Congress of the United States
Washington, DC 20515

December 19, 2006

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Martin,

We are writing to express our concerns about the planned agenda item for the FCC's December 20th meeting concerning local franchising authorities' (LFA) ability to award competitive cable franchises (MB Docket No. 05-311). According to press accounts, you plan to propose a sweeping new regulatory framework that would preempt the current state and local video franchise laws and procedures. Based on these accounts, this proposal seems to have a questionable legal basis while threatening the public interest by limiting support for local public, educational and governmental (PEG) channels and institutional networks (INET), and allowing companies to exclude parts of a community from receiving service.

Since this proposal was reported, we have heard from a number of local public officials in Wisconsin about how this proposal could threaten their ability to provide local programming, ensure quality service and require that the benefits of competition be available to all of their citizens. We have enclosed some of these comments for your review. Furthermore, many communities in Wisconsin and across the country have indicated a willingness to come to agreements with overbuilders that are similar to those they have reached with the incumbent service provider. While there may have been some high profile cases of unreasonable local demands, these abuses seem isolated.

In addition to these concerns about the potential public interest impact, the FCC's proposed national regulatory framework seems to have a questionable legal justification. According to press reports, you have cited Section 621(a)(1) and 636(c) of the Communications Act of 1934 (47 U.S.C. § 541(a)(1) and § 556(c)) as the basis for the Commission's authority to adopt sweeping new rules pre-empting LFA's existing franchise process. However, while Section 621 specifies that a franchise authority "may not unreasonably refuse to award an additional competitive franchise," the Act also provides that an LFA must "assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides" (47 U.S.C. § 541(a)(3)); and "require adequate assurance that the cable operator will provide adequate public, educational and governmental access channel capacity, facilities, or financial support" (47 U.S.C. § 541(a)(4)(B)). LFAs are thus under a clear statutory mandate to ensure non-discriminatory

access and adequate PEG support for all of their constituents, and any delay in awarding additional competitive franchises based on these goals may not, under the statute, be deemed unreasonable. Furthermore, the current statute already provides for a method to resolve disagreements via the federal or state courts (47 U.S.C. § 555). The Commission should not substitute an industry-supported proposal for the current framework, which was carefully crafted by Congress in statute, originally in 1984 and then amended in 1992.

Moreover, if the Commission believes it necessary to deal with the special case of franchise proposals that have yet to receive a final decision by the local franchise authority, it seems more appropriate to narrowly tailor this to the statute and not impose a new national regulatory framework. For example, the FCC could instead issue guidelines instructing the LFAs to consider an application deemed denied after a reasonable and appropriate time period and allow the current appeals process envisioned by Congress to proceed.

Finally, as you know, Congress has considered making changes to the video franchise rules and is expected to take up this issue again during the next Congress. It is the purview of Congress to decide whether to make significant changes and the content of these changes, especially when there exist other options that are consistent with the current statute.

Sincerely,

Russell D. Feingold
United States Senator

Tammy Baldwin
Member of Congress

CC: Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert M. McDowell