

United States Senate

WASHINGTON, DC 20510-4504

May 23, 2011

The Honorable Julius Genachowski
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20054

Dear Chairman Genachowski:

As you no doubt know, the United States is in the midst of a severe recession. Unemployment is high, and millions of Americans have experienced significant declines in their incomes. With family budgets stretched thin, I write to request that you develop policies that stop the cost of basic cable television from continuing to spiral out of control.

Over the years, I have received countless letters demanding that we do something about cable rates. This is no surprise given what has been happening in Vermont in the last two years alone. At the end of 2009, just two of Comcast's ten Vermont service areas charged more than \$20 a month for basic cable packages. One year later, six in ten service areas in Vermont exceeded the \$20 mark. On average, during that one year period, Comcast increased the price of its basic cable packages \$2.14 a month. This amounts to a 10% increase at a time when inflation was virtually nonexistent. To make matters worse, as prices increased, the number of channels offered to some Vermont subscribers declined.¹

My staff has spoken with the Public Service Department in the State of Vermont, and they would like to better protect the interest of Vermont consumers. Unfortunately, decisions made by the FCC over the last ten years have tied the hands of state regulators and rendered them powerless to address this situation.

In a series of nearly identical decisions dating from the late 1990s,² you relied on your own regulation, 47 C.F.R. 76.905(g), to hold that Vermont cannot regulate the basic cable tier

¹ This data is on file in my office and available upon request.

² E.g., Comcast Cable Commc'n, 25 F.C.C.R. 5885 (2010); The Hellicon Group, 17 F.C.C.R. 16636 (2002); The Hellicon Group, 17 F.C.C.R. 16632 (2002); The Hellicon Group, 17 F.C.C.R. 1515 (2002); Frontervision Operating Partners, 16 F.C.C.R. 5228 (2001); Mountain Cable Co., 14 F.C.C.R. 13994 (1999).

because satellite networks such as DirecTV, Inc., and DISH Network offer sufficiently comparable programming to effectively compete with the dominant cable provider.³ From a practical point of view, however, there are huge differences between satellite networks and cable networks, even though there may be an overlap in the channels they offer.

Specifically, satellite networks are different than cable networks in terms of (1) accessibility and (2) access to public education government (“PEG”) channels. With regard to the first point, the simple reality is that satellite cannot be considered effective competition when many Vermonters are simply unable to access it. Your decisions make the explicit presumption that satellite is “technically available due to its nation-wide . . . footprint” and “actually available if households in a franchise area are made reasonably aware” of it. This presumption falls short of the mark in mountainous environments like Vermont’s where, due to geographic realities, satellite is not an option for a significant number of households.

Second, satellite is not an adequate substitute for cable because it does not offer PEG programming, which serves as a needed source of information for communities throughout Vermont. In Vermont, cable subscribers can access a vibrant array of public access content, such as city council meetings, boards of selectmen meetings, school board meetings, and other local and community events. Satellite does not provide that service.

It is no wonder, then, that supposed competition from satellite has failed to hold down Comcast’s rates. The many Vermonters who cannot access satellite for geographic reasons, and the many more who want access to PEG channels, have no choice but to pay Comcast for basic cable. As of December 31, Comcast had at least 113,000 subscribers in Vermont. Many of these are captive customers, and for this reason Comcast has been able to raise its rates again and again without justification.

This is an important issue, not only for the state of Vermont, but for the nation as a whole. I would therefore ask that you reconsider the regulation determining that satellite is an adequate alternative to cable, 47 C.F.R. 76.905(g), and the decisions precluding Vermont from regulating basic rates that were based on that regulation.

Sincerely,



BERNARD SANDERS

³ Although I strongly object to the “effective competition” standard, I understand that you are bound by it, as it comes from a congressional mandate. My request is not that you ignore this standard but rather that you apply it in a different manner such that cable providers are not insulated from regulation by the existence of satellite services.