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FCC Initiates Rulemaking to Ensure Reasonable Franchising Process for New Video Market Entrants

Washington, DC – The Federal Communications Commission (FCC) today adopted a Notice of Proposed Rulemaking that seeks comment on issues relating to the implementation of Section 621(a)(1) of the Communications Act of 1934. The Notice seeks input on what can be done to ensure that local franchising authorities (LFAs) do not unreasonably refuse to award cable franchises to competitive entrants.

This *Notice* initiates a proceeding to further the interrelated goals of enhanced cable competition and accelerated broadband deployment. The FCC tentatively concludes that the mandate of Section 621(a)(1) should be interpreted to prohibit not just the ultimate refusal to award a franchise, but also a broader range of behaviors, and the *Notice* seeks comment on that conclusion.

Specifically, the *Notice* addresses a broad range of questions, including:

- The Notice asks if local franchising authorities are unreasonably refusing to grant competitive franchises. The Notice also asks what problems cable incumbents have encountered with LFAs, including how best the Commission can ensure that the local franchising process is not inhibiting the ability of incumbent cable operators to invest in broadband services.
- The *Notice* also asks whether the Commission has authority to implement the procompetitive mandate of Section 621(a)(1). The *Notice* tentatively concludes that the Commission is empowered by provisions of both Title I and Title VI of the Communications Act to take steps appropriate to ensure that the local franchising process does not serve as an unreasonable barrier to entry for competitive cable operators. The *Notice* also tentatively concludes that the Commission may deem to be preempted and superseded any law or regulation of a State or LFA that causes an unreasonable refusal to award a competitive franchise in contravention of Section 621(a).
- The *Notice* tentatively conclude that it is not unreasonable for an LFA, in awarding a franchise, to "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"; "allow [a] cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area"; and

"require adequate assurance that the cable operator will provide adequate public, educational and governmental access channel capacity, facilities, or financial support."

- Assuming there is both the need and the authority for Commission intervention, the *Notice* asks how the Commission should interpret the mandate of Section 621(a)(1). The item tentatively concludes that the Commission should interpret the relevant language of Section 621(a)(1) broadly in order to prohibit not only unreasonable refusals to award competitive franchises, but also the establishment of procedures and other requirements that unreasonably interfere with the ability of would-be new entrants to introduce quickly their competitive offerings.
- The item seeks comment on what specific steps should the Commission take to implement Section 621(a)(1).
- The *Notice* seeks comment on whether the Commission has authority to establish a minimum amount of time for potential competitors with existing facilities to build out their networks beyond their current service territories. It also seeks commenters to address what would constitute a reasonable minimum timeframe.
- Finally, the *Notice* asks whether the Commission should address actions at the state level, to the extent we find such actions create unreasonable barriers to entry for potential competitors.
- The Commission announced it plans to hold an en banc hearing to supplement the record in this proceeding.

The *Notice* will be available online at www.fcc.gov.

Action by the Commission, November 3, 2005, by *Notice of Proposed Rulemaking* (FCC 05-189). Chairman Martin, Commissioners Abernathy, Copps and Adelstein. Chairman Martin, and Commissioners Abernathy, Copps, and Adelstein issued separate statements.

MB Docket 05-311

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