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U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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December 19, 2006

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The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Martin:

I write with respect to the cable franchising item currently under consideration at the Commission. It would be extremely inappropriate for the Federal Communications Commission to take action that would exceed the agency's authority and usurp Congressional prerogative to reform the cable television local franchising process.

In a speech you gave on December 6th of this year, you proposed that the Commission establish:

- (a) time frames for local franchising authorities to act on franchise applications, specifically, 90 days for entities that are already authorized to access a community's rights-of-way and 6 months for other applications;
- (b) limits on what localities can require new entrants to pay in the form of franchise fees, specifically with respect to non-cable services and in-kind contributions;
- (c) requirements concerning the ability of a local franchising authority to provide that a cable operator, after a reasonable period of time, become capable of providing cable service to all households in a franchise area; and
- (d) requirements that pertain to consumers living in multiple dwelling units.

In addition, it has come to my attention from press reports and other sources that, in this same proceeding, you may be proposing that the Commission establish:

- (e) requirements that would deem an application granted or confer interim authority for use of a community's public property after the expiration of the Commission-established time frames;
- (f) a regime that could preempt in whole or part, existing or future State or local laws or franchise requirements; and
- (g) requirements concerning when providers that are constructing communications networks capable of offering telephone, broadband, and video services are subject to the franchise requirement.

Should you proceed with consideration of such an order that adopts these or similar proposals, I seek answers to the following questions concerning the Commission's explicit authority to take such actions:

1. For each of the proposals enumerated above as well as for other proposals adopted, please provide the specific statutory and legal authority, including citations, for the Commission to take any of these steps.
2. To the extent that the Commission order affects the existing relationship between the various sections of Title VI of the Communications Act, please provide the statutory and legal citations that provides the Commission with specific authority to do so. In particular, I am interested in an explanation of how your actions comply with long-standing statutory construction principles.
3. To the extent that the Commission's order effectively confers access to municipal or other public property rights on a permanent or interim basis, please provide the statutory and legal citations granting the Commission specific authority to do so.
4. To the extent that the Commission's order could compel a local government to enter into a contract with a cable service provider, please provide the statutory and legal citations for the Commission's specific authority to do so.
5. To the extent that the Commission's order proposes to treat new entrants on a different basis from incumbents or other competitive cable operators operating under an existing franchise agreement, please provide the statutory and legal citations for the Commission's specific authority to do so.

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6. To the extent that the Commission's order would affect the existing statutory remedies in Title VI, including burdens of proof, please provide the statutory and legal citations for the Commission's specific authority to do so.

I look forward to receiving your answers by no later than Tuesday, January 3, 2007. In addition, I ask that this letter and the answers provided be placed in the official record of the Commission on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Dingell", written over a large, stylized flourish that loops back to the left.

JOHN D. DINGELL
RANKING MEMBER