



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

June 3, 2015

The Honorable Patrick J. Leahy
Ranking Member
Committee on Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Leahy:

Thank you for your letter regarding the scope of the Commission's proposal for implementing Section 111 of the STELA Reauthorization Act of 2014 (STELAR).

As you know, 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, result in approval of Effective Competition petitions in almost every instance. As such, the FCC has granted Effective Competition petitions in over 10,000 communities thus far and has found that Effective Competition exists in more than 99.5 percent of the communities evaluated since 2013.

The proposal currently before the Commission adopts a rebuttable presumption of Competing Provider Effective Competition. Thus, while it provides the administrative relief detailed in Section 111 of STELAR, as demonstrated by the support it has received from small cable operators,³ it also preserves the ability of local franchising authorities to provide data that

¹ 47 U.S.C. § 543(l)(1). This type of Effective Competition is known as Competing Provider Effective Competition. The other three types of Effective Competition defined in the statute are Low Penetration Effective Competition, Municipal Provider Effective Competition, and Local Exchange Carrier (LEC) Effective Competition. Only a presumption of Competing Provider Effective Competition is at issue in this proceeding.

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).

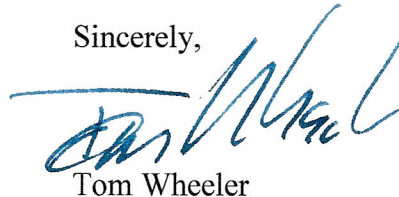
³ See Comments and Reply Comments of the American Cable Association.

refutes the presumption if able. Vermont exemplifies the prevalence of Effective Competition as defined in the statutory tests. To date, all of the 17 Effective Competition petitions received for Vermont, covering 191 communities, satisfy the Congressional standard. As a result, Effective Competition has been declared in 75 percent of the communities in Vermont, including more populated areas, such as Burlington and small towns like Bellows Falls and Bradford.⁴

The current record, as well as the results of the vast majority of Effective Competition petitions to date for the last decade, support the proposal being considered by the Commission. Aligning the Commission's administrative processes with the success of Congress's push for more MVPD providers as defined in the 1992 Act would not undermine our shared goals of greater broadband access in rural areas and more consumer choice in the video marketplace. In fact, updating our policies will allow staff resources to be dedicated to ongoing initiatives that would have a more direct impact on these objectives.

I appreciate your interest in this matter, and your views will be included in the record of the proceeding for the Commission's review. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", is written over a horizontal line.

Tom Wheeler

⁴ This data is based on a staff determination that out of a total of 254 Community Unit Identification Numbers (CUIDs) in Vermont, the Commission has granted a finding of Effective Competition in 191 communities.