

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

In the Matter of)	
)	
Annual Assessment of the Status of)	MB Docket No. 06-189
Competition in the Market for the Delivery of)	
Video Programming)	
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)	

COMMENTS OF THE CITY OF NEW YORK

The City of New York (“City”), hereby submits the following comments in response to the Notice of Inquiry released by the Federal Communications Commission (“Commission”) in the above captioned proceeding.¹ The following comments respond to the Commission’s questions about the effect of franchising and other local and state regulations on competition in the video marketplace, by providing information about the cable franchising process in the City.

Since 1970, the City has been entering into franchise agreements with cable operators. Today, the City has nine cable franchise agreements that together cover the entire city and one open video system agreement. The franchise agreements are with Time Warner Cable of New York City (“Time Warner”) and Cablevision Systems New

¹ See *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, MB Docket No. 06-189, rel. Oct. 20, 2006 (“NOI”).

York City Corporation (“Cablevision”),² and the open video system agreement is with RCN Telecom Services of New York, Inc. (“RCN”), with RCN operating as an over builder.³ Verizon has also stated its intention to provide video programming service in the City, and has been constructing fiber-optic facilities in certain parts of the City, which it has indicated will be compatible with (among other things) the provision of cable television service when completed. The City hopes that Verizon will soon be providing cable television services within the City.

The Commission’s NOI asks about “the impact of the local franchising process on new providers’ entry into local markets.” The City has always been eager for competition in all communications market sectors, including cable television. The City’s local franchising process is structured in a competitively neutral manner to address legitimate local concerns over the terms and conditions under which cable service is provided, in a manner consistent with the Cable Act. As described below, the franchising process has also helped to further the Commission’s goal of ensuring that local residents have the means to receive diverse programming.⁴

² In these comments, the City will cite to either the Time Warner Southern Manhattan franchise agreement, Cable Television Franchise Agreement for the Borough of Manhattan (Southern Manhattan Franchise) Between The City of New York and Time Warner Cable of New York City, a division of Time Warner Entertainment Company, L.P., (entered into Sept. 16, 1998) (“Time Warner Agreement”), or the Cablevision franchise agreement for Brooklyn, Cable Television Franchise Agreement for the Borough of Brooklyn Between The City of New York and Cablevision Systems New York City Corporation (entered into Oct. 8, 1998) (“Cablevision Agreement”). The pertinent language in all of the agreements is virtually identical. Parties can obtain copies of the agreements by contacting the Department of Information Technology and Telecommunications at 212-788-6119.

³ See Open Video System Agreement between The City of New York and RCN Telecom Services of New York, Inc. (entered into Dec. 23, 1997) (“OVS Agreement”); see also 47 U.S.C. § 573 (outlining procedures for the establishment of an open video system).

⁴ See NOI at ¶ 12. The City’s previously filed comments in the Commission’s video franchising proceeding provide a more detailed discussion of the City’s franchising process. See Comments of the City of New York, MB Docket No. 05-311 (filed Feb. 13, 2006) (“*Video Franchising Comments*”).

The universal service, non-discrimination, state-of-the-art, and technical standards requirements contained in the franchise agreements⁵ ensure that all residents within a franchise area have access to infrastructure that can support a wide and diverse range of video programming services. The build-out requirements have given all City residents access to at least one cable provider, while also protecting residents from discrimination based on income or other factors.⁶ The technical standards, along with regular monitoring of compliance with these standards, have ensured that cable operators are deploying or upgrading their networks in a way that gives City residents “state-of-the-art” facilities with adequate capacity. Without some local oversight, it has been the City’s experience that “market factors” alone have not always provided sufficient impetus to ensure that timely and necessary upgrades are implemented to assure that infrastructure is maintained and can support the availability of maximally diverse programming options.

The public, educational, and governmental (“PEG”) access channels are another way in which the local franchising process has helped deliver to City residents diverse and uniquely local programming. The public access channels offer borough specific information and local programming that might not otherwise be available on traditional cable networks. The educational and governmental channels are used for, among other

⁵ See, e.g., Cablevision Agreement, § 3.2.01 and Appendix A.

⁶ While protecting from income or racially based discrimination are important values, the local interest in non-discrimination may not necessarily be limited to economic status or race. Some residents may be left isolated from service for other reasons, including differences between single family homes and multiple dwellings or between areas where utilities run on poles above ground or must be buried underground. It can be an important role of local government to assure that utility infrastructure is widely available and that neighborhoods not be, for whatever reason, isolated by inaccessibility to infrastructure that is available elsewhere in the community. Are some areas of a community to be entitled to cable competition and others condemned to be left without, when it may be that a carefully structured local franchise could ensure access to cable competition for all? The priorities and tradeoffs related to such decisions can best be made at the local level based on local conditions.

things, programming of the City University of New York, C-SPAN type coverage of City Council and other local government proceedings, live video feeds of traffic conditions at key locations, and foreign language programming serving otherwise underserved communities and foreign language students.

The consumer protection requirements contained in the City's franchise agreements seek to ensure that residents receive a certain standard of service quality.⁷ The City, in its role as the franchising authority, also fields thousands of complaints and questions each year from City residents regarding their cable service. Local governments are best equipped to handle such tasks, given the wide variations in local needs and conditions. For example, in New York City the density of multiple dwellings can create service issues that may not arise in other locations.

The other key aspects of the City's franchising process are: 1) regulation of the rights-of-way to guarantee access to the rights-of-way in a safe and equitable manner; 2) compensation for use of the rights-of-way consistent with the Cable Act; 3) provision by cable operators of institutional network ("I-Net") facilities;⁸ and 4) capital support for PEG and I-Net.⁹

⁷ For instance the City's agreements require cable operators to provide bills in a comprehensible format (Cablevision Agreement, Appendix I, § 4.1), maintain records of repair requests (Cablevision Agreement, Appendix I, § 6.6), establish time periods for complaint resolution (Cablevision Agreement, Appendix I, § 7.4), and correction and repair of service outages and interruptions (Cablevision Agreement, Appendix I, § 6.2). In addition, the agreements establish remedies that the City can seek in the event that a cable company substantially fails to comply with a material customer service requirement (Cablevision Agreement, Appendix I, § 12.2).

⁸ The City's I-Net was established through the use of funds, fiber, and accessories provided by the City's cable and other franchises. (It is relatively easy for companies to set aside excess capacity, or provide links between buildings, when they themselves are deploying new facilities). The City has used its I-Net in many innovative ways that have brought expanded services to residents. For example, the City uses the I-Net for employee training, including first responder training, and for ensuring there are redundant communications capabilities for police, fire, and first responder needs.

⁹ See *Video Franchising Comments* (providing a more detailed discussion of these aspects of the City's video franchising process).

The NOI also asks about the impact of state franchising requirements on the entry of new providers. It may be premature to gauge the full impact of statewide franchising, as most such bills have only been passed during the last year. Given the differences between New York City and its surrounding areas, in terms of, for example, population density and topography (most prominently seen, for instance, in the large number of high-rise buildings in the City), New York State would not be an appropriate candidate for statewide franchising.

Conclusion

In conclusion, the City's cable franchising process has served, and can continue to serve, to assure residents access to infrastructure supporting a wide and diverse range of video programming, assures the use of portions of such infrastructure for programming of unique local interest, and supports through public access the presence of programming voices that might not otherwise be heard solely in a commercial context.

Respectfully submitted,

/s/ _____

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