

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 6 February 2006

SUBJECT: Proposed Henderson County comments to FCC on Cable Rulemaking

ATTACHMENT(S): Proposed comments

SUMMARY OF REQUEST:

The Federal Communications Commission ("FCC") has issued a proposed rule which would restrict or eliminate the ability of local governments to issue and regulate cable franchises. In the Notice of Proposed Rulemaking, the FCC makes a number of assumptions and asserts that franchising of cable services by local governments may be an unreasonable barrier to entry for new telco video providers. The FCC is seeking comment from local government (and others) on "what can be done to ensure that local franchising authorities (LFAs) do not unreasonably refuse to award cable franchises to competitive entrants."

The National Association of Telecommunications Officers and Advisors ("NATOA") urges all local government entities to participate in this process by filing comments. It is important that the FCC be obligated to deal in facts and not anecdote, and that local government inform the FCC of the important role it plays protecting local communities' needs and interests.

Attached is a proposed comment from Henderson County. It draws on information both from NATOA and John Howell, the County's cable franchise adviser.

BOARD ACTION REQUESTED:

The Board is request to approve the attached proposed text of comments.

PROPOSED MOTION if so inclined:

I move that the Board adopt the proposed Comments as the official Comments of Henderson County to the proposed FCC rulemaking, and direct the County Attorney to submit the same to the FCC.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

DRAFT

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984)
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

MB Docket No. 05-311

COMMENTS OF Henderson County, North Carolina

These Comments are filed by Henderson County, North Carolina in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Henderson County believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

In our community a cable "franchise" is termed an Ordinance. The Federal Cable Act refers to this as a "franchise" so we will use that term in these comments. Also, many communities have a cable enabling ordinance, which operates in conjunction with the franchise agreement, the terms of which are often negotiated with the cable company in conjunction with the franchise agreement. These documents collectively referred to as the "franchise" below.

Cable Franchising in Our Community

Community Information

Henderson County is a county with a population of over 95,000. Our franchised cable provider is Mediacom, L.L.C.. Our community has negotiated cable franchises since the 1970s. Our county has never been approached by a competitive provider to provide video service. Henderson County has never denied any provider the opportunity to serve our community, and has in place the mechanisms to offer the same or a comparable franchise to a competitor upon request.

Our Current Franchise

Our current franchises began in 1991 and will expire in 2006. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning

36 months before the expiration of the franchise in which to request a renewal under the Federal Act. Henderson County is in the midst of mutual negotiations with Mediacom.

Our franchise requires the cable operator to pay a franchise fee to county in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: Any changes in the federal law or FCC rules shall be incorporated into our agreements within a reasonable amount of time.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government.

Conclusions

The local cable franchising process functions well in Henderson County. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

Henderson County therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

Henderson County, North Carolina

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