Before 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	)	

REPLY COMMENTS OF COMMUNICATIONS SUPPORT GROUP, INC. (CSG)

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INTRODUCTION

Communications Support Group (CSG) provides consultant services related to financial audits, compliance audits, franchise administration, franchise enforcement, and renewal and transfer proceedings associated with communications, telephone, cable television and Open Video System ("OVS") systems.[1] For more than twenty years, we have served more than 85 California municipalities in the following areas:

- Telecommunications Policy Analysis and Regulatory Action Planning
- Cable Television Performance Appraisals and Technical Research
- Franchise Fee and Utility Tax Audits and Reviews
- Cable Television Franchise Renewals and Transfers
- Community Needs Assessments
- Review of OVS Certification Requests
- Rate Regulation
- Public, Educational and Governmental ("PEG") Access (or "PEG") Performance Audits
- Cable TV Master Plans for Governmental and Educational Access

The Notice of Proposed Rulemaking ("NPRM") contained in MB Docket No. 05-311 has elicited a considerable amount of interest across the country, generating approximately 4,000 written comments submitted to the Commission. Based on CSG's review of the Regional Bell Operating Companies' ("RBOCs'") extensive comments,[2] these companies have devoted considerable resources to the matter. Yet, despite massive expenditures in words, RBOC industry-friendly studies, and RBOC industry-friendly consultants and attorneys, the RBOCs have:

- Clearly failed to demonstrate that the Commission has the authority to construe or enforce Section 621(a)(1) of the Cable Communications Policy Act of 1984, as amended ("Cable Act");
- Clearly failed to demonstrate that the Commission has the authority to adopt rules implementing Section 621(a)(1); and
- Badly failed to convincingly advance the fiction that local franchising authorities ("LFAs") have unreasonably refused to grant competitive cable television and other multichannel video franchises to the RBOCs.

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[1] Gregory Fuentes, Esq. assisted in preparing several sections of these "Reply Comments."

[2] The initial written comments submitted by Verizon, AT&T, Bellsouth, and Qwest numbered approximately 400 pages.

The statutory framework that Congress established in the mid-1990s for RBOC activity as multichannel video providers has provided RBOCs numerous reasonable avenues of entry into these markets. Yet, until fairly recently, the RBOCs have generally chosen not to avail themselves of these opportunities. The RBOCs, not LFAs, bear the primary responsibility for the RBOCs' limited penetration into these markets.

The Commission should forego adopting Section 621(a)(1) rules. The Commission should refrain from engaging in unauthorized activity that will likely lead to a wastage of the Commission's limited resources in unnecessary litigation in which the Commission is unlikely to prevail. Rather, the Commission would better serve the public by devoting these resources to areas where the Commission actually has the authority to act—such as those involving emergency communications systems, which apparently have performed far from optimally during recent natural disasters, such as Hurricane Katrina.

Additionally, the Commission should refrain from relying upon or including in documents authored by the Commission any allegations concerning LFAs that fail to identify LFAs so that these allegations can be independently verified. Unfortunately, many of the comments submitted to the Commission by the RBOCs in this NPRM are rife with such unsubstantiated allegations.

Point 1 - The Commission neither has the authority to construe or enforce Section 621(a)(1) nor has the authority to adopt rules implementing Section 621(a)(1).

With respect to this NPRM; on February 13, 2006, the National Association of Telecommunications Officers and Advisors ("NATOA"), the National League of Cities ("NLC"), the National Association of Counties, the U.S. Conference of Mayors, the Alliance for Community Media, and the Alliance for Communications Democracy filed joint comments (the "NATOA et al. Comments"). Additionally, on February 13, 2006, the Commission received related comments filed by the law firm of Rutan & Tucker on behalf of several California LFAs.

These two sets of comments very ably demonstrate that: (a) the Commission does not have the authority to construe or enforce Section 621(a)(1); and (b) the Commission does not have the authority to adopt rules implementing Section 621(a)(1). Although comments to the contrary filed by the RBOCs are extensive, they are ultimately unpersuasive.

Like many government agencies, the Commission has resources that are limited in light of the important responsibilities and challenges it faces. For example, the Commission has recently seen fit to create a Public Safety and Homeland Security Bureau, a project that will undoubtedly require considerable expenditures of Commission time and other resources.

Now, more than ever, the Commission should refrain from adopting a course that will generate unnecessary litigation concerning which the Commission is unlikely to prevail.

Point 2 – The RBOCs limited activity as multichannel video providers is primarily due to the RBOCs' decisions, not regulatory hurdles or LFA action or inaction. The RBOCs' claims regarding LFAs and the current franchising process unreasonably impeding video franchise applications have little merit.

In their initial written comments in this NPRM (all dated February 13, 2006), the RBOCS repeatedly place the blame for their limited penetration in the multichannel video marketplace on regulatory hurdles or other obstacles created by LFAs.[3] However, such allegations are unfounded.

First, as noted in the NATOA et al. Comments (pages 24-26); the RBOCs, since 1996, have had four different legal means to enter the multichannel video market as providers, Yet, RBOCs have displayed relatively little interest in either becoming multichannel video providers—in numerous cases abandoning video systems that they have either acquired and/or built. Second, when RBOCs have displayed such interest, in numerous areas, the RBOCs have refused to pursue franchises. Third, when RBOCs have pursued multichannel video franchises, the RBOCs have often delayed and/or prevented completion of the process by insisting on unreasonable franchise terms.

Since 1996, pursuant to 47 U.S.C. § 651(a)(1)(4), RBOCs and other common carriers have been legally able to enter multichannel video markets as broadcast or wireless providers under Title III of the Communications Act of 1934 ("Communications Act"); as video common carriers under Title II of the Communications Act; as cable operators under Title VI of the Communications Act; or as OVS providers pursuant to 47 U.S.C. § 653. However, RBOCs currently have a limited presence as multichannel video providers, <u>primarily because RBOCs have repeatedly chosen to refrain from becoming such providers or have affirmatively chosen to leave the video markets they had entered</u>.

Many entities with resources far less substantial than those of the RBOCs have applied for and obtained numerous cable television or OVS franchises from LFAs throughout the United States. In California, such entities currently operating video systems include Champion Broadband, Surewest Communications, and RCN Telecomm Services, Inc. Additionally, RCN and WideOpen West ("WOW") operates in several major cities in other parts of the country—such as New York, Chicago, and Boston--having entered into more than two hundred cable television and OVS agreements with LFAs. Pursuant to these agreements, RCN and WOW serve approximately 1,200,000 customers.[4]

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[3] See, for example: *Comments of Verizon on Video Franchising*, "Summary" i, (" . . . there is no question that the current local franchising process generates unwarranted delays and is engrained with overreaching practices. . . ."); Comments of Bellsouth Corporation and Bellsouth Entertainment, LLC, p. 68 (". . . . the franchising process hampers video competition under even the best of circumstances. Moreover, this process is largely unnecessary. . . ."); *Comments of Qwest Communications International Inc*., p.29 ("[C]ompetition is being routinely thwarted, often at the behest of incumbent monopoly providers, by LFA delays in action and by unreasonable build-out requirements."); Comments of AT&T Inc., p. 26 ("There are numerous other examples of local entry regulation thwarting competitive entry.").

[4] See, e.g., footnote 5, below, and RCN Telecomm Services, Inc.'s February 13, 2006 "Reply Comments" in this NPRM, pp. 1-2.

Both AT&T, in its previous incarnation as SBC, and Verizon have had a striking history of abandoning video markets that entities they controlled had entered prior to SBC and Verizon attaining said control. For example, after taking over the previously independent RBOC, Ameritech; SBC, in 2001-2002, sold numerous cable television systems that Americast (Americtech's video affiliate) had built in the Midwest. At the time of this sale, these Americast systems served approximately 300,000 customers.[5] SBC took the same approach in California, terminating several video projects that Pacific Bell had begun throughout that State, including video system construction in major cities, such as San Diego and San Jose.[6] Likewise, in recent years, Verizon has sold several state-of-the-art cable television systems in California and Florida, serving over 100,000 customers.[7]

AT&T has little recent firsthand experience in negotiating and working with actual multichannel video franchises. For example, AT&T has repeatedly taken the highly questionable position that the video components of its Project Lightspeed offerings do not constitute a cable television service for which AT&T requires cable franchises from pertinent LFAs.[8] Consequently, AT&T's comments regarding the manner in which the franchising process actually operates should be accorded little weight.

Although RBOCs have repeatedly criticized LFAs for alleged delays in obtaining video franchises, many of these delays are attributable to RBOCs insisting on unreasonable franchise terms to which many LFAs typically should not and will not agree. Verizon's "model" cable television franchise agreements often contain such unreasonable terms, some of which have even been incorporated into actual ordinances adopted by some LFAs. For example, a cable television franchise agreement into which the City of Sachse, Texas and

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[5] Linda Haugsted, *WOW Takes Over ex-Americast Systems*, Multichannel News, December 10, 2001, available at http://www.multichannel.com/article/CA185597.html;
Monica Hogan, *DBS, Overbuilders Satisfy Subs*, Multichannel News, September 10, 2001, available at http://www.multichannel.com/article/CA155387.html.

[6] *AT&T Gets Hung up in San Jose*, Multichannel News, August 8, 2000, available at http://www.multichannel.com/article/CA19662.html; NetAction, How *The Bells Stole America's Digital Future, (Part 1.3 supplemental)*, available at http://www.netaction.org/broadband/bells/years.html

[7] Mike Farrell, *Adelphia Buys Verizon's Overbuilds*, Multichannel News, March 11, 2002, available at http://www.multichannel.com/article/CA200158.html; Linda Haugsted, *Adelphia's Verizon Buy Heads to Court*, Multichannel News, available at http://www.multichannel.com/article/CA204545.html.

[8] See, for example, SBC Ex Parte filing, *IP-Enabled Services*, WC Docket No. 04-36 (filed Sept. 14, 2005). That said, AT&T is apparently pursuing a written agreement with San Ramon, California concerning the provision of AT&T video services in that city that would contain many elements of many cable television franchise agreements. January 24, 2006 "City Council Staff Report" to the City Council/City Manager of San Ramon, California concerning *Resolution No. 2006-15 – Authorizing the Mayor to Execute an Agreement as Recommended by the City Manager and Approved as to Form by the City Attorney Between the City of San Ramon and AT&T to Permit the Upgrading and Installation of Facilities to Support Internet Protocol. Television (IPTV) Service (Project Lightspeed).*

Verizon recently entered into has the following terms that many LFAs would find unacceptable:

1. Customer service standards that do not go into effect until six months after the effective date of the franchise;
2. An "effective date" for the franchise that does not occur until the franchisee actually provides service on a commercial basis, which fails to provide reasonable protections to the LFA;
3. Provisions that allow the franchisee to unilaterally terminate the franchise agreement if the LFA exercises its police powers, which is legally problematic;
4. A definition of "gross revenues" upon which franchise fees are paid that contain numerous loopholes; and
5. An overly broad definition of "force majeure."

These listed provisions are only a few of the problematic elements of this and other franchises that Verizon has obtained or that Verizon has proposed to my clients and other LFAs. Much as LFAs desire to assist promulgating competition in the video marketplace, Verizon's repeated insistence on such unreasonable provisions delays the conclusion of the necessary negotiations. In light of the many successful negotiations leading to competitive video franchises handled by LFAs, it is clear that RBOCs insisting on unreasonable terms—not recalcitrant LFAs—are often the primary reason that RBOCs are unable to expeditiously obtain competitive video franchises.

Additionally, we find Verizon's and AT&T's comments generally misleading about the actual experience of cities in the franchising process. As noted above, smaller broadband competitors, such as WOW, Knology and RCN with a fraction of the Bells' resources have managed to obtain franchises to compete with cable companies in hundreds of communities all across America.[9] RCN indicates in the abovementioned initial comments to this NPRM that franchise agreements have produced substantial benefits for both consumers and local communities. RCN provides fiber optic data networks, channel capacity for local use, financial support for public, educational, and governmental access programming, cable drops to public buildings, libraries, and schools, and other contributions to the communities it serves. In addition, RCN provides substantial revenues to local communities in the form of franchise fees that typically equal 5% of gross cable revenues.

In two cases that I worked on personally, the southern California cities of Arcadia and Monrovia granted OVS franchises to even a small, relatively unknown, competitive local exchange carrier, Champion Broadband, in less than six months after the date the company applied for OVS status at the Commission. Champion Broadband filed a Form 1275 on the 10th day of February, 2005 to apply for Certification to operate an OVS system in these two cities. On June 30, 2005, the California PUC granted Champion Broadband California,

[9] RCN comment in the NPRM states that RCN negotiated approximately 130 local cable franchise and OVS agreements, and is operating successfully under more than 100 active agreements today.

LLC a certificate of public convenience and necessity for authority to provide limited facilities-base and resold local exchange and interexchange telecommunications as a competitive local exchange carrier. By October 18, 2006 and by December 6, 2005 the respective cities awarded competitive franchises with level playing field considerations. These events contradict the assertions by Verizon and other RBOCs regarding unreasonable barriers to entry.

Protection of the public interest also requires a long standing past-practice of public input, scrutiny, and legislative review. In crafting a competitive franchise agreement, responsible LFAs typically balance fairness concerns raised by the incumbent cable TV operators on the one hand and barrier to entry concerns voiced by the would-be competitors on the other. While franchises are contractual in nature, the franchising process generally provides the incumbent cable operators certain due process rights, creating additional obligations for LFAs. For instance, the City of Pasadena, California, in its initial comments to the Commission in this NPRM, describes a process pursuant to the City's Charter which requires that the City adopt a resolution regarding its intent to grant a franchise; this resolution is published and serves as notice of the public hearing required prior to the grant of any franchise. The Charter further requires that franchises be granted by ordinance, which must be read twice prior to adoption. In Pasadena, the framework for regulation of cable TV, OVS, and other video and telecommunications service providers is provided in Title 18 of the Municipal Code, which Pasadena updated in May 2000 to address important changes in telecommunications regulation and customer service standards. Among the code modifications were updates to procedures to facilitate processing of competitive franchise applications from both cable TV and OVS overbuilders.

In our personal experience, telephone video entrants such as Verizon, have entered discussions with the expectation that a "model franchise" agreement be the format used to award the franchise. This "model franchise" often is found to lack specifications for PEG, video system build-outs, and construction standards. Any delays that I have experienced in awarding cable television franchises to Verizon have stemmed from the extra time needed for LFAs to evaluate and compare franchise language being requested in Verizon's "model boilerplate" with language and requirements contained in LFAs' existing "cable franchises. In California, this extra time is particularly warranted to assure that LFAs comply with state law parity requirements.

Point 3 –Many of the allegations concerning LFA action and/or inaction in the area of video franchising fail to identify the LFAs in question. The Commission should not rely on such unsubstantiated allegations in its decision-making process and should not accord these allegations any weight in the documents the Commission generates.

The RBOCs have been extremely critical of LFAs and of the considerable authority that Congress has delegated to LFAs in the area of multichannel video franchising. Unfortunately, many of the LFA-critical comments do not identify the LFAs that have allegedly engaged in counterproductive behavior. Consequently, these unidentified LFAs generally cannot defend themselves or provide necessary corrections or explanatory or mitigating factors concerning the behavior by these LFAs.

For the Commission to rely upon such unsubstantiated allegations in this NPRM or any other decision-making process would constitute extremely poor public policy. Reliance upon such improperly verified allegations would be especially egregious in light of the fact that: (a) the Commission is considering acting in an area over which it has no authority (Section 621(a)(1)); and (b) the Commission is also considering abrogating LFAs' longstanding Congressionally mandated authority over multichannel video franchising and LFAs' control over their public rights-of-way--the latter of which long preceded the Communications Act.

Verizon's and ATT's comments contain numerous criticisms of LFAs that fail to identify them. For example, Verizon's comments say:

- "In Virginia, many LFAs demand 'acceptance fees' at the time Verizon is awarded a franchise. Examples include a county that required Verizon to pay $225,000; one town that required $100,000 and two other cities that required $50,000 each." (Attachment A Declaration of Marilyn O'Connell at ¶ 35).
- "Two other Virginia LFAs required applications fees … of $10,00 and $50,000, respectively" (*id.*)
- "And other LFAs across the county demand similar fees that add tens of thousands of dollars." (Attachment A Declaration of Marilyn O'Connell at ¶ 36).

By providing no specific names, the RBOCs have vilified LFAs, with no specifics and no citations—thus, not needing to notify the LFAs in question, to the extent that they are truly associated with the allegations. Where allegations against LFAs are not accompanied with necessary details, the Commission should not give these allegations any weight in this rulemaking. We ask the Commission to disregard unsubstantiated allegations which cannot be verified by the FCC or anyone else.

Point 4 – Cooperative action by LFAs are often beneficial because they streamline the franchising process.

The Commission to not take seriously the comments of AT&T (at p. 29), alleging that "Ad hoc coalitions or working groups of municipalities have likewise tended to worsen, not cure, the entry barriers created by local franchise authorities, fostering a race to the bottom in which individual LFA wish lists are combined to create even more onerous conditions on entry."

To the contrary, we are aware of numerous LFAs across the country, and some that I have worked with directly that operate as commissions, consortia, or intergovernmental agencies involved in franchising that have eliminated barriers to entry and sped the processing of competitive video and cable television franchise applications.[10] These groups of local

[10] For example, the Cities of Arcadia, Brea, Chino, Diamond Bar, Fullerton, Arcadia, Manhattan Beach, Monrovia, Moreno Valley, Redondo Beach, and San Bernardino have worked together in various groups and

governments actually speed entry to market, because, at a minimum, they eliminate much of the time that would otherwise be spent negotiating with multiple communities individually, and often reduce the overall costs of review and administration.

As discussed in Pasadena's comments; in June 2005, Champion Broadband submitted a complete OVS franchise application to the City. During the year which followed, Pasadena coordinated and shared information with its neighboring cities of Arcadia and Monrovia. The three cities conducted mutual requests for information regarding Champion Broadband's financial qualifications and shared in the drafting process that allowed two cities to grant franchises by the end of 2005.

Pasadena's comments also note that the City has recently been approached by AT&T for approval of an upgrade to its local infrastructure to facilitate higher-speed data and video services. Many other LFAs in California have received similar requests. Accordingly, several LFAs in southern and northern California have exchanged information between one another through common trade associations such as NATOA and SCAN NATOA (a NATOA chapter representing the States of California and Nevada). This sharing of information is beneficial, not something likely to "worsen" entry barriers as alleged by AT&T comments.

Point 5 –PEG Access Programming Merits Federal and State Protection.

The NATOA et al. Comments well describe the multichannel video regulatory framework created by Congress whereby multichannel video franchising is wisely delegated to LFAs. On pages 38-39, these comments note that: (a) this Congressional framework gives considerable authority to LFAs in the areas of PEG Access, institutional networks ("I-Nets"), video system build-outs, and consumer service protection; and (b) this delegation is warranted, in large part, because LFAs are the governmental entities that can be most responsive to local needs.

Locally produced video programming performs an important civic function by providing essential local news and information. Under the existing law, local governments may require that a certain amount of cable system capacity and financial support for use of that capacity be set aside for the local communities' use. This capacity is most often used in the form of PEG Access channels carried on cable or OVS systems. Once an LFA has established the required number of channels and amount of financial support required to meet community needs, the LFA then determines the nature of the use, which may be mixed between any of the three "access: categories. Public access channels are set aside for the public and are often run by a free-standing non-profit entity. Educational access channels are typically largely reserved for local educational institutions. Government access channels allow citizens to view city and county governmental meetings, and watch a wide variety of programming about their local communities that would not be offered on commercial television. Whether video coverage of governmental meetings, information

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capacities on certain cable franchise transfers. As noted herein, Pasadena, Arcadia, and Monrovia have worked together on OVS applications and franchise agreements.

about government services or special programs, local law enforcement's most wanted persons, or school closings or classroom instruction, PEG access programming disseminates extremely valuable information to in a cost-effective manner to our constituents. Local governments continue to make innovative uses of this programming capacity as new interactive technology allows more valuable information to be available to our constituents.[11]

PEG access channel capacity, facilities and equipment requirements, along with I-Net requirements, are among the most vital elements of the local community cable-related needs and interests that the Cable Act preserves and protects. Because they are based on each community's own unique local needs, PEG and I-Net requirements often vary considerably from community to adjoining community, which is precisely what Congress intended. For example, while some communities require significant capacity for PEG or I-Net capacity, others seek little or none.

We are encouraged that many telephone industry executives and staff tell us that they fully support local governments' management and control of rights-of-way; that they are willing to pay the same fees as cable providers; that they are willing to provide the capacity and support for PEG access programming, and even that they are aware of and agree to carry emergency alert information on their systems. We hope that they will follow through on their public statements and work closely with local government to preserve core franchise functions.

That said, at least one company, AT&T, generally asserts that it is not subject to current franchising requirements and it does not have to meet the above important obligations to the public. And both Verizon and AT&T are often unwilling to pay franchise fees on the same gross revenues as cable or to permit the use of audits to ensure proper payment. Futher, AT&T has stated that customer service protections are unnecessary, yet provides little or no recourse to consumers.

The following comments filed with the Commission by Dr. George Stoney, Department of Film and Television, Undergraduate Division, New York University are especially instructive:

> All the above experience has deepened my conviction that when given the opportunity ordinary citizens of the greatest variety in terms of age, educational level, ethnicity and community concerns can and will make responsible use of the opportunity provided by the existence of these facilities and access to channels.
>
> Like public libraries, access centers need professional guidance (which takes steady funding) and a keen sense of what the localities need and may reasonably expect. Unlike these libraries, access is supported only by customers of the associated video services.

[11] NATOA's President's Lori Panzino-Tillery comments before the FCC in Keller, TX Testimony January 31, 2006, Pages 7- 8 of 20

Particularly worthy as justification for preserving local franchise requirements for PEG Access is the considerable amount of continuity in the use of PEG access channels. Cities across the country are actively using their access channels for many valuable purposes, including:

- Video bulletin boards with text and graphics for community announcements.
- Coverage of community planning forums, town hall meetings, and neighborhood board meetings.
- Community-produced television programming for special interests such as seniors, non-English-speakers, ethnic and cultural groups, youth, people with disabilities, and advocacy groups.
- Staff-produced television programming on topics of interest to the local community.
- Dedicated channel capacity specifically for non-profit organizations to air locally-produced programming.
- Dedicated channel capacity specifically for religious organizations to air locally-produced programming.
- Hotline studios for live, interactive programs that allow local experts to answer viewer questions.
- Free viewing of video service at selected public sites.
- Local news coverage not available on local broadcast stations.
- Media literacy and production training for neighborhood-based community organizations and individuals.
- Video production courses.
- Video production facilities including studio, field, editing, and remote van.
- Support to media training centers in local schools, enhancing learning opportunities for students.
- Satellite program reception and redistribution by the local School District.
- Local political coverage, candidate platform statements and candidate debates during campaign season.
- Distance learning programming delivered to public and private institutions, facilitating distribution of for-credit instruction, such as that offered through the Pasadena City College.
- Gavel-to-gavel coverage of educational governance proceedings by the School District.
- Homework hotline programming delivered to students' homes via video.
- Distribution of community college and university educational programming.

- Internet access for members of the public at the Community Access Corporation's facility.
- Unique non-local programming, such as NASA-TV, available via satellite feed.
- Gavel-to-gavel coverage of state legislative sessions, hearings, and other select proceedings on issues of community interest, such as recent state legislature liquor store nuisance hearings.
- Gavel-to-gavel coverage of local government meetings, hearings and other select local governmental proceedings.
- Election night coverage.
- Local services provided at satellite city facilities via I-Net and cable modem.

Finally, we emphasize that strong system interconnection provisions are necessary to maximize the value of local access channels when more than one video provider operates in a community. Verizon has shown some willingness in its model franchise agreements to meet such interconnection requirements.[12] However, language in subsequent sections of the recently negotiated franchise agreement between Verizon and the City of Hermosa Beach, CA contains significant loopholes allowing nonperformance.

> 6.1.4.1. *Interconnection Procedure.* Within 30 days of the Service Date, Franchisee shall initiate negotiations with the owner(s) and operator(s) of all Other System(s) to determine their equitable share of costs for both construction and operation of the interconnection link. Franchisee shall negotiate in good faith with existing cable operator(s) respecting reasonable, mutually convenient, cost-effective, and technically viable interconnection points, methods, terms and conditions. LFA shall require the existing cable operator(s) to provide such interconnection to Franchisee on reasonable terms and conditions. The construction costs and ongoing expenses of interconnection shall be fairly shared between Franchisee and the existing cable operator(s). Franchisee and the existing cable operator(s) shall negotiate the precise terms and conditions of an interconnection agreement. LFA shall use its best efforts to facilitate these negotiations.
>
> 6.1.4.2. *Relief.* If the parties are unable to reach agreement on the terms of interconnection, including, but not limited to, compensation and timing, the dispute shall be submitted to LFA for resolution. Franchisee shall be granted reasonable extensions of time to interconnect, which shall be granted if Franchisee has negotiated in good faith and has failed to obtain an approval from the owner or operator of the Other System(s). If the cost of interconnection would be unreasonable, interconnection is not technically feasible or would cause an unacceptable increase in Subscriber rates, or if an existing cable operator will not agree to reasonable terms and conditions of interconnection, Franchisee's failure to comply with the obligation to

[12] Section 5.2 of Hermosa Beach Franchise on *Interconnection* states: "The Franchisee shall design its Cable System so that it may be interconnected with other cable systems in the Franchise Area. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods."

carry PEG programming originating on the cable system of the existing cable operator or to interconnect the Cable System will not be deemed a violation of the franchise enforceable under Article 13 of this Agreement.

As noted above, AT&T's practice is to avoid cable franchises altogether. AT&T does not appear to be open to specifying any terms for PEG interconnection.

The Commission should continue to allow LFAs to carefully craft rules requiring competing wireline video programming providers to interconnect systems for carriage and reception of local PEG access channels.

Point 6 – Important Consumer Protection & Customer Service Standards

Consumer service protections are another area in which Congress wisely delegated considerable authority to LFAs. LFAs are best suited, by far, to carefully tailor these protections to their individual, sometimes very distinct, communities. LFAs are also much more capable than state or federal entities to expeditiously correct violations of customer service standards.

Like Pasadena and many other LFAs, we find that many LFAs' telecommunications or cable television Ordinances and/or franchise agreements contain a variety of customer protection and service obligations, by which LFAs ensure that video providers treat residents in a fair manner. These obligations include:

- Standards for customer service operators and toll-free telephone line capacity.
- A local business office open on weekdays and evenings or weekends with adequately trained staff.
- Installation and service call standards, including standards for emergency responsiveness and response timeframes.
- Consumer privacy protections.
- Billing and information standards, ensuring customers are provided clear, up-to-date information about services and charges.
- Standards for credits to customers for service outages and missed appointments.
- Procedures for handling customer complaints and disputes.
- Procedures related to disconnection and downgrade of subscriber services.
- Parental control options.
- Nondiscrimination in serving customers.

Moreover, many LFAs perform a laudably in monitoring the performance of multi-channel video providers' compliance with these standards--a task that neither the federal government nor many state governments could adequately perform. The many thousands of customer complaints concerning cable and OVS service received by LFAs annually would likely overwhelm the Commission, as currently constituted and funded. (NATOA's recent survey of customer service complaints amongst its membership which generated responses pertaining to approximately 7 million cable and OVS customers—approximately ten percent of these customers nationally—indicated that this relatively small percentage of customers had filed over 60,000 complaints during a two–year period.

Point 7 – The Commission should support LFAs' efforts promoting universal service and preventing redlining.

RBOC commenters generally assert that cable companies are not required to provide phone service throughout communities they serve, so it would be unfair to impose such a requirement on the phone companies when they offer video service. The National Cable Television Association ("NCTA") argues that this is not true. First, the NCTA alleges, when cable companies offers digital telephone or high-speed Internet access, they do so to ALL their customers. Second, to the extent the Bells are trying to compare themselves to competitive local exchange carriers (CLECs), this appears to be a rewriting of history. Congress sought to promote voice competition -- any voice competition -- as part of the 1996 Telecommunications Act's attempt to counterbalance the Bells' overwhelming dominance. Congress did so by relying on new competitors, who were, by definition, companies with limited networks competing with a historical monopoly with all of the key components of a network in place. Conversely, cable operators face vigorous video competition from DBS companies and other broadband providers. Additionally, this RBOC argument also fails because CLECs were, in fact, required to obtain certificates of public convenience and necessity before they could offer service, and these RBOCs were also required to comply with several additional requirements.

We also wholeheartedly embrace the comments of NCTA regarding the rationale for using restraint in responding to telephone companies' requests for unlevel regulatory treatment. A March 6, 2006 letter from Kyle McSlarrow, President and CEO of the NCTA states this position well:

> However, the Bell monopolies seek to short-circuit this process by having you focus only on one side of the equation – video – and they do so by grasping for special benefits that are unparalleled for companies of a scale that dwarfs their competitors. Regrettably, they do so also by hiding behind myths that upon closer examination are simply a smokescreen for their own business decisions taken over the last ten years since passage of the 1996 Telecommunications Act. In the last decade, the Bell monopolies have all but wiped out their telephone competitors; they have swallowed their long-distance competitors; and with the announcement of the AT&T-Bell South merger, they are on the verge of recreating Ma Bell. And only one competitor really stands in their way: the cable industry. My point here is not to question the merger, which will be handled appropriately by the relevant federal agencies and Congressional committees. Rather, it is to suggest how extraordinary it is for an industry, in which one company alone – at&t – has a market capitalization greater than that of the entire cable industry, not only to ask for special favors from Congress but in fact demand free

> license to enter the video market while maintaining all current regulation on a much smaller cable industry.[13]

Point 8 – Equitable regulatory treatment is required in maintaining the financial health of the competing video industries

RBOCs' recent rush to join the video marketplace after years of relative inaction now lead only to threaten the financial stability of the video marketplace. We believe that Congress and the FCC risk further disturbing the country's economy by giving the telephone industry favorable and unfettered regulatory treatment. For the most part, the regulatory environment requires little change. Under the current regulatory framework of Title II, IV and VI of the Communications Act; both the telephone and the cable television industries have shown solid growth and financial health since the passage of the Telecommunications Act of 1996. (See Exhibit 1 attached hereto, containing excerpts of the Commission's 12th Annual Report In The Matter Of Competition In The Video Marketplace.)

One the nation's top economists, Mr. Aryeh B. Bourkoff, a managing director and senior analyst at UBS Investment Research recently expressed concern that the Telephone industry's push for regulatory relief from Title VI requirements on the industry's video services is risky at best. At a recent Senate Committee on Commerce, Science, and Transportation, hearing, "Wall Street Perspectives on Telecommunications Hearing Conclusions and Viewpoint," held on March 14, 2006, Mr. Bourkoff shed important light on the matter when he testified that:

> I stress the importance of maintaining a level playing field among all operators while allowing consumer preferences to dictate changes to current models. Uncertainty among investors will persist if the rules surrounding obtaining a video franchise fluctuate based on the nature of the new entrants. In my analysis of the sector, I assume that there will be a fully competitive state between cable, satellite, telecommunications, and other providers with all operators given an equitable opportunity to service the customer base.[14]

At the same hearing, Mr. Luke T. Szymczak, Vice President JPMorgan Asset Management cautioned:

> There is a good degree of concern that we may soon see new entrants using new technologies with potentially more attractive economics than existing operators can achieve with their current networks. Likewise there is a high degree of skepticism that the substantial investment underway at the ILECs to build broadband networks to the home will deliver a satisfactory return on the incremental investment. It is true that sometimes investors can be too skeptical, and it seems that telecom investors have become extremely risk-adverse. However in the case of broadband access network

[13] http://www.ncta.com/press/press.cfm?PRid=679&showArticles=ok

[14] http://commerce.senate.gov/pdf/bourkoff-031406.pdf

> investments, the skepticism seems entirely rational given that there has yet to be a proven business model. Memories of the telecom meltdown that started in 2000 and resulted from the big spending programs of the late 1990s which proved to be based on entirely misplaced hopes and business models contribute to the skepticism. The big question is whether carriers' plans are more realistic and achievable this time around. It a question for which one could make either a positive or negative argument and the answer will come only with time, and thus caution. [15]

Accordingly, we do not recommend federal or state regulatory schemes that treat wireline video service as anything but a cable service under the current regulatory framework of Title VI.

CONCLUSION

Local franchises thus provide a means for local government to appropriately oversee the operations of cable video service providers in the public interest, and to ensure compliance with applicable laws. No compelling need exists to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Local franchises allow each community, including many with whom CSG has worked for several years, to have a necessary voice concerning how local cable or video systems will be built and operated and what features (such as PEG access, I-Nets or local emergency alerts, etc.) will be available to meet local needs. These factors should apply equally to new entrants, regardless of the technologies utilized, as they do for existing users.

Communications Support Group, Inc. therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Additionally, we ask the Commission to further assure that any federal rules on the matter include the following requirements, at a minimum:

1. Funding -- The Cable Act allows LFAs to require that cable operators set aside capacity on their systems for PEG use. It also allows LFAs to provide funds for PEG capital equipment and facilities in addition to the 5% cable franchise fee. We would like to see mandates of at least 1% of gross revenues in support of designated PEG uses.

2. Franchise Fee Revenue Base Should Not Be Reduced -- A reduced franchise fee revenue base would reduce LFA financial support for PEG. Current local control over the definition of gross revenue should be retained and not preempted by federal law.

[15] http://commerce.senate.gov/pdf/szymczak-031406.pdf.

3. PEG Capacity Must Be Allowed to be Community-Specific and Not Necessarily Tied to Current Levels -- Under the Cable Act, the number of channels set aside for PEG use is determined by each local community based on its particular PEG needs. PEG capacity needs are not static, typically growing over time.
4. Technical Comparability -- PEG bandwidth should to be handled on par with that of commercial users, with equal access to electronic promotions and customer portals, such as menus or hyperlinks, and to interactive switching.
5. Ease of Negotiation for New Entrants -- The fastest available means of entry is for new entrants to adopt agreements comparable to those of the incumbent provider. There are many examples demonstrating that new entrants can quickly enter existing markets if they are willing to match incumbent provider obligations.
6. Local Enforcement -- Regulatory authority for protecting and designing PEG should be a function of individual LFAs, as should resolution of consumer complaints.
7. Net Neutrality -- Our members have a direct interest in networks remaining neutral and open. Such openness not only assures a vibrant community conversation, but leaves room for the thousands of small entrepreneurs whose creativity forms the basis of American innovation.
8. Technical Neutrality -- Any new legislation should be technologically neutral, with all forms of video delivery located in the public rights-of-way subject to the same or equivalent public obligations. Proposed legislation should be carefully constructed to avoid providing incentives which artificially interfere with market innovation.
9. Ownership Caps -- Any new legislation should impose caps on horizontal ownership of communications systems using the public rights-of-way. The legislation should require some level of government oversight on transfers of ownership.
10. Citizenship and Access to Broadband Communications -- Any new legislation should anticipate inevitable market imbalances and should have tests for identifying those imbalances as well as concrete methods for remedy.

Dated: March 28, 2006

By: John Risk

John Risk
President, Communications Support Group, Inc.

Exhibit 1

MB Docket No. 05-255

The Following facts were extracted from:

TWELFTH ANNUAL REPORT In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming (Please note paragraph numbers and footnote numbers have changed and do not match those shown in the FCC report.)

Adopted: February 10, 2006 Released: March 3, 2006

1. Americans are voracious consumers of media services, spending close to 30 percent of their day engaged in some activity involving media, with television viewing the dominant media activity.[16] For the September 2004 – September 2005 television season, the average household tuned into television for 8 hours, 11 minutes a day.[17] This is almost three percent higher than the previous season, over 12 percent higher than 10 years ago, and the highest level observed since television viewing was first measured by Nielsen Media Research in the 1950s.[18] Within the same period, the average person watched 4 hours, 32 minutes each day, again a record high.[19]

2. Other Wireline MVPD Services. For the purposes of this report, we consider broadband service providers (BSPs) to be newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network. As of June 2005, BSPs served approximately 1.4 million subscribers, representing 1.5 percent of all MVPD households. Electric and gas utilities also provide MVPD and other services. Reports indicate that 616 public power entities offer some kind of broadband services, serving about 14 percent of total households in the United States. Of those, 102 offered video service, 128 offered high-speed Internet access, 52 offered local telephone service, and 42 offered long distance telephone service. Of the 102 offering video services, 10 are offering video-on-demand (VOD).

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[16] *Study: Average Person Spends More Time Using Media than Anything Else*, Radio Business Report, Sept 5, 2005, available at http://www.rbr.com/tvepaper/pages/september05/05-190_news1.html, citing the Middletown Media Studies 2 from Ball State University.

[17] Nielsen Media Research, *Nielsen Reports Americans Watch TV at Record Levels* (press release), Sept. 29, 2005. Nielsen's estimates are based on its National People Meter service.

[18] *Id.*

[19] *Id.* Children and teens are spending an increasing amount of time using new media. Young people are exposed to 8 hours and 33 minutes of media content each day; 3 hours and 51 minutes of which are spent watching television and videos. Kaiser Family Foundation, *Media Multitasking – Changing the Amount and Nature of Young People's Media Use* (press release), Mar. 9, 2005.

3. Incumbent local exchange carriers (ILECs) have reported plans to provide video service via asymmetric digital subscriber line (ADSL), very high-speed digital subscriber line (VDSL), or fiber to the home (FTTH) or fiber to the node (FTTN).[20] There are 652 communities in 46 states currently served at least in part by FTTH networks, with 322,700 "connected homes." The larger LECs have accelerated their plans to roll out video services using DSL and fiber-based distribution platforms. Verizon is deploying an FTTH network under the brand name "FiOS" that will allow delivery of multichannel video services in addition to telephony and high-speed Internet access service at speeds above those of ADSL technology. Verizon has received franchises from local communities in California, Florida, Virginia, Texas, Massachusetts, and Maryland. It began offering multichannel video service in Keller, Texas, in September 2005, and now offers service to more than a dozen Texas communities; in Herndon, Virginia, in November 2005; and in Temple Terrace, Florida, in December 2005. SBC is planning to deploy an IP-enabled broadband network called "Project Lightspeed" using both FTTN and FTTH to deliver video and other services to residential customers. SBC reports that the network will be available to 18 million homes nationwide within three years. Qwest and a number of smaller incumbent LECs are offering, or preparing to offer, MVPD service over existing telephone lines using VDSL or ADSL technologies.

4. ***Cable System Ownership***. Between July 2004 and June 2005, a total of 22 MVPD transactions were announced.[21] Together these transactions were valued at approximately $48.7 billion and affected approximately 12.7 million subscribers. At the end of 2004, there were 118 clusters with approximately 51.5 million subscribers compared to 108 clusters and approximately 53.6 million subscribers at the end of 2003 (although due to a change in methodology, these figures are not directly comparable). In the largest cluster size category (over 500,000 subscribers), the number of clusters remained constant at 29 between 2003 and 2004.

5. ***Subscribership***. The number of basic cable subscribers declined slightly from 66 million in 2003 to 65.4 million in 2004, as shown in Table 1 below. Kagan estimated that the number of basic cable subscribers would remain unchanged at 65.4 million basic subscribers at year-end 2005.[22]

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[20] Fiber to the node (also known as fiber to the neighborhood) is a hybrid network architecture involving optical fiber from the carrier network, terminating in a neighborhood cabinet (or "node"), which converts the signal from optical to electrical. The connection from the cabinet to the user premises is provided over unshielded twisted pair (UTC) or coaxial cable. While fiber to the house is preferable in terms of overall performance, it is more expensive to deploy than fiber to the node. *See* Harry Newton, NEWTON'S TELECOM DICTIONARY (CMP Books, 17th ed., 2001), at 296.

[21] These figures are for announced transactions, including the sale of Adelphia's assets to Comcast and Time Warner currently under review by the Commission.

[22] Cable Databook at 11.

6. ***Cable Industry Revenue***. Total revenue grew to $60.0 billion in 2004, as shown in Table 4 below.[23] This represents a 10.4 percent increase over the 2003 total revenues of $54.4 billion. Cable revenue is projected to grow 10.8 percent in 2005 to $66.5 billion. Much of the increase in revenue comes from advanced services, especially high-speed Internet service and digital cable services, and from higher basic cable rates, which are regulated by local communities.[24] Average monthly residential revenue per subscriber grew from $66.22 in 2003 to $72.87 in 2004 and is projected to increase to $80.33 in 2005.[25] As shown in Table 4, all revenue categories increased, except revenue from installation/miscellaneous, which decreased 9.6 percent in 2004 but is expected to increase by 6.6 percent in 2005.[26]

[23] The $60 billion of revenue generated by the cable industry is about one-fifth the $291 billion of revenue generated by the telephone industry. Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, *Telecommunications Industry Revenues: 2003* (rel. Mar. 1, 2005).

[24] Kagan estimated that total revenue from residential subscribers would grow from $57.5 billion in 2004 to $63.1 in 2005. Kagan expected total revenue from business subscribers to grow from $2.6 billion in 2004 to $3.4 in 2005. Cable Databook at 13.

[25] Cable Databook at 4.

[26] We note that installation/miscellaneous varies from year to year. It includes installation revenues and any other revenues reported by Kagan, but not included in the categories listed separately on Table 5.