

FHH Telecom Law
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FCC Considers Limits
On Local Franchising Authorities
Greasing the skids for more video competition

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The Commission has initiated a rulemaking to seek comment on its implementation of Section 621 (a) (1) of the Communications Act, which requires that local franchising authorities (“LFAs”) not unreasonably refuse to award cable franchises to competitive entrants. The Notice of Proposed Rule Making (“NPRM”) seeks to further the FCC’s interrelated goals of enhanced cable competition and accelerated broadband deployment. The NPRM is largely seen as an effort by the Commission to facilitate the recent efforts by Verizon and SBC to provide competitive video services.

In the NPRM, the Commission tentatively concludes that Section 621 (a) (1) should not only be interpreted to prohibit the ultimate refusal by an LFA to award a franchise, but should also bar a broader range of behaviors by LFA’s. The NPRM seeks comment on whether LFAs are unreasonably refusing to grant competitive franchises. The NPRM also explores whether the local franchising process is inhibiting the ability of incumbent cable operators to deploy broadband services.

The Commission tentatively concludes that it has authority under both Title I and Title VI of the Communications Act to ensure that the local franchising process does not serve as an unreasonable barrier to entry for competitive cable operators. The Commission also tentatively concludes that any law or regulation of a state or LFA that causes an unreasonable refusal to award a competitive franchise is deemed preempted and superceded by Section 621 (a) (1) of the Communications Act.

On the issue of “red-lining”, the Commission tentatively concludes that it is not unreasonable for an LFA, in awarding a competitive franchise, to assure that access to cable service not be denied to any group of subscribers because of their income. A cable operator must be given a reasonable period of time, however, to become capable of providing cable service to all households in its franchise area. The LFA may require that cable operators provide adequate public, educational and governmental access channel capacity, facilities, or financial support. The Commission tentatively concludes that it should interpret Section 621 (a) (1) broadly so as to prohibit LFA procedures and other requirements that unreasonably interfere with the ability of would-be new entrants to introduce quickly their competitive video offerings.

The Commission plans to hold an en banc hearing to supplement the record in this proceeding. The deadline for filing Comments and Reply Comments had not been

announced at the time of this writing. If you are interested in participating in this proceeding, please contact this office.