FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

June 3, 2015

The Honorable Frank Pallone
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Pallone:

Thank you for your letter asking the Commission make certain that its implementation of Section 111 of the STELA Reauthorization of 2014 (STELAR) best serves consumers and that the record upon which the Commission proposal is based is satisfactory.

The Commission immediately began working on the Congressional directive to simplify the process for small cable entities seeking a finding of Effective Competition upon passage of STELAR at the end of 2014. A significant amount of groundwork and analysis already occurred several months prior to STELAR, as a part of internal process reform efforts that started within months of my arrival at the Commission. The Media Bureau suggested that the twenty-year old Commission rule, which has presumed a finding of no Effective Competition since 1993, was ripe for review since it has found that Effective Competition exists in more than 99.5 percent of the communities evaluated since 2013.

Congress established the test for Effective Competition currently implemented by the Commission in the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). The statutory test for the type of Effective Competition at issue in the proposed Order is satisfied if the franchise area is "(i) served by at least two unaffiliated [MVPDs] each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (ii) the number of households subscribing to programming services offered by [MVPDs] other than the largest [MVPD] exceeds 15 percent of the households in the franchise area."[1] When the Commission adopted the presumption of no Effective Competition in 1993, incumbent cable operators had approximately a 95 percent market share of MVPD subscribers.

Today, the nationwide presence of DIRECTV (provides local broadcast channels to 197 markets representing over 99 percent of U.S. homes) and DISH Network (provides local broadcast channels to all 210 markets), alongside the significant number of direct broadcast satellite (DBS) subscribers (34.2 million or 33.9 percent of MVPD subscribers)[2] results in approval of Effective Competition petitions in almost every instance; the FCC has granted Effective Competition petitions in over 10,000 communities.

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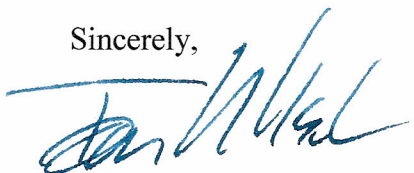
[1] 47 U.S.C. § 543(l)(1). This type of Effective Competition is known as Competing Provider Effective Competition.
[2] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Sixteenth Report, 30 FCC Rcd 3253, 3256, ¶ 2, and 3300-01, ¶¶ 112-113 (2015).

The record established in response to the Commission's Notice of Proposed Rulemaking includes a wide array of viewpoints, each of which has been carefully considered. Cable operators, especially small and mid-sized entities, have expressed support for the proposal because of the immediate administrative relief it would provide if adopted.[3] Broadcasters, in conjunction with several public interest groups, suggest that the proposal before the Commission will result in higher cable prices for price-sensitive consumers because cable operators will move programming currently available on the basic service tier to more expensive cable tiers.[4] Any evidence of such efforts in the 10,000 plus communities where the Congressional test for Effective Competition has already been satisfied for the past decade would lend credence to these arguments. However, repeated requests for even one such example have gone unmet.

Finally, you note that the Commission should fully consider the input from stakeholders such as the Office of Cable Television (OCTV) for the New Jersey Board of Utilities. The Commission carefully reviewed OCTV's April 2015 filing, along with those of the New Jersey Division of Rate Counsel. New Jersey is home to an active and engaged local franchising authority (LFA), one of the few in the country. We take seriously their concerns about the staffing resources and lack of access to data that they and other LFAs may experience if the presumption shifts. Under the existing presumption, however, staff analysis indicates that less than one-fifth of the communities currently eligible to rate regulate take the necessary administrative steps. The Commission's proposed changes would still allow franchising authorities who want to regulate rates to continue to do so, provided they can make a showing that there is a lack of Competing Provider Effective Competition in their franchise area. Furthermore, the proposal does not affect other franchising authority abilities, including the collection of franchise fees, negotiation or oversight of PEG channels and I-Nets, or creation and enforcement of customer service requirements.

I believe, based on the discussion above, as well as the robust comment and discussion in the record of the NPRM, that the record is complete and ripe for decision. I appreciate your interest in this matter and your letter will be included in the record of the proceeding. Please let me know if I can be of any further assistance.

Sincerely,



Tom Wheeler

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[3] *See* Comments of the American Cable Association; Comments of ITTA – The Voice of Mid-Size Communications Companies.

[4] *See, e.g.,* Letter from Erin L. Dozier, Senior Vice President and Deputy General Counsel, Legal and Regulatory Affairs, NAB, to Marlene H. Dortch, Secretary, FCC (May 15, 2015). *See also* Letter from Public Knowledge *et al.* to The Honorable Tom Wheeler *et al.* (May 26, 2015).