



December 12, 2006

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

Michael J. Copps  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Jonathan S. Adelstein  
Commissioner  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Deborah Taylor Tate  
Commissioner  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Robert M. McDowell  
Commissioner  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Dear Mr. Chairman and Commissioners:

The national associations representing America's local elected officials and their advisors write to bring to your immediate and urgent attention our concerns with the draft order on video franchising that is being circulated by Chairman Kevin J. Martin.

While the draft order has not been made public, several news organizations have reported on certain key elements. Based on these reports we have serious concerns with the Commission taking further action in the franchising proceeding (MB Docket No. 05-311) in such a short time frame and without further public scrutiny. The cumulative impact of the draft order's preemption on state and local governments runs counter to our federal system and applies a federally-mandated command-control model approach to traditionally state and local issues. The draft order would harm consumers, cities and counties in four significant ways.

First, Title VI of the Communications Act does not provide sufficient, if any, legal authority for the Commission to take action in changing the way cable franchises are granted without explicit Congressional approval. Furthermore, the Commission does not have the authority to dictate the terms and conditions of franchises given by local franchising authorities. To take action on this order without first establishing clear legal authority in this matter would only lead to litigation and delay, having the exact opposite effect the Chairman is seeking.

Second, while we acknowledge franchising needs to be done in a timely fashion, we do not believe that Title VI permits a fixed deadline on local franchise authority action. The facts and circumstances in every case will vary, and much depends on the cooperativeness and good faith of the applicant, not just that of the local franchising authority. We also believe that a fixed deadline would provide no incentive for new providers to work toward a local franchise agreement because they would have access to the public right of way without local oversight if they simply wait out the timeframes.

Third, we understand the draft order would require the cost of any in-kind benefits, such as I-Nets, as well as any monetary payments other than the franchise fee, to be offset against the 5% franchise fee. In virtually every instance, this would be a significant net fiscal loss to the local franchising authority. The “franchise fee” definition in the Cable Act does not include in-kind services or facilities, and it also does not include monetary payments for PEG capital facilities and equipment (including I-Net facilities) or monetary payments incidental to the award or enforcement of the franchise

Fourth, we understand the “build-out” requirements in the draft order do not protect the interests of all customers in a local franchising area. Competition is good when everyone can benefit, not just a privileged few. Local franchising authorities have effectively managed build-out in their respective jurisdictions without hindering the deployment of broadband services. Indeed, the most widely and quickly deployed broadband networks are owned by the cable industry – the very industry that has complied with local build-out requirements.

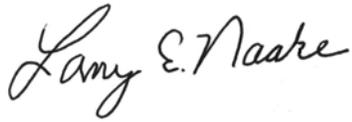
To act on this order in December would be precipitous and unwise given the uncertainty of the Commission’s authority in this matter, and the other concerns raised by this letter. There is no real urgency here, just the pleadings of a very powerful industry.

Chairman Martin has spoken about the need to spur competition in the video market. We agree. Our nation’s cities and counties welcome video competition in their communities. However, Chairman Martin’s draft order undermines local franchising authority and enforcement, threatens local budgets, and limits the benefits of broadband video competition to a few well-to-do neighborhoods.

While it is the Commission’s responsibility to facilitate the utilization of communications technologies, it is also the responsibility of the Commission to follow the statute and protect the interests of franchising authorities and the consumers as the Cable Act requires.

Collectively, we represent the interests of almost every municipal or county government in the United States and look to you for your attention to our concerns. We would be pleased to supply additional information to further your assessment of these concerns as you continue your deliberations on video franchising.

Sincerely,



Executive Director  
National Association of Counties



Executive Director  
U.S. Conference of Mayors



Executive Director  
National League of Cities



Executive Director  
National Association of  
Telecommunications Officers and Advisors

cc: Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, D.C. 20554