

Before The
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Annual Assessment of the Status of)
Competition in the Market for the)
Delivery of Video Programming)

CS Docket No. 01-129

INITIAL COMMENTS OF
RCN CORPORATION

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August 3, 2001

No. of Copies rec'd 014
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SUMMARY

RCN Corporation ("RCN"), the nation's first and largest broadband overbuilder supplying voice, data, and video signals to residential subscribers over its own state-of-the-art fiber optic and coaxial network, is pleased to provide its Initial Comments for the Commission's annual assessment of the status of competition in the MVPD industry. Although competition is gradually taking hold in the MVPD universe, incumbent cable companies continue to have an 80% share of the market. Moreover the cable segment of the market is becoming ever more concentrated, with the 10 largest multiple system operators ("MSO's") accounting for over 50% of the market. Similarly, the vertical integration of cable service and programming is becoming more clear each year.

The good news is that MVPD competition works, and wherever it has taken root the viewing public has seen dramatic improvements in the quality of service delivered by the existing providers, including steady rates or fewer increases, technical upgrades, or a wider variety of programming. Unfortunately the enormous cost of establishing a second local broadband network is so great that many entities that explored entering the market after the passage of the 1996 Telecommunications Act have decided not to proceed or have withdrawn. The open video service, or "OVS" mode of competitive entry has been essentially abandoned by the ILECs. Indeed, the only OVS operator of any significance is RCN, which is providing OVS and franchise cable services in 7 of the nation's 10 largest metropolitan markets: Boston, New York, Philadelphia suburban locations, Washington, D.C., Chicago, San Francisco, and Los Angeles suburbs. RCN currently has well over a million connections and is rapidly adding homes passed and subscribers to its system.

RCN continues to encounter substantial impediments to competitive entry. The most important of these is the inability to secure, or the uncertainty about whether it will be able to

secure, essential programming. For an MVPD competitor, while financing and technology are important, the key to success is to have attractive programming. Without such programming nothing else matters because the competitor will not be able to sell its product. Indeed, access to programming on just and reasonable terms is so crucial to MVPD competition that it can fairly be likened to the basic policy decision made by Congress in the Telecommunications Act of 1996 to compel the deeply entrenched ILEC industry to open up its local distribution plant to new entrants to stimulate competitive entry.

One of the most important programming segments is local sports, and not coincidentally, RCN has experienced difficulty getting such programming in three of its major markets: Boston, New York, and Philadelphia. In each case the incumbent MSO sought to keep such programming away from RCN so as to blunt its ability to penetrate the local market. In New York City — the premier cable market in the country — RCN is still not able to carry all the local sports programming because the incumbent Cablevision, which controls 7 of the 9 local professional teams, has bought up the rights to their programming and withholds some of the so-called "overflow" games from RCN. In the Philadelphia market Comcast, the incumbent there, first refused to let RCN carry SportsNet, which Comcast owns and which controls the great bulk of the local professional sports programming in the market. SportsNet is currently being made available to RCN, but to date only on short term renewals rather than the industry-standard long term contracts. Neither RCN, nor any other MVPD competitor, can succeed in any local market where the local sports programming is unavailable on equitable terms and conditions. This is a continuing issue to which the Commission must pay close attention.

The Commission's refusal to allow three major MVPD competitors - RCN, DirecTV, and EchoStar, to use the Commission's program access rules to gain access to important sports

programming has chilled competitive entry. The Commission's interpretation of section 628 of the Act limiting the scope of that important provision to satellite-delivered programming makes it easy and profitable for incumbents to evade the program access provisions of the statute by clustering their cable ownership in limited geographic areas and then using terrestrial distribution methods. Prior interpretations of the OVS rules which permitted a local cable competitor of an OVS operator to pose as a potential outside programmer so as to force disclosure of critical competitively-sensitive system data has also chilled competitive entry.

The Commission will shortly be instituting a proceeding to determine if the existing statutory restriction on vertically integrated cable operators refusing to share their programming with local competitors should be continued, or be allowed to sunset. It is crucial for the further development of MVPD competition that the ban on exclusivity be continued. Indeed, it is crucial for the further development of MVPD competition that the broader program access provisions in section 628 of the Communications Act be extended in various ways so that the program-owning incumbents are not able to use programming as a blunt anticompetitive vehicle. RCN believes the Commission has all the authority it needs in the Act to do what it deems essential to assure a level playing field for new competition and to read section 628 expansively. However, if the Commission does not agree, it should promptly seek additional legislative authority from the Congress.

Another barrier to competitive entry is the cost associated with gaining access to utility poles for the attachment of RCN's wires. Although Congress amended the Communications Act in 1996 specifically to compel pole-owning utilities to make space available on their poles on nondiscriminatory and just and reasonable terms, RCN has encountered difficulties with pole access in the Boston and Philadelphia regions. Both Verizon of Massachusetts and Verizon of

Pennsylvania failed to meet their statutory obligations to RCN with the result that the build-out of RCN's systems in those areas was materially delayed and the costs were significantly higher than they should have been. After much expense and effort in the form of litigation, RCN has been able to significantly improve the situation and currently has agreements with both Verizon entities. An even more serious problem has arisen in the Philadelphia area in respect to the poles of the local electric utility - PECO Energy Co. ("PECO"). 75 % of the local utility poles in suburban Philadelphia are owned by PECO which has been grossly overcharging RCN both for pole attachment licenses and for make-ready work. RCN has filed a formal complaint against PECO in respect to these matters which is currently pending before the Cable Service Bureau.

RCN has also experienced difficulties gaining access to MDUs in various markets. Because some 30% of the public lives in such structures and this block is usually the critical early revenue-generating portion of any metropolitan area, the inability to efficiently provide service (or to provide such service at all) to such subscribers is frequently a serious problem. In many cases the incumbent cable operator has arranged exclusive rights to serve a particular building, often by making an up-front payment to the building owner. The Commission's cable inside wiring rules are of limited value because they apply only in instances where the incumbent does not own the existing wiring and has no legal right to remain on the premises. In RCN's experience incumbents virtually always claim to have such rights and are ready to litigate the matter through the local courts. In such circumstances the newcomer finds it at best unappealing to pursue service to such an MDU because of the costs and illwill litigation it would entail, and at worst wholly impractical because of the substantial delay. The Commission should revisit and revised its cable inside wiring rules so that they facilitate competition in MDUs.

RCN has continued to encounter difficulties in negotiating rights-of-way agreements with local municipalities, many of which seek excessive or unreasonable financial and other concessions from potential MVPD competitors. RCN has previously asked the Commission to take a more proactive role in asserting federal primacy in respect to rights-of-way principles so that local franchise authorities cannot unduly delay or even completely forestall competitive entry.

Among other barriers to MVPD entry has been the Commission's own slowness in reaching decisions involving disputes between incumbents and new entrants. Major competitive disputes involving regulatory matters can take years to resolve. RCN is still waiting for a ruling on a narrow aspect of the cable inside wiring rules which was submitted almost three years ago.

The bulk of the new entry into the MVPD market has come through development of DBS. While DBS is a powerful delivery model, it has serious shortcomings, especially for urban viewers who often cannot achieve a clear line of sight to the satellite. Both in urban and in rural areas the establishment of a return path is cumbersome and expensive. Accordingly, it is vital that the Commission continue to take steps to facilitate the development of other forms of MVPD competition, such as that offered by RCN and other fiber-optic based providers.

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Pursuant to the Notice of Inquiry ("NOI") released by the Commission in the above-captioned matter on June 25, 2001,¹ RCN Corporation ("RCN"), by the undersigned counsel, hereby submits its Initial Comments. RCN, the largest OVS operator in the country, and one of the largest broadband overbuilders with subscribers in 7 of the 10 largest markets in the U.S., is pleased to have this opportunity to set forth its views on the numerous important issues raised in the NOI.

I. INTRODUCTION

RCN has participated in the Commission's annual review of the status of competition in the MVPD industry for many years and submitted extensive Comments in last year's proceeding. Rather than repeat much of the information contained in last year's Comments and Reply Comments, RCN will merely update the Commission on those matters with respect to which recent developments are especially germane to the public policy issues addressed in this

¹ *In the Matter of Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 01-191, *rel.* June 25, 2001, 66 Fed. Reg. 35431 (2001).

proceeding, and will emphasize those matters which are of paramount importance to RCN's continuing effort to bring innovative and meaningful competition to the MVPD market. What does bear reemphasis, and indeed increasing emphasis as the incumbent cable industry becomes more concentrated² and more geographically clustered, is that competing with an existing cable operator in an urban area is not for the faint-hearted or the thinly-capitalized. The new competitor must be able to market its services against an entrenched cable operator who has substantial advantages in the competitive battle: name recognition, an embedded customer base, strong economies of scale, established relationships with local franchise and governmental authorities, a corporate presence in the community, and vertically integrated programming affiliates or established contracts for programming.

The new entrant has no captive subscribers; no initial revenue, and enormous start-up expenses such as securing the local franchise. This latter process alone generally takes six months to a year or even longer. Local franchise authorities usually attempt to secure as high a price as possible for granting a franchise and typically require high standards of proof of a franchise applicant's financial and operational experience and capability. Multi-year construction

² Notwithstanding the decline in cable's share of the MVPD market to some 80%, the cable industry has grown ever more concentrated, with the 10 largest multiple system owners ("MSOs") now accounting for some 52.5% of the market, and with the vertical integration of cable companies and programming vendors growing increasingly clear. The striking level of concentration is set forth in the Commission's 7th Annual MVPD Report, CS Docket No. 00-132, *rel.* Jan. 8 2001, which notes, *inter alia*, that the top four MSOs serve more than 50% of all subscribers: AT&T (19.1%); Time Warner (now AOL Time Warner): (14.9%); DirecTV (10.3%); and Comcast (8.4%). The Report notes also that the top 10 MSOs served 75% of the MVPD universe in 1999 but 84% in 2000. (¶ 169). One or more of the top five MSOs holds ownership interests in each of the 99 vertically integrated services. (¶ 174). Nine of the top 20 video programming networks ranked by subscribership are vertically integrated with a cable MSO. (¶ 175). A "significant amount" of video programming is controlled by only 11 companies, including cable MSOs. (*Id.*).

commitments are normally required. Accordingly, the potential competitor must earmark funds, purchase long lead time items, enter into programming commitments, hire hundreds of employees in each market, and, most important, fight for each subscriber because the local residents who want cable service are probably already customers of the incumbent. To use a well-worn metaphor, the low-hanging fruit has been picked. Installing fiber optic or coaxial cable throughout a community can cost \$100,000 to \$300,000 per mile. As a result, it has generally been thought that competitive MVPD service based on construction of a second local broadband distribution network is not sustainable financially³ and there has been relatively little of it, either before passage of the Telecom Act of 1996, or thereafter.

Of course, RCN also enjoys certain competitive advantages: its newly designed and installed fiber optic network is among the most advanced in the world,⁴ it is able to offer bundled service combining local and long distance telephony, high speed Internet access, and broadband video from day one. Bundling offers enormous economic benefits to the consumer. In the Boston area, for example, RCN's ResiLink SM Platinum service, which costs \$156 per month, provides telephone, cable and high-speed Internet access. Typical cable and phone providers in the Boston area offer less for a combined monthly total of about \$243 per month.⁵ Because it is

³ Typically, it is said that "[o]nce an incumbent system has captured a large share of the viewing public in a particular area, it is quite difficult for a new system to come into the market and offer potential subscribers as favorable pricing and viewing options as those available from the incumbent system." Piraino, *A Proposal For the Antitrust Regulation of Professional Sports*, 79 B.U.L. Rev. 889 (1999) at n. 387.

⁴ See Morgan Stanley Dean Witter Report, March 31, 1999. RCN has been rated number 2 out of 100 of the most innovative telecommunications companies in America. See *Forbes* ASAP Dynamic 100 List, April 5, 1999.

⁵ RCN Annual Report for 2000, at 12.

not an incumbent cable operator it is not generally disdained or disliked by the general public, as are so many established cable companies whose reputation for poor service and high price is well deserved. In fact, almost without exception RCN has found that local franchise authorities and local residents enthusiastically welcome the introduction of a cable competitor. Certainly the public is subscribing to RCN's services. A typical ResiLink SM customer takes 3.5 services for an average of \$129 a month.⁶

The Commission knows quite well that competition works, despite all the difficulties faced by competitors and has broadly addressed this issue in prior annual reports on the status of competition in the MVPD market.⁷ Typical observations are the following: "[C]ompetition often results in lower prices, additional channels, improved services, or additional non-video services."⁸ "Generally, we find that in communities where head-to-head competition is present, the incumbent cable operator has responded to competitive entry in a variety of ways, such as lowering prices, providing additional channels at the same monthly rate, improving customer service, adding new services including high speed Internet and telephone services, or by challenging the legality of the entrant's activities."⁹ These observations are borne out by RCN's

⁶ *Id.*, at 13. At year end 2000, 26% of RCN's 1.1 million marketable homes took at least one service and 37% of the 550,000 marketable homes that had RCN available to them for at least one year took one or more RCN services. *Id.*, at 7. For a new competitor these are very high rates of market penetration.

⁷ See, e.g., *Fourth Annual Report, Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, 13 FCC Rcd 1034 (1998), at ¶¶ 131-132; *Fifth Annual Report*, 13 FCC Rcd 24284 at ¶¶ 121 and 136-137; *Sixth Annual Report*, 15 FCC Rcd 978 at ¶¶ 129-133; *Seventh Annual Report, supra*, at ¶¶ 213-238.

⁸ FCC, *Seventh Annual Report* at ¶ 39.

⁹ *Id.*, at ¶ 213.

experience in a variety of markets. Appendix A hereto contains a brief description of instances in which RCN's presence in a community has had a visible impact on the incumbent's rates, services, or practices. RCN continues to invest in its network and services. For its part, the Commission must inform itself and the Congress of the public policy issues which exist in the MVPD marketplace, take such action as it is empowered to do under its existing statutory authority, and, not least, seek from the Congress such further authority as it believes it needs to properly advance the public interest.

II. RCN'S STATUS AND ACTIVITIES

In last year's Comments RCN discussed in detail its state-of-the-art multi-purpose network, its Resilink SM pricing plan, integrated MegaBand TM services, and its pricing plans.¹⁰ In the 12 months following the submission of those Comments, RCN has continued to build out its network, to increase its penetration in its chosen markets, and to tackle the competitive barriers which it discussed at length in last year's Comments. Appendix B hereto consists of a brief tabular presentation showing the growth in RCN's network from 1st quarter 2000 to 1st quarter 2001.¹¹ Overall, consolidated revenue in 2000 increased over the prior year by 21% to \$405 million. At the end of the 1st quarter of 2000 RCN had just over 600,000 marketable homes. One year later it had almost 1.2 million marketable homes. At year-end 2000 RCN passed twice

¹⁰ RCN 2000 Initial Comments at 2-4.

¹¹ Financial data for the second quarter of 2001 will not be available on the filing date for these Comments; RCN will supply such further data in Reply Comments or as soon thereafter as the data are available.

as many homes (1,455,000), doubled the route miles, and increased on-net connections (474,000) by two fold, as compared with 1999.¹²

On a market-by-market basis, there has been substantial growth in the Boston, New York, Philadelphia, Washington, D.C., Chicago, Los Angeles and San Francisco venues. In the case of the Philadelphia metropolitan area, RCN continues to build out as rapidly as possible in numerous suburban communities but is not currently building in the City itself. Negotiations with the Cable Commission in Washington, D.C. to reach a long term agreement are proving very difficult although RCN's affiliate there, Starpower, continues to expand its services geographically within the city pursuant to a short term OVS agreement and in suburban locations with a mixture of OVS and franchise arrangements.

III. INDUSTRY STRUCTURE

The NOI asks for information about changes in the structure of the MVPD industry. RCN has no access to data which are not available to the Commission and accordingly will not dwell on this issue. Suffice it to note that cable continues to dominate the MVPD industry and that cable continues to become ever more concentrated. As the Commission's own data show, cable still has approximately 80% of the MVPD industry, with DBS accounting for some 15 percentage points of the remainder. Terrestrial cable overbuilders, SMATV and some MMDS and C-Band satellite home delivery systems account for the remaining 5%. The interesting point here is that entities like RCN *i.e.*, those willing to take on the cable operators using terrestrial technology are few and far between. Indeed, the commercial viability of RCN's business is

¹² RCN Annual Report 2000, at 4.

heavily dependent on the bundled nature of its offering, more particularly the three revenue streams which are generated on one integrated network.

RCN believes it is the largest such overbuilder in the country. While DBS is a powerful technology and its commercial success is to be applauded, it has serious limitations, including high subscriber fees, use of valuable spectrum, little or no two-way capability, and many instances of unavailability in urban areas due to line-of-sight limitations. With respect to the growth of overbuilding generally, it appears that such activity, at the aggregate national level, has slowed down considerably. It seems indisputable that the slow down in telecommunications investment has had an adverse effect on overbuilders who face the twin challenges of thinner capital markets and customers who may be more cautious about accepting monthly obligations for services. RCN continues to expand its overbuilding in each of its markets, although in light of recent conditions in capital markets it has decided to concentrate on construction in the markets already launched rather than to initiate new systems in other communities. As set forth in Appendix B hereto, the traditional financial and subscriber criteria show that RCN is expanding while other major overbuilders have withdrawn altogether or adopted a lower profile than in earlier years in regard to broadband overbuilding.¹³

In addition to a general deterioration in economic conditions which themselves may be expected to lead to a lack of new entrants, the Commission's long-standing 30% cap on horizontal cable ownership has been called into question. In *Time Warner Cable Co., L.P. v. FCC* the U.S. Court of Appeals for the D.C. Circuit has reversed and remanded to the

¹³ It has always been RCN's approach to new markets not to enter one unless it had sufficient funds on hand to complete the build out and establishment of a new competitor. Others may have followed a different business plan and are now severely constrained by the relative scarcity of new investment capital.

Commission its rules establishing horizontal cable ownership limits.¹⁴ As a result the Commission has suspended its requirement that AT&T divest some of its cable holdings,¹⁵ and, of no less concern, Comcast, the third largest cable operator in the U.S., has indicated a desire to acquire AT&T's cable holdings,¹⁶ an acquisition that would make Comcast the largest cable MSO in the country and allow Comcast to control the broadband services of some 22 million subscribers, or some 31% of the cable households. The acquisition would also make Comcast the principal franchisee in 8 of the largest 10 markets in the country and give it a strong presence in 18 of the 20 largest.

As recently suggested by Commissioner Tristani,¹⁷ a tendency of the MVPD industry to grow ever more concentrated only underscores the urgent need for the Commission to take whatever regulatory action is open to it under existing law to promote competitive entry and to provide a favorable climate for such entrants to have a fair opportunity to succeed. Doing so does not substitute regulation for marketplace economics; it merely facilitates the latter by leveling the playing field. While RCN is a multibillion dollar enterprise it is minuscule in size and resources compared to the largest cable MSOs. Because, as noted above, the last few years have witnessed a winnowing out of many broadband or potential broadband operators as the rigors of broadband

¹⁴ 249 F.3rd 1126 (D.C. Cir. 2001).

¹⁵ *In the Matter of Applications for Consent to the Transfer of Control Licenses and Section 214 Authorizations from MediaOne Group, Inc. to AT&T Corp.*, Order, CS Docket No. 99-251, *rel.* March 16, 2001.

¹⁶ New York Times, July 9, 2001, at 1.

¹⁷ "Public, Educational, and Governmental Access Channels: Localism and Diversity In Action" Before the Alliance for Community Action.

competition have become ever more clear, if competition is to succeed, even to a modest degree, there must be a regulatory climate which fosters it. If the Commission concludes that additional authority is required to achieve these goals, it should seek such supplemental authority from the Congress.

IV. ACCESS TO PROGRAMMING

A. In General

As in prior years, RCN emphasizes that access to high-quality programming is the keystone to any successful MVPD offering, and that such programming must include the great bulk of local sports programming. Such programming is highly desired by subscribers; its absence virtually dooms any MVPD competitor to failure. In prior years RCN has provided the Commission with details on its inability to secure local sports programming in the New York City and in the Philadelphia markets.¹⁸ Both of these problems persist. In New York City RCN has been deprived by Cablevision of access to overflow sports programming. Cablevision, an incumbent with some 2.7 million subscribers in the New York metropolitan area, controls programming rights for seven of the nine local professional sports teams¹⁹ and their venues. In early 1999, Cablevision revised its sports programming distribution system from satellite to terrestrial so as to preclude RCN's carriage of an important tier of extremely popular local sports

¹⁸ RCN 2000 MVPD Comments, at 13-22.

¹⁹ These teams are the Yankees, Mets, Knicks, Nets, Rangers, Islanders, and the N.J. Devils. Cablevision owns outright two of these teams: the Knicks and the Rangers.

programming. As RCN explained to the FCC, the loss of a full slate of local sports programming is a serious detriment in marketing RCN's new service.²⁰

Recently the Commission rejected RCN's application for review of a CSB Order denying RCN's formal program access complaint against Cablevision.²¹ The Commission concluded that RCN had failed to show that Cablevision moved the programming from satellite to terrestrial distribution for the purpose of evading the program access provisions of sec. 628 of the Act.²² In doing so, however, the Commission, over the dissent of Commissioner Tristani, also denied RCN's request for discovery which RCN had sought in order to probe the issue of statutory evasion.²³ RCN believes the Commission's decision is wrong as a matter of law and logic and will have pernicious and anti-competitive effects on the MVPD industry. RCN's competitive standing in New York City continues to suffer from the absence of the overflow programming. Any other potential MVPD overbuilder thinking of entering the market can only conclude from the Commission's decision that incumbents enjoy a virtually irrebutable

²⁰ "From the viewpoint of marketing, it is not good enough to say we offer 'most' local sports, or 'almost all' local sports. The public does not want to have to analyze what is missing; they want to know they will get it all, and this is especially important in a fiercely competitive environment such as the New York City MVPD market. Stated differently, having, for example, 85% of the local sports programming is not 85% as good as having 100%; it is a significant competitive disadvantage, and this is true whether we have 75% or 85% or even 95%." Reply of RCN Telecom Services of New York, Ex. A, pp. i-ii, June 28, 1999.

²¹ *RCN Telecom Services of New York, Inc. v. Cablevision Systems Corporation, et al.*, FCC 01-127, *rel.* May 30, 2001.

²² 47 U.S.C. § 548.

²³ *Id.* In effect, the Commission affirmed the CSB's one-sided determination that Cablevision's motives were not suspect, without allowing any serious inquiry into those motives.

presumption that programming can be removed from the ambit of section 628 by shifting it to terrestrial distribution.²⁴

In the Philadelphia suburban communities in which RCN is actively building out its system, the overwhelmingly dominant incumbent, Comcast,²⁵ acquired the great bulk of the local sports programming, as well as their venues, and threatened to deny RCN long term access.²⁶ The threat was mitigated only when Comcast faced Justice Department review of its plan to acquire Home Team Sports in the Washington area. To this day, however, Comcast has refused to enter into a multi-year industry-standard contract for local sports programming in Philadelphia, but keeps RCN on a revolving three-month renewal. This is no way to run a business and puts RCN's ability to market its services in the Philadelphia area at constant risk.

²⁴ Indeed, the Commission's decision closely follows the same anti-competitive analysis on which it relied in denying two other program access complaints against Comcast in Philadelphia. See *DirecTV v. Comcast Corp.*, 13 FCC Rcd 21822 (1998), and *EchoStar Communications Corp. v. FCC*, 14 FCC Rcd 2089 (1999), *rev'w den. sub nom. In The Matter of DirecTV v. Comcast Corp. and EchoStar Communications Corp. v. Comcast Corp.*, FCC 00-404, 2000 WL 1720534.

²⁵ Comcast serves 1.9 million subscribers in the Philadelphia metropolitan area, about 90% of the total subscribership.

²⁶ Through subsidiaries, Comcast owns a controlling interest in the Philadelphia Flyers National Hockey Team, the 76ers National Basketball team and two area arenas. It also holds a controlling interest in SportsNet which controls the great bulk of the professional area sports programming in the Philadelphia DMA. SportsNet carries approximately 66% of the games of the Philadelphia Flyers (NHL) and 73% of the Philadelphia 76ers' (NBA) regular season games as well as 49% of the Phillies' games (MLB). Comcast also owns exclusive rights to broadcast games of the Philadelphia Phantoms (American Hockey League), Philadelphia Wings (National Lacrosse League), and Philadelphia Kixx (National Professional Soccer League), as well as numerous football and basketball games of regional colleges and universities. This programming is distributed terrestrially to 2.7 million subscribers in the Philadelphia DMA. In its own promotional material Comcast has touted the strategic importance of SportsNet: "SportsNet provides a significant marketing advantage against satellite TV and other competitors."

While this is better than not having the programming at all, it also leaves RCN in a tenuous position as it seeks to persuade existing Comcast subscribers to try the newcomer: while RCN currently has the highly-desirable SportsNet programming, it can not provide assurances that it will continue to have such programming over the long run.²⁷ Perhaps RCN should consider itself fortunate to have SportsNet on any terms and conditions since both DirecTV and EchoStar have been denied any access to the programming whatsoever. Nevertheless, the practice of continuing to make SportsNet available only on a short term basis has never been explained to RCN, and the anticompetitive potential of this insecure contractual arrangement is all too clear.

Broadly speaking the cable industry appears to have adopted ownership or control of local sports programming as a device to capture or assure dominance in local markets. It has long been recognized that sports programming is crucial.²⁸ Cablevision is not only dominant in the New York City sports programming market but has investments in a wide variety of sports

²⁷ The issue of Starpower's continuing access to Home Team Sports ("HTS") in the Washington, D.C. area arose in 2000 when Comcast proposed to acquire the entity owning the HTS programming rights. The Department of Justice issued CID's to Comcast and to others and, RCN understands, HTS will continue to be available to MVPD competitors in the Washington, D.C. area.

²⁸ See, e.g., *Implementation of Section 26 of the Cable Television Consumer Protection and Competition Act of 1992; Inquiry into Sports Programming Migration*, Final Report, 9 FCC Rcd 3440 (1994).

programming activities.²⁹ Industry commentators recognize the value of the sports programming monopoly to cable operators:

[P]rofessional sports leagues have further extended their economic power by allying with other monopolies in related markets. The leagues' relationships with broadcast networks and cable systems have limited competition in local media as well as sports markets. The New York Yankees, for instance, have granted Cablevision the exclusive right to broadcast games in the New York area in exchange for a payment of \$486 million over twelve years. Such a relationship, however, does not only increase the Yankees' monopoly profits. By giving Cablevision exclusive control over sports programming critical to any cable system's success, the Yankees have allowed Cablevision to preclude potential competitors from entering the New York cable market.³⁰

B. Section 628 And Exclusivity

When section 628 of the Communications Act was enacted in 1992, Congress was reacting to widespread complaints about the refusal of cable companies vertically integrated with program providers to make their affiliates' programming available to competitors. Congress accordingly enacted a ban on withholding of such programming either through the signing of exclusivity agreements, or through other anticompetitive devices or practices. Section 628(c)(2)³¹ contains a provision banning programming exclusivity agreements in certain circumstances.

²⁹ According to Multichannel News, Cablevision's Rainbow Media Holdings Inc. and Fox/Liberty Networks (with which Cablevision has sports affiliations) "either own or are affiliated with more than 20 regional sports networks that have programming deals with most professional teams: 25 of 30 MLB teams, 26 of 29 National Basketball Association teams and 19 of 26 National Hockey League squads." Multichannel News, May 4, 1998, p. 74. The article also comments that such programming is a "gold mine" for the regional sports networks, "[L]ocal events often generate the highest ratings of any cable program... ." *Id.*

³⁰ Piraino, *supra*, at 891 (footnotes omitted). Cablevision has tied up programming rights to the Mets for 30 years, and the Yankees for 12 years. Possessing the rights for seven of the nine teams in the New York metro area has allowed Cablevision to triple its previous subscribership. *Id.*, at 919.

³¹ 47 U.S.C. § 578(c)(2).

However, recognizing that the cable industry was in a period of rapid and dynamic development, Congress specified that the ban on exclusivity was to be reviewed by the Commission after 10 years, and renewed only if the Commission concluded, on the basis of the then-current circumstances, that doing so was desirable.³²

In 1998 testimony before a Senate Committee, Congressman Tauzin, one of the principal architects of the Cable Act of 1992, which contained what is now section 628 of the Communications Act, observed that

In 1992, we awakened to the sad realization that we had forgot one crucial element, and that was that cable controlled programming. And that controlling programming was a way of making sure that there would be no competitors. If a competitor couldn't get the programming, it certainly wasn't going to launch the satellite or put up the antenna. Or, in fact, even build another cable system in the same community to compete with the incoming [incumbent] cable company.³³

As the NOI recites, the 10 year life of the exclusivity provision terminates in October of 2002, and the Commission is accordingly obliged to initiate a review of the proceeding in calendar 2001. Commenters are asked to provide suggestions as to how the Commission should conduct this review. RCN believes that the ban on exclusivity is absolutely vital if competition is to have any chance of success in the MVPD market. RCN urges the Commission to adopt something other than the typical notice-and-comment rulemaking; the Commission establish, either in lieu of such proceedings, or in addition to them, some sort of live industry forum among cable companies, their programming affiliates, competitive entrants, and other interested parties. This could take the form of round-table discussions, oral presentations, or some other form of

³² See 47 U.S.C. § 628 (c)(5).

³³ Testimony of Representative Billy Tauzin before the Senate Commerce, Science and Transportation Committee, July 28, 1998, Tr. at 6 (text in bracket added).

live interaction with FCC staff or Commissioners present as well. Granting limited discovery rights to interested parties or encouraging staff-propounded questions to various industry participants would also permit relevant facts to be placed on the public record.

It is widely known that the vertically integrated cable companies and the new or prospective entrants have diametrically opposed views on the necessity to retain the ban on exclusivity. While notice-and-comment procedures for the development of Commission rules may be legally sufficient to satisfy the APA, a more interactive dialogue among the players themselves would provide the Commission – and particularly the three new Commissioners – with a more immediate hands-on opportunity to listen to the parties, ask questions, or evaluate what they hear on the basis of a live exchange.

There is no more crucial issue to the preservation of the degree of competition that currently exists, and indeed to its expansion, than competitors' access to programming. While RCN fully appreciates that compelling vertically integrated entities to make their programming available to competitors constitutes something of an intrusion into free market principles, that intrusion is no less vital to the public interest than the policy decision made by Congress in sections 251-276 of the Communications Act to compel the ILECs to open up their local distribution plant to competitive local exchange carriers: in both cases a deeply entrenched industry with the compelling advantages of economies of scale and scope would simply preclude new entry unless regulation existed to prime the competitive pump.

RCN is currently spending millions of dollars to expand its physical plant in suburban Philadelphia communities served by Comcast. Having initiated service there in early 2000, subscribership is growing at a satisfactory rate. Virtually all of these subscribers have a choice of RCN's cable service or that of Comcast, and a choice of RCN's telecommunications services or

those of Verizon. Without SportsNet the viability of RCN's services would be nil to nonexistent. RCN would like the opportunity to describe Comcast's "shadow" marketing in communities about to receive RCN's service by which Comcast sought to create doubt about RCN's continued carriage of SportsNet. Comcast should be prepared to explain face-to-face its plans and policies for SportsNet and its refusal over the last 18 months to make a firm long term contractual commitment to RCN.

V. DELIVERY PROBLEMS

The NOI seeks information about access problems, in particular to utility poles and to MDUs. RCN continues to experience difficulties in both respects and, as it has in the past, urges the Commission to take a more proactive stance in respect to these matters.

A. Pole Attachment Problems

Another of the procompetitive steps taken in the Telecommunications Act of 1996 was the amendment of section 224 of the Communications Act to compel pole-owning utilities to make their poles accessible to cable companies and to telecommunications companies and to impose additional pro-competitive conditions on the utilities.³⁴ RCN has found this legislation invaluable. As a telecom entity which plans to build its own facilities to serve primarily residential customers, rather than the more limited universe of commercial subscribers targeted by the great majority of competitive local exchange carriers ("CLECs"), and as a cable competitor, RCN must run its facilities up every residential street and down every alley. In Massachusetts, for example, RCN is currently on approximately 72,000 poles and may require access to some 60,000 more. In Pennsylvania it is currently licensed for almost 16,000 poles

³⁴ 47 U.S.C. § 224(e), 224(f)(1).

and, ultimately, may need access to over 100,000. In Queens, New York, RCN has wiring on 5,200 poles.

In the last year RCN has had to devote substantial resources to gaining access to utility poles in respect to its Boston and Philadelphia area systems. RCN participated before the Massachusetts DTE in its consideration of Verizon-New England's application under section 271 of the Act to provide in-region interLATA communications.³⁵ RCN contended that Verizon was not in compliance with the 14 point checklist set forth in the Act³⁶ because it did not permit RCN to attach to its poles in a fashion consistent with section 224 of the Communications Act.³⁷ The DTE rejected RCN's legal position and approved that application. RCN again challenged Verizon's pole attachment policies before the FCC. Early in 2001 the Commission granted Verizon's application.³⁸ The Commission's rationale for rejecting RCN's position relied entirely on the theory that in a state like Massachusetts, which has its own pole attachment regulations, the FCC lacks jurisdiction to consider pole attachment issues in the context of a section 271 application.³⁹ RCN believes this conclusion is erroneous as a matter of law and moreover sets a precedent which will substantially inhibit new investment in competitive cable systems since access to ILEC-owned utility poles on fair and reasonable terms is vital for any terrestrial

³⁵ 47 U.S.C. § 271.

³⁶ Specifically 47 U.S.C. § 271(c)(2)(B)(iii).

³⁷ 47 U.S.C. § 224 (Pole Attachment Act).

³⁸ *In Re Application of Verizon of New England*, CC Docket 01-9 *rel.* April 16, 2001, *appeal pending sub nom. Worldcom, Inc. v. FCC*, D.C. Circuit Case No. 01- 1198, *filed* April 25, 2001.

³⁹ *Id.*, at ¶ 206.

overbuilder seeking to compete in an ILEC-dominated market. RCN notes, however, that with the informal assistance of the Massachusetts DTE, Verizon-MA and RCN have reached an agreement of an experimental nature which goes far to meet RCN's concerns about just, reasonable, and nondiscriminatory access to Verizon-MA's poles.

RCN also experienced difficulties gaining access to poles in the territory of Verizon of Pennsylvania, albeit the issues faced in the two Verizon territories were dissimilar. In Massachusetts the principal issue was RCN-BecoCom's inability to box Verizon's poles, even after Verizon had allowed others to box and had even done so itself.⁴⁰ In Pennsylvania, Verizon freely permitted boxing but was responding too slowly to RCN's attachment and make-ready requests and was allowing other attachers to use certain attachment techniques which it denied to RCN. After RCN intervened before the Pennsylvania Public Utility Commission RCN and Verizon were able to settle their differences and RCN withdrew from the proceeding.⁴¹

In the suburban Philadelphia communities in which RCN is actively expanding its system 75% of the utility poles are owned by PECO Energy Co. ("PECO"), a subsidiary of Exelon Corporation. Like an increasing number of other electric utilities, PECO and its affiliates have entered the telecommunications market. Through a variety of partnerships PECO provides CLEC

⁴⁰ "Boxing" refers to the practice of attaching wiring to both sides of a pole, *i.e.*, to the street side and the opposite, or "field" side, so as to make more efficient use of the carrying capacity of the existing poles.

⁴¹ While Verizon imposed on RCN a condition of confidentiality with respect to the terms of the withdrawal, the advisory opinion of the Pennsylvania PUC concerning Verizon-PA's section 271 application provides the essential terms. *See* Pennsylvania Public Utility Commission Consultative Report in Docket M 00001435 *rel.* June 25, 2001, pp. 107-119. RCN is pleased to report that, at least to date, Verizon has faithfully fulfilled the commitments it gave to RCN in the settlement and accordingly RCN is no longer dissatisfied with Verizon of Pennsylvania's pole attachment practices or policies.

and wireless services in the greater Philadelphia area. Over RCN's vocal objections, PECO charges RCN a pole license fee of \$47.25 per pole to attach its cable to PECO's poles, a rate which is far beyond anything experienced by RCN in a wide variety of other metropolitan areas. In addition PECO charged RCN very high rates for make-ready work and refused to provide cost justification for such rates. Finally, PECO charged RCN for make-ready work which was necessary to correct pre-existing safety violations on its poles. Since the summer of 1999 RCN has paid PECO approximately \$10.2 million for license and make-ready fees, of which some \$9.7 million is for make-ready.

As required by the Commission's pole attachment rules,⁴² RCN attempted to address PECO's charges and practices directly and informally but to no avail. When the parties were unable to resolve these matters in private negotiations, RCN filed a formal complaint at the FCC⁴³ addressed to the level of PECO's license fees, and shortly thereafter filed an amended complaint concerning PECO's make-ready fees and practices.⁴⁴ PECO's responses to RCN's Complaint and Amended Complaint claim that the FCC lacks jurisdiction over its pole attachment fees because section 224 of the Act does not apply to an entity, like RCN, which provides internet access service to its subscribers. PECO objected also to FCC consideration of its make-ready fees on the ground, *inter alia*, that the provision of make-ready work is not a utility function and is therefore beyond the scope of section 224. While this filing is not the place

⁴² 47 C.F.R. § 1.1400 *et seq.*

⁴³ Pennsylvania does not have its own pole attachment regulations and accordingly section 224 (c)(1) of the Act gives exclusive jurisdiction to the FCC.

⁴⁴ *RCN Telecom Services of Philadelphia, Inc. v. PECO Energy Co. and Exelon Infrastructure Services, Inc.*, PA 01-03. The matter is now before the CSB for decision.

to address the merits of RCN's Pole Attachment Complaint, it is worth noting that the Commission has rejected the argument presented by numerous utilities that section 224 does not cover attachers which provide internet access service, and the 11th circuit's decision agreeing with the utilities' position is currently docketed in the Supreme Court in the upcoming Fall term.⁴⁵ The CSB has also indicated, in numerous proceedings, that it has jurisdiction over make-ready charges.⁴⁶

These three pole attachment proceedings have sapped financial and manpower resources which could have been better utilized to provide competitive service choices to the public. On the other hand they illustrate that incumbents with market position are ever-ready to abuse their control over essential facilities to preserve their dominant position in the market or to prevent an incipient competitor from gaining a viable foothold. More specifically, PECO's efforts to deny FCC jurisdiction over its pole attachment rates and practices appear to be part of an emerging pattern in which large numbers of electric utilities are seeking through wholesale denial of FCC jurisdiction to attack the pro-competitive position set forth by Congress in the Telecommunications Act of 1996. To date the CSB and the Commission have been vigorous advocates of the Commission's authority to control such utility abuses, both in their own decisions and in the courts. The Commission must continue to be aggressive in enforcing the Pole Attachment Act where a relevant state has not acted.

⁴⁵ *Gulf Power v. FCC*, 208 F.3d 1324 (1999), *stayed pending Supreme Court review; pet'n for cert. granted sub nom FCC and U.S. v. Gulf Power Company, et al*, Jan. 22, 2001.

⁴⁶ *See, e.g., Cavalier Telephone Co. LLC v. Virginia Electric and Power Co.*, 15 FCC Rcd 9563 (CSB 2000), *app. for rev'w pending*, at ¶¶ 12-16.

B. Access To Multiple Dwelling Units

Access to MDUs remains a serious barrier to entry. In prior years RCN has indicated that the Commission's existing cable inside wiring rules are of limited value because they can be largely defeated by an incumbent claiming ownership or the right to control, the existing distribution wiring. This remains true. In the Washington, D.C. metropolitan area, for example, Starpower has encountered numerous instances in which the incumbents have received exclusive building rights covering a period of years. Frequently these exclusive contracts involve upfront payments to building owners, and it has proven very difficult to offer service in any such building. While it may be possible, at least in some states, to litigate the legality or enforceability of such arrangements, doing so creates ill-will with the MDU owner, is expensive, and is time consuming.

As a practical matter, therefore, where such arrangements appear to be widespread entering the market is far more difficult and in some markets may be virtually impossible. In RCN's 2000 Initial Comments it noted that it had been waiting almost two years for the CSB to resolve RCN's request for a ruling on the proper interpretation of one provision of the cable inside wiring rules.⁴⁷ At the time, RCN noted that regulatory action delayed for such a long period of time in such a dynamic industry as telecommunications is very damaging to new entrants and provides an unfair advantage to incumbents seeking to keep new competitors at bay. Sadly, RCN must again note that no action has been forthcoming on this request. It is thus almost three years that RCN's request has been pending at the CSB.

⁴⁷ RCN 2000 Initial Comments, at 30; Petition for Special Relief, CSR 5311, filed September 23, 1998.

VI. OTHER BARRIERS TO ENTRY AND TO COMPETITION

In its Comments filed last year, RCN provided the Commission with a list of the barriers to competition which existed at that time. These encompassed program access issues, physical access to MDUs, securing rights-of-way and franchises on reasonable terms and conditions, anticompetitive decisions of the Commission, and the pervasive efforts of the cable incumbents to seek to block or burden competitors' access to the market.⁴⁸ Each of these problems persists. Again, RCN refers to the Comments it filed last year, and merely provides an update as required.

In *Time Warner Cable v. RCN-BecoCom and RCN Telecom Services of New York, Inc.*, the Commission consolidated for review two CSB decisions granting formal complaints filed by Time Warner against RCN in the Boston and New York markets. In both cases the CSB had found that Time Warner, as a potential video programming provider on RCN's OVS system, was entitled to see certain OVS-related data. In doing so the CSB rejected RCN's contention that the data were proprietary and not available to Time Warner as an in-region competitor of RCN under § 76.1503(c)(2)(v)⁴⁹ of the rules. The full Commission rejected the interpretation of that section applied by the CSB and instead held that if the party seeking access to the OVS data operates a cable system within the OVS' technically integrated service area, it should be denied access to such data.⁵⁰

Time Warner filed for reconsideration of that decision and continued to pursue its request for disclosure of RCN's competitively sensitive data in the metropolitan Boston market by filing

⁴⁸ *Id.*, at 11-33.

⁴⁹ 47 C.F.R. § 76.1503(c)(2)(v).

⁵⁰ *Time Warner Cable Co. v. RCN Telecom Services of New York, Inc., and RCN-BecoCom*, 15 FCC Rcd1124 (2000).

further pleadings with the CSB. RCN appealed the Commission's decision to the Court of Appeals for the D.C. Circuit.⁵¹ Pending Commission action on the Petition for Reconsideration the Court of Appeals held RCN's appeal in abeyance. In April of 2001 the Commission denied Time Warner's Petition for Reconsideration.⁵²

VII. OVS STATUS

Open Video Service, or OVS, one of the most innovative creations of the Telecommunications Act of 1996,⁵³ has not yet proven to be a widespread success. At present, no ILEC offers OVS service anywhere in the country, and RCN appears to be the only entity of national scope which is actually offering OVS service and one of very few offering such service anywhere. As RCN has previously reported to the Commission, many local franchise authorities appear to prefer to enter traditional franchises rather than to address the new questions posed by OVS agreements or – even worse – OVS franchises.⁵⁴ Since speed to market is crucial for RCN, it adopts the approach which appears to be most congenial to the local franchising bodies.

⁵¹ *RCN Telecom Services of New York, Inc., and RCN-BecoCom, LLC v. FCC*, Case No. 00-1043 filed February 9, 2000.

⁵² *Time Warner Cable Co. v. RCN Telecom Services of New York, Inc., and RCN-BecoCom, LLC*, FCC 01-119, *reh.* April 3, 2001. Thereafter RCN asked the Court to dismiss its appeal and the Court did so in an Order entered on July 18th, 2001. The Commission's decision on reconsideration is thus a final order.

⁵³ *See* 47 U.S.C. § 573.

⁵⁴ RCN has held extensive discussions with a number of municipalities concerning potential OVS franchises. The correct implementation of the statutory scheme for OVS systems operating pursuant to an OVS franchise is far from clear and there is no applicable FCC or judicial precedent. RCN has previously advised the Commission that the decision in *City of Dallas, Texas v. FCC*, 165 F.3rd 341 (5th Cir. 1999), *reh. den.* May 28, 1999, rejecting the FCC's determination to ban local franchises for OVS operators, would make OVS far less attractive as a mode of competitive cable entry, and this has proven to be true. To RCN's knowledge no such franchises have been issued anywhere in the country.

In those markets where RCN operates OVS systems it has provided all the data required by the rules to be made available to local government, broadcasters, and potential video programming providers. Although RCN has received numerous expressions of interest from potential VPPs, none has signed up as yet for service.

VIII. INDUSTRY STRUCTURE AND SERVICES

Finally, RCN provides some overall observations about MVPD industry structure and services. The Telecommunications Act of 1996 was intended to enhance competition between incumbent cable and telecommunications entities: section 653 encouraged ILECs to enter the video distribution field, and cable companies were encouraged to provide telephony. As noted above, however, four and half years later no ILEC operates an OVS and there is relatively little ILEC activity of any sort in the MVPD market place. Nor, on the other side of the coin, is the cable industry moving significantly into telephony. While some cable MSOs such as Cox have initiated telephone service on a limited or experimental basis, the only cable operator which has made a significant effort in this respect is AT&T Broadband. If Comcast is successful in acquiring AT&T Broadband's assets, that initiative is likely to be short-lived. Again, RCN is unique in the MVPD industry in that its revenues are derived significantly from both telecommunications and video services.⁵⁵

RCN's experience with clustering in the Boston, New York, Philadelphia suburbs and Washington DC. metropolitan areas is that clustering of cable ownership is driven principally by the desire to reinforce dominance in a particular market. While undoubtedly clustering creates

⁵⁵ For the quarter ended March 31, 2001, RCN's sales for voice totaled some \$27 million, for video some \$50 million, for data \$35 million, and "other" almost \$13 million. *See* Pro Forma Total RCN Corporation and Subsidiaries available at <http://www.rcn.com/investor/press/05-01/05-03-01/05-03-01.html>, p.3.

conditions in which certain program enhancements are available, the Commission must recognize that these enhancements are both driven by, and intended to block, competitive entry. In this sense they are analogous to the monopolist's willingness to drop prices in the short run to drive out competition so that, when the competition is no longer a serious prospect, the monopolist can revert to its former high prices or poorer service with no fear of challenge.⁵⁶

IX. CONCLUSION

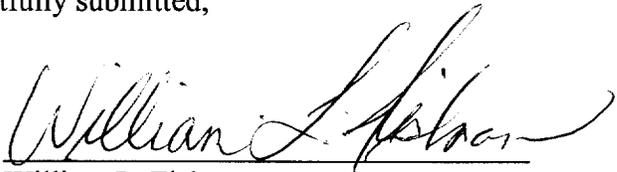
As in prior years, RCN urges the Commission to devote more resources to the long-term, structural, and institutional issues, rather than to limit its participation principally to writing long reports to the Congress. What the new MVPD competitor needs is a more proactive CSB and Commission stance on these issues. Only from such enhanced pressure will competitive entry and competition be likely to move along faster than they have in the past. If the trends of the last few years are extrapolated into the next few, Congress' vision of a more competitive MVPD industry will, except for DBS, come to little or naught, and that disappointing outcome, in substantial part, will reflect the FCC's failure to more aggressively establish a regulatory substrate on which private sector initiative can flourish.

RCN is well aware that the present climate favors marketplace solutions rather than heavy regulatory intervention. In fact, RCN agrees with that orientation and has put some \$5 billion dollars of private capital at risk to fulfill its unique vision of a single carrier building a single pipe to offer multiple residential services in densely populated areas. On the other hand, reality dictates that such efforts require a partnership in which regulators assess the legitimate needs of private investors and take minimal regulatory steps to see that such needs are met.

⁵⁶ Indeed, as the NOI itself notes, the much-vaunted advantages to incumbent subscribers of clustering may be illusory. *See* NOI at ¶ 19.

Decisions which are mechanistic, delayed for years, protective of incumbency, or otherwise discouraging of competitive investment will ultimately mortally impair Congress' clear intention to encourage private sector investment in the telecommunications and MVPD markets. In short, private investment such as that undertaken by RCN must be a partnership with regulators doing their part to establish a regulatory climate that encourages risk-taking. Without such a partnership the procompetitive policies of the Telecommunications Act of 1996, as well as of early cable legislation, inevitably will be frustrated.

Respectfully submitted,

By: 

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August 3, 2001.

EFFECTS OF COMPETITIVE ENTRY

RCN's introduction or announced introduction to a market benefits MVPD consumers because it leads the incumbent to improve its existing rates, practices, or service offering in one or more ways. Sometimes these are voluntary adjustments by the incumbent. Sometimes they occur in the context of a franchise renewal when RCN is awaiting the award of its own franchise, a process which gives the local franchise authority more leverage on the incumbent. A few representative instances of competitive responses follow:

» **Somerville, MA**

Incumbent Time Warner announced rate freezes in Somerville, a Boston suburb, upon RCN's entry, even though it was raising rates in most of the eastern Massachusetts communities in which it was the franchisee by 10% to 15%.

» **Boston, MA**

The City was able to negotiate a franchise renewal with Cablevision which imposed obligations on the incumbent more favorable to the public than would otherwise have been possible because RCN was already operating in the city as an OVS. Cablevision agreed to increase its commitment to public, educational and government ("PEG") channels and increase the channel capacity of its system. Cablevision also moderated its regional rate increase in the Boston area because it faced competition from RCN.

» **New York City**

In Manhattan the incumbent, Time Warner, adopted an aggressive bulk discount plan for apartment buildings targeted for service by RCN.

» **Suburban Philadelphia**

As RCN has rolled-out its competitive cable and local telephone services in suburban Philadelphia communities such as Folcroft, the incumbent, Comcast, began offering rate locks

and service improvements in towns to which RCN was offering or about to begin offering service. These special offers were highly selective, and focused specifically on the imminent arrival of RCN's competitive service.

» **Allentown, PA**

Allentown is one of the very few communities in the United States which has been served for 20 years by competitive cable companies. In Allentown the competitors are RCN and Service Electric. Both have almost fully built-out the city, so that most residences have two broadband wires available at each house. As a result of the competition, cable rates are significantly below the national average, and penetration is higher than the national average (approximately 90% of the city is wired by both companies). There are also fewer customer complaints on a percentage basis than the industry experiences nationally.

» **Washington, D.C. Metropolitan area**

RCN's affiliate in Washington, D.C., Starpower, has provoked dramatic changes in the offerings of incumbent cable operators, discouraging price increases and improving service offerings. Upon the announcement of Starpower's entry into the market, the D.C. incumbent's rate increases moderated from previously announced annual increases in the range of 7% to a mere 2% in 1998. Starpower's basic rate in Washington, D.C. is \$31.95 for 96 channels and no installation fee. Comcast charges \$33.87 for 56 channels with a \$39.95 installation fee. In anticipation of competitive entry, Cox Cable announced that it would upgrade its cable to 860 MHz capacity in Fairfax County. In Prince George's County, Comcast announced an upgrade of its plant beyond its franchise obligation in light of Starpower's arrival. Comcast in Arlington announced a major overhaul of its channel line-up with significant additional channel capacity and digital upgrades to make its offerings more competitive with newly-franchised Starpower.

APPENDIX B

RCN SERVICE CONNECTIONS

<u>Advanced Fiber</u>	<u>March 31, 2000</u>	<u>March 31, 2001</u>
<u>On-Net</u>		
Voice	68,550	164,012
Video	160,665	295,509
Data	26,698	80,992
Subtotal On-Net	255,913	540,513
<u>Off-Net</u>		
Voice	45,262	49,229
Video	139,383	147,502
Data	500,495	427,222
Subtotal Off-Net	685,140	623,953
Total Service Connections	941,053	1,164,466
Advanced Fiber Homes Passed	808,023	1,545,332
Marketable Homes	601,745	1,183,687

Source: <http://www.rcn.com/investor/press/05-01/05-03-01/05-03-01.html>.

CERTIFICATE OF SERVICE

I, Sharon Gantt, hereby certify that on this 3rd day of August, 2001, a copy of the foregoing Comments of RCN Corporation was served on the following parties listed below via messenger or, if marked with an asterisk, by first class postage-paid U.S. mail:

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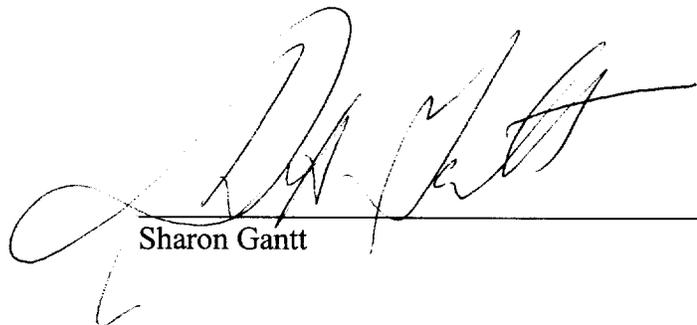
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