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FCC Adopts Rules to Ensure Reasonable Franchising Process for New Video Market Entrants

Washington, DC – The Federal Communications Commission (FCC) today adopted a *Report and Order and Further Notice of Proposed Rulemaking* that establishes rules and provides guidance to implement Section 621(a)(1) of the Communications Act of 1934, which prohibits franchising authorities from unreasonably refusing to award competitive franchises for the provision of cable services.

In the *Order*, the Commission concludes that the current operation of the franchising process constitutes an unreasonable barrier to entry that impedes the achievement of the interrelated federal goals of enhanced cable competition and accelerated broadband deployment.

The *Order* addresses several ways by which local franchising authorities are unreasonably refusing to award competitive franchises. These include drawn-out local negotiations with no time limits; unreasonable build-out requirements; unreasonable requests for "in-kind" payments that attempt to subvert the five percent cap on franchise fees; and unreasonable demands with respect to public, educational and government access (or "PEG").

To eliminate the unreasonable barriers to entry into the cable market, and to encourage investment in broadband facilities, the Commission:

- Found that franchising negotiations that extend beyond certain time frames amount to an unreasonable refusal to award a competitive franchise within the meaning of Section 621(a)(1);
- Found that requiring an applicant to agree to unreasonable build-out requirements constitutes an unreasonable refusal to award a competitive franchise;
- Found that, unless certain specified costs, fees, and other compensation required by local franchising authorities are counted toward the statutory five percent cap on franchise fees, demanding them could result in an unreasonable refusal to award a competitive franchise;
- Found that it would be an unreasonable refusal to award a competitive franchise if the local franchising authority denied an application based on a new entrant's refusal to undertake certain unreasonable obligations relating to public, educational, and governmental ("PEG") and institutional networks ("I-Nets"); and

- Preempted local laws, regulations, and requirements, including local level-playing-field provisions, to the extent they impose greater restrictions on market entry than the rules adopted herein.

- The Commission concluded that although the record allows it to determine generally what constitutes an "unreasonable refusal to award an additional competitive franchise" at the local level, the Commission does not have sufficient information to make such determinations with respect to franchising decisions made at the state level or in compliance with state statutory directives, such as statewide franchising decisions. As a result, the *Order* addresses only decisions made by county- or municipal-level franchising authorities.

The Commission also adopted a *Further Notice of Proposed Rulemaking* in which it seeks comment on how its findings in the *Order* should affect existing franchisees, tentatively concludes that the findings should apply to existing franchisees at the time of their next franchise renewal process, and seeks comment on the Commission's statutory authority to take this action. The Commission will conclude this rulemaking and release an order no later than six months after the release of the *Order*.

The Commission adopted a *Notice of Proposed Rulemaking* on November 3, 2005 to seek public comment on these issues.

Action by the Commission, December 20, 2006, by *Report & Order and Further Notice of Proposed Rulemaking* (FCC 06-180). Chairman Martin, Commissioners Tate and McDowell with Commissioner Copps and Adelstein dissenting. Separate statements issued by Chairman Martin, Commissioners Copps, Adelstein, Tate, and McDowell.

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