COMMITTEE ON
ENERGY AND COMMERCE
SUBCOMMITTEES:
ENERGY AND AIR QUALITY
TELECOMMUNICATIONS AND THE INTERNET
ENVIRONMENT AND HAZARDOUS MATERIALS

COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

CO-CHAIR:
COALITION FOR AUTISM RESEARCH AND EDUCATION

Congress of the United States
House of Representatives
MIKE DOYLE
14TH DISTRICT, PENNSYLVANIA

WASHINGTON OFFICE:
401 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225–2135

DISTRICT OFFICES:
225 ROSS STREET
5TH FLOOR
PITTSBURGH, PA 15219
(412) 261–5091

11 DUFF ROAD
PENN HILLS, PA 15235
(412) 241–6055

627 LYSLE BOULEVARD
MCKEESPORT, PA 15132
(412) 664–4049

December 19, 2006

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

RE: Video Franchising Proceeding – MB Docket No. 05-311

Dear Mr. Chairman:

I write to urge you to postpone action on the draft order on video franchising currently under circulation. I am very concerned that the Commission may be taking an action for which it does not have legal authority and that has not had proper Congressional or public scrutiny.

I share your goal of increasing competition for television services, but I believe that the proposed order may be unnecessary for achieving this goal, not to mention ineffective and unfair. Moreover, I believe that this proposal indicates a misunderstanding of the facts on the ground in the video franchising process. Finally, I question the authority for and the methods used to reach that policy.

As you described in your December 6, 2006 speech to the Phoenix Center, the draft order would upend the video franchising process and impose a 90-day time period for negotiating franchise agreements with companies that already have access to a community's rights-of-way for purposes other than video distribution. After this time period, new cable entrants could provide video service without a franchise. This has been referred to by some in the news media as a "shot clock."

In basketball, shot clocks penalize those who hold the ball too long. But since most local governments would quickly and easily approve franchises that mirror the terms incumbents have already agreed to, the onus should be on the new entrant if that entity seeks to meet the unique needs and interests of the community in a way different from the incumbent's existing franchise—they hold the ball.

As it has been described, the proposed "shot clock" has it backwards: it allows the franchise applicant to run out the clock in order to get a desirable outcome—video service without local oversight. If the Commission is seriously interested in upholding the law by preserving local input in the franchising process, then it should not create a disincentive for new providers to negotiate in good faith with local governments. Such a change seems unnecessary –

especially since there is plenty of evidence that the current system is working as Congress intended.

Under current law, the franchising process has been very successful in promoting video competition while preserving municipal rights over the public rights-of-way. In Pennsylvania, for example, Verizon has been obtaining franchises faster than it has been able to deploy its video service. Specifically, Verizon has agreed to initiate franchise negotiations in only 4 of Pennsylvania's 67 counties. They are Bucks, Chester, Delaware, and Montgomery Counties in suburban Philadelphia.

Communities in my district and others across the Commonwealth, have requested that Verizon begin negotiations, but Verizon has refused, stating that, based upon its internal deployment schedule, it is not ready to begin discussions with these municipalities. In the 4 counties in which Verizon has agreed to negotiate, to date 100 municipalities have granted franchises to Verizon. Verizon may not be required to launch video service in parts of these communities for years—in some cases, as long as 10 years. Verizon has received all of the franchises it has sought in these 4 counties, and the company is pleased with the progress of franchising in Pennsylvania. A statement from Verizon Executive Vice President and Chief Financial Officer Doreen Toben at a recent conference questions the problem which the Commission is supposedly trying to fix: "On the franchising piece, coming from where we used to be...we have become very successful now in getting franchising. So we don't see that as an issue certainly going forward."

The proposed order also strikes me as probably ineffective. It raises real questions that if there's such a massive backlog in expansion already, these changes in the franchising process might provide little or no increase in competitive TV service.

In addition, the proposed order strikes me as terribly unfair to municipalities and the consumers they represent. The 90-day negotiation deadline would have serious ramifications for communities across the country. In my home state of Pennsylvania, cable agreements with most municipalities are required by law to be approved by ordinance. Ordinances must be advertised for at least two weeks prior to formal action. Given that most municipalities hold only one legislative meeting per month, the combination of the advertising requirement and the legislative calendar would make it difficult for the municipality to even begin considering a completed agreement in less than 4-6 weeks. This represents one-third to one-half of the entire time period being proposed, and leaves little room to negotiate the ways in which the operator will meet the local needs of the community.

These proposed restrictions would not only undermine the integrity of the franchise process Congress established to assure that cable providers are responsive to the needs and interests of a community, but they are unnecessary to achieve the goal of providing cable competition in a timely manner.

Your Phoenix Center speech also indicates a desire to require the cost of any in-kind benefits or monetary payments other than the franchise fee to be offset against the franchise fee itself. I am very concerned that these changes would cause real and serious financial harm to local governments. This proposal undermines PEG channel and institutional network operations because many, if not most, of these monetary and in-kind contributions are dedicated to these valuable resources. As you are aware, educational, religious, and civic programming constitute a large portion of PEG programming, and often a city's local police and fire safety communications traffic are distributed over an institutional network. I question the logic of stepping in this minefield when the legislative history of the Cable Act set forth that the franchise fee includes only monetary payments and does not include franchise requirements for the provision of services, facilities or equipment. I worry that if this proposal is not fixed, the FCC will now be directly responsible for cutbacks in city services or tax hikes.

Finally, I think it is important to note that the Commission does not have the statutory authority to dictate the terms and conditions of franchises that are by law awarded by local franchising authorities. Title VI of the Communications Act is clear that the authority to award a franchise resides with local franchising authorities, not the Commission. Clearly, the proposal attempts to do by regulation what the 109th Congress chose not to do in law. Without that congressional mandate, I believe the Commission is walking into a legal minefield.

The underlying premise of your proposed order is that communities have posed a barrier to entry to cable competition. This premise appears to be incorrect. The current franchising process has allowed cable competition even faster than the competitive operators have been able to provide it. And if changes to the current structure are needed, it is Congress that can set forth a different framework. I strongly urge you to postpone action on the proposed order until it has received adequate Congressional and public scrutiny.

Sincerely yours,

Mike Doyle

Mike Doyle
Member of Congress

cc:

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