, Maryland; City of Boston, Massachusetts; and City of Laredo, Texas

June 8, 2011

EXHIBIT 1

City of Laredo, TX

Cable operators

We currently have:	**In 2007, we had:**
1 cable operator (Time Warner)	**1** cable operator (Time Warner)

Franchising Laws

The cable operator is providing service pursuant to:	**In 2007, they provided service pursuant to a :**
___✓___ state franchise	____✓___ state franchise

Consumers

The cable operator(s) is providing service to: (If more than one cable operator – in the aggregate)	**In 2007, the cable operator(s) provided service to: (If more than one cable operator – in the aggregate)**
29, 329	Unknown.

Consumer Choice

Today the cable operator offers service to	**In 2007, the cable operator individually offered service to**
There is no choice of wireline competitors in Laredo	There is no choice of wireline competitors in Laredo

PEG Channels

We currently have:	**In 2007, we had:**
___1_ public access channel(s)	_1_ public access channel(s)
___2_ educational channel(s	_2_ educational channel(s)
___1_ government channel(s)	_1_ government channel(s)

PEG Support

Today the cable operator(s) offers following PEG support	**In 2007, the cable operator individually offered service to**
1% of Gross Revenue as required by state franchise.	1% of Gross Revenue as required by state franchise.

Information provided by: Gerardo J Leal, Public Access media Services Manager

Anne Arundel County, Maryland

Cable operators

We currently have:	**In 2007, we had:**
3 cable operators	**3** cable operators

Franchising Laws

The cable operator is providing service pursuant to:	**In 2007, they provided service pursuant to a :**
__✓__ local franchise	__✓__ local franchise

Consumers

The cable operator(s) is providing service to: (If more than one cable operator – in the aggregate)	**In 2007, the cable operator(s) provided service to: (If more than one cable operator – in the aggregate)**
_156,902__ of consumers	__136,779__ of consumers.

Consumer Choice

Today the cable operator offers service to	**In 2007, the cable operator individually offered service to**
Broadstripe provides service to 9% of consumers in franchise area.	Broadstripe provided service to 20% of consumers in franchise area.
Comcast provides service to 30% of consumers in franchise area.	Comcast provided service to 47% of consumers in franchise area.
Verizon provides service to 37% of consumers in franchise area.	Verizon provides service to 3% of consumers in franchise area.

PEG Channels

We currently have:	**In 2007, we had:**
__**1**___ public access channel(s)	__**1**___ public access channel(s)
__2___ educational channel(s	__**2**___ educational channel(s)
__1___ government channel(s)	__**1**___ government channel(s)

PEG Support

Today the cable operator(s) offers following PEG support	**In 2007, the cable operator individually offered service to**
(Broadstripe) provides support in the amount of: (.98 amt per sub)	(Broadstripe) provided support in the amount of: (.98 amt per sub)
(Comcast) provides support in the amount of: (.98 amt per sub)	(Comcast) provided support in the amount of: (.98 amt per sub)
(Verizon) provides support in the amount of: (.98 amt per sub)	(Verizon) provided support in the amount of: (.98 amt per sub)

Information provided by: John Lyons, County's Cable Administrator

Montgomery County, Maryland

Cable operators

We currently have:	In 2007, we had:
3 cable operators	**3** cable operators

Franchising Laws

The cable operator is providing service pursuant to:	In 2007, they provided service pursuant to a :
__✓__ local franchise	__✓__ local franchise

Consumers

The cable operator(s) is providing service to: (If more than one cable operator – in the aggregate)	In 2007, the cable operator(s) provided service to: (If more than one cable operator – in the aggregate)
_248,162__ of consumers	__214,918__ of consumers.

Consumer Choice

Today the cable operator offers service to	In 2007, the cable operator individually offered service to
Comcast provides service to 54.8% of consumers in franchise area.	Comcast provided service to 82.2% of consumers in franchise area.
RCN provides service to 2.1% of consumers in franchise area.	RCN provided service to 4% of consumers in franchise area.
Verizon provides service to 43.05% of consumers in franchise area	Verizon provides service to 13.7% of consumers in franchise area.

PEG Channels

We currently have:	In 2007, we had:
__**2**___ public access channel(s)	__**2**___ public access channel(s)
__**5**___ educational channel(s	__**3**___ educational channel(s)
__**4**___ government channel(s)	__**4**___ government channel(s)

PEG Support

Today the cable operator(s) offers following PEG support	In 2007, the cable operator individually offered service to
Comcast operating 2,091,7723% RCN & Verizon 3% Gross revenue	Comcast operating 1,905,828 RCN & Verizon 3% Gross revenues

Information Provided by: Marjorie Williams, City of Boston, MA

Cable operators

We currently have:	In 2007, we had:
2cable operators (Comcast & RCN)	**2** cable operators (Comcast & RCN)

Franchising Laws

The cable operator is providing service pursuant to:	In 2007, they provided service pursuant to a :
__✓__ local franchise	__✓__ local franchise

Consumers

The cable operator(s) is providing service to: (If more than one cable operator – in the aggregate)	In 2007, the cable operator(s) provided service to: (If more than one cable operator – in the aggregate)
_Comcast – citywide – 170,000 RCN – citywide, approx. 16,000 in less than 1/3rd of the cities' neighborhoods	Comcast – about 10% less. RCN – about the same – growth has been static

Consumer Choice

Today the cable operator offers service to	In 2007, the cable operator individually offered service to
Comcast - citywide.	Comcast - citywide .
RCN – limited coverage in 6 of Boston's 14 neighborhoods	RCN – limited coverage in 6 of Boston's 14 neighborhoods

PEG Channels

We currently have:	In 2007, we had:
__2___ public access channel(s)	__**2**___ public access channel(s)
__1___ educational channel(s	__**1**___ educational channel(s)
__1___ government channel(s)	__**1**___ government channel(s)

PEG Support

Today the cable operator(s) offers following PEG support	In 2007, the cable operator individually offered service to
0.017% of GR	0.017% of GR

Information provided by: Mike Lynch, Director of Mayor's Cable, Video and Web Service Office

Fairfax County, Virginia

Cable operators

We currently have:	In 2007, we had:
3 cable operators	**3** cable operators

[**Cox serves entire County except for Reston; Verizon serves entire County (build-out about 85% complete); Comcast serves Reston only**]

Franchising Laws

The cable operator is providing service pursuant to:	In 2007, they provided service pursuant to a :
__✓__ local franchise	__✓__ local franchise
_____ state franchise	_____ state franchise

Consumers

The cable operator(s) is providing service to: (If more than one cable operator – in the aggregate)	In 2007, the cable operator(s) provided service to: (If more than one cable operator – in the aggregate)
_283,000__ of consumers	__250,000__ of consumers.

[**There were about 386,000 households in the County as of the end of 2009**]

Consumer Choice

Today the cable operator offers service to	In 2007, the cable operator individually offered service to
(Name of cable operator) provides service to __% of consumers in franchise area.	(Name of cable operator) provided service to __% of consumers in franchise area.
(Name of cable operator) provides service to __% of consumers in franchise area.	(Name of cable operator) provided service to __% of consumers in franchise area.
Add additional if needed	

(Cannot readily be determined given multiple operators in overlapping franchise areas)

PEG Channels

We currently have:	**In 2007, we had:**
__**4**___ public access channel(s)	__**4**___ public access channel(s)
__**5**___ educational channel(s	__**5**___ educational channel(s)
__**2**___ government channel(s)	__**2**___ government channel(s)

PEG Support

Today the cable operator(s) offers following PEG support	**In 2007, the cable operator individually offered service to**
Cox provides support in the amount of: 3% of gross revenue (as defined in agreement)	Cox provides support in the amount of: 3% of gross revenue (as defined in agreement)
Verizon provides support in the amount of: 3% of gross revenue (as defined in agreement)	Verizon provides support in the amount of: 3% of gross revenue (as defined in agreement)
Comcast (Reston only) provides support in the amount of: $0.30 per subscriber per month (automatically increased from $0.25 after 5 years per agreement § 7(c)(1))	Comcast (Reston only) provides support in the amount of: $0.25 per subscriber per month

Information Provided by: Frederick E. Ellrod III, Director, Communications Policy and Regulation Division, for Fairfax County

[*See generally* franchise documents on County's public Web site]

EXHIBIT 2

Thomas M. Menino, Mayor
Mike Lynch, Director

Mayor's Office of Cable and Web Services
Dept. of Innovation and Technology
City of Boston
43 Hawkins Street, Boston, Massachusetts 02114
Telephone: 617/635-3112
E-mail: mike.lynch@cityofboston.gov

May 18, 2011

Testimony: In Opposition to S. 1687,
"An Act Promoting Consumer Choice and Competition of Cable Service"

Before: The Honorable John Keenan, House Chair
The Honorable Benjamin Downing, Senate Chair
Joint Committee on Telecommunications, Utilities and Energy
Hearing Room A-1, State House, Boston, MA 02133

Chairman Keenan, Chairman Downing, and
Members of the Committee on Telecommunications, Utilities and Energy:

Thank you for the opportunity to speak today on behalf of the Issuing Authority for the City of Boston, Mayor Thomas M. Menino.

I would like to register our opposition to Senate 1687, "An Act Promoting Consumer Choice and Competition of Cable Service."

We believe that the bill provides incentive and opportunity for Verizon and other companies to obtain a local franchise by circumventing local authority.

The deletions and additions to Sections 9 and 14 of MGL 166-A appear to pre-empt local control of the cable franchising process and deny local government and its citizens any opportunity to reasonable negotiate license terms and conditions.

The City of Boston believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis. We've done it in Boston with RCN.

But, the 90-day rule proposed in this bill undercuts local government. This drastic reduction in time limits our ability to communicate issues with residents, thereby denying consumers a role in this decision.

The 90-day timeline is not only a disservice to consumers; it would be a big boon to the cable provider. The cable company is a master of the slow response. This rule would essentially say that the last one to the finish line wins.

In Boston's experience over the last 30 years, we have renewed, amended, dissolved and issued new licenses a number of times. Inevitably, we will have 30 or more issues to resolve with the cable provider. These issues often involve complex and rapidly changing technology; intricate financial, right-of-way and construction questions and the needs and interests of an increasingly diverse population. They include such items as:

- What type of system they will build, how many nodes, how much capacity & how long it will take to build,
- Insurance, indemnification, bonding;
- Local management & customer service;
- Public and private Right-of-Way procedures;
- Public benefits and customer service requirements;
- Fee calculations and network contributions; and so on.

Mayor Thomas M. Menino supports and encourages the introduction of new technologies and competition. He established an Office of Telecommunications as a point-of-entry for broadband, wireless, and telecommunications services seeking to provide services to Boston's residents and businesses.

Boston established the first fiber optic policy within city government for its Public Right of Way (PROW) management through the Public Improvement Commission (PIC) that became a model for other local governments.

Finally, Boston's mayor and other city officials have met a number of times over the last six years with Verizon of Massachusetts to discuss system upgrades, new services and the potential for cable franchising. The purpose of these meetings has been a mutual dialogue on how best to assist Verizon as they enter their new video market and provide competitive service in Boston.

We have spent six years trying to get Verizon to pursue a cable franchise in Boston. We have invited Verizon to engage in a Boston cable franchising process that will result in access for <u>all</u> our city residents to the advanced broadband network FiOS that Verizon is building elsewhere in the Commonwealth.

In Boston, we have a solid history of negotiating, renewing and transferring contracts with cable and telecommunications providers that are good for the industry and good for our residents. For example, our agreements with two Distributed Antenna Systems improve mobile phone service and introduce a new competitor in Boston, Metro PCS.

We know that the City of Boston can issue the right local franchise for Verizon as a new entrant into the video services field on a timely basis.

Cable franchising is a local issue for two reasons:

1. the customers are local, and,
2. the streets and poles that hold their wires are local.

Conclusions

The local cable franchising process in Massachusetts functions well for Boston and for our providers. Working with the industry, we see to it that the needs of our local residents and communities are met, while we balance the business needs of cable providers to use our Public Right of Way.

Working with the Commonwealth and other Massachusetts communities, we seek to make sure that good service and choice are available for all our residents and all our neighborhoods.

Further, Boston has demonstrated a strong track record of efficient management as a Local Franchising Authority. We question the proposed new legislation and see it as unnecessary.

The City of Boston respectfully requests that the Legislature do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under state regulations (207 C.M.R.) and state law, MGL 166A with regard to either existing cable service providers or new entrants.

Respectfully submitted for the
City of Boston, Massachusetts

By: Mike Lynch, Mayor's Cable & Web Office/IT
on behalf of the Issuing Authority,
Thomas M. Menino,
Mayor of Boston
1 City Hall Square
Boston, Massachusetts

cc: The Honorable Thomas M. Menino, Mayor of Boston
William G. Oates, Chief Information Officer
William F. Sinnott, Corporation Counsel
Dina Siegal, Intergovernmental Relations

EXHIBIT 3

JOHN KERRY
MASSACHUSETTS

COMMITTEES:
COMMERCE, SCIENCE, AND TRANSPORTATION
FINANCE
FOREIGN RELATIONS
SMALL BUSINESS

United States Senate

WASHINGTON, DC 20510–2102

May 10, 2011

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, SW
Room 8B201
Washington, DC 20554

Dear Chairman Genachowski:

I am writing to follow up on Mayor Menino's recent petition regarding unchecked rising cable rates in Boston. I share Mayor Menino's concerns about the consequences of price increases on families that can least afford it.

As you know, telecommunications deregulation was supposed to dramatically increase competition and lower rates. There is no doubt that it has successfully spurred innovation and in some cases lowered prices. Yet, while media profits rise and a few cable and telephone companies grow through investment and acquisition, cable competition in Boston has not been a check on rising rates. As wages for too many families remain stagnant, the skyrocketing basic cable rates in recent years have put increasing pressure on family budgets that are already squeezed.

A recent study commissioned by Mayor Menino's office confirmed that the basic cable rate for one company within the City of Boston jumped from $9.05 per month in 2008 to $15.80 in 2011. After holding increases in the basic tier of service rate below 6 percent each year from 2002 to 2009, the rate suddenly jumped by more than 60 percent in just the last three years. At the same time, in neighboring areas that are still rate regulated by the FCC's regulatory scheme, prices have grown significantly more slowly. In fact, this study concludes that this company has collected around $24 million more from Boston subscribers since 2008 than they could have when compared to the regulated rates consumers pay in surrounding areas. Additionally, this study notes that other unregulated communities in Massachusetts have seen similarly large price increases. Specifically, basic cable rates in Brookline and Everett jumped 17.6 percent and 16.7 percent, respectively, in the past year alone.

Mayor Menino is right to ask for an explanation of why that is, whether it requires you to revisit your finding of competition in Boston and other markets like it, and what you recommend to families facing rising prices for access to basic cable services. Given the importance of access to service and the growth in the cost of media for families, I am particularly concerned about the rise in what would have been rate regulated services without the FCC finding of competition.

Therefore, I hope you will provide the Senate Commerce Committee with an analysis of the price effects the Effective Competition determination has had on basic cable rates using a

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sampling of markets where this determination has been made over the last ten years, including Boston and other cities in Massachusetts. I hope to ascertain whether rate hikes are specific to Boston or systemic, if the hikes are justified, and what the factors are that can effectively check those rate hikes. If one or two competitors to the dominant provider is not having the expected price effect and prices are rising in tandem among the few providers that exist, then we must examine the benefits those price increases represent for consumers and how the increases affect working families.

Thank you in advance for your attention to this matter.

Sincerely,

John F. Kerry

John F. Kerry

BERNARD SANDERS
VERMONT

COMMITTEES:
BUDGET
ENERGY AND NATURAL RESOURCES
ENVIRONMENT AND PUBLIC WORKS
HEALTH, EDUCATION, LABOR, AND PENSIONS
VETERANS' AFFAIRS
JOINT ECONOMIC

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www.sanders.senate.gov

May 23, 2011

The Honorable Julius Genachowski
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20054

Dear Chairman Genachowski:

As you no doubt know, the United States is in the midst of a severe recession. Unemployment is high, and millions of Americans have experienced significant declines in their incomes. With family budgets stretched thin, I write to request that you develop policies that stop the cost of basic cable television from continuing to spiral out of control.

Over the years, I have received countless letters demanding that we do something about cable rates. This is no surprise given what has been happening in Vermont in the last two years alone. At the end of 2009, just two of Comcast's ten Vermont service areas charged more than $20 a month for basic cable packages. One year later, six in ten service areas in Vermont exceeded the $20 mark. On average, during that one year period, Comcast increased the price of its basic cable packages $2.14 a month. This amounts to a 10% increase at a time when inflation was virtually nonexistent. To make matters worse, as prices increased, the number of channels offered to some Vermont subscribers declined.[1]

My staff has spoken with the Public Service Department in the State of Vermont, and they would like to better protect the interest of Vermont consumers. Unfortunately, decisions made by the FCC over the last ten years have tied the hands of state regulators and rendered them powerless to address this situation.

In a series of nearly identical decisions dating from the late 1990s,[2] you relied on your own regulation, 47 C.F.R. 76.905(g), to hold that Vermont cannot regulate the basic cable tier

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[1] This data is on file in my office and available upon request.
[2] E.g., Comcast Cable Commc'n, 25 F.C.C.R. 5885 (2010); The Hellicon Group, 17 F.C.C.R. 16636 (2002); The Hellicon Group, 17 F.C.C.R. 16632 (2002); The Hellicon Group, 17 F.C.C.R. 1515 (2002); Frontervision Operating Partners, 16 F.C.C.R. 5228 (2001); Mountain Cable Co., 14 F.C.C.R. 13994 (1999).

because satellite networks such as DirecTV, Inc., and DISH Network offer sufficiently comparable programming to effectively compete with the dominant cable provider.[3] From a practical point of view, however, there are huge differences between satellite networks and cable networks, even though there may be an overlap in the channels they offer.

Specifically, satellite networks are different than cable networks in terms of (1) accessibility and (2) access to public education government ("PEG") channels. With regard to the first point, the simple reality is that satellite cannot be considered effective competition when many Vermonters are simply unable to access it. Your decisions make the explicit presumption that satellite is "technically available due to its nation-wide . . . footprint" and "actually available if households in a franchise area are made reasonably aware" of it. This presumption falls short of the mark in mountainous environments like Vermont's where, due to geographic realities, satellite is not an option for a significant number of households.

Second, satellite is not an adequate substitute for cable because it does not offer PEG programming, which serves as a needed source of information for communities throughout Vermont. In Vermont, cable subscribers can access a vibrant array of public access content, such as city council meetings, boards of selectmen meetings, school board meetings, and other local and community events. Satellite does not provide that service.

It is no wonder, then, that supposed competition from satellite has failed to hold down Comcast's rates. The many Vermonters who cannot access satellite for geographic reasons, and the many more who want access to PEG channels, have no choice but to pay Comcast for basic cable. As of December 31, Comcast had at least 113,000 subscribers in Vermont. Many of these are captive customers, and for this reason Comcast has been able to raise its rates again and again without justification.

This is an important issue, not only for the state of Vermont, but for the nation as a whole. I would therefore ask that you reconsider the regulation determining that satellite is an adequate alternative to cable, 47 C.F.R. 76.905(g), and the decisions precluding Vermont from regulating basic rates that were based on that regulation.

Sincerely,

Bernard Sanders

BERNARD SANDERS

[3] Although I strongly object to the "effective competition" standard, I understand that you are bound by it, as it comes from a congressional mandate. My request is not that you ignore this standard but rather that you apply it in a different manner such that cable providers are not insulated from regulation by the existence of satellite services.