

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of the Petition of)
)
National Cable & Telecommunications)
Association)
)
Petition for Declaratory Ruling To Clarify 47) WC Docket No. 11-118
U.S.C. § 572 in the Context of Transactions)
between Competitive Local Exchange Carriers)
and Cable Operators)

To: The Commission

**COMMENTS OF THE
TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

I. INTRODUCTION AND SUMMARY

The Telecommunications Industry Association (TIA) submits comments to the Federal Communications Commission (Commission) in the above captioned proceeding.¹ TIA and its members appreciate the opportunity to provide stakeholder perspective of the equipment vendor on the issues raised by NCTA. TIA specifically supports the clarification of the role of Local Franchising Authorities (LFAs) as proposed in the NCTA Petition, in order to remove the market uncertainty experienced by local exchange carriers (LECs).

¹ Public Notice, *Comment Sought on NCTA Petitions Regarding Section 652 of the Communications Act*, WC Docket No. 11-118, DA 11-1177 (Jul. 8, 2011) (PN). *See also* Conditional Petition for Forbearance from Section 652 of the Communications Act for Transactions Between Competitive Local Exchange Carriers and Cable Operators, WC Docket 11-118 (Jun. 21, 2011) (NCTA Petition for Forbearance).

TIA represents the global information and communications technology (ICT) industry through standards development, advocacy, tradeshow, business opportunities, market intelligence and world-wide environmental regulatory analysis. For over eighty years, TIA has enhanced the business environments for broadband, mobile wireless, information technology, networks, cable, satellite, and unified communications. TIA's 600 member companies' products and services empower communications in every industry and market, including healthcare, education, security, public safety, transportation, government, the military, the environment, and entertainment. TIA is accredited by the American National Standards Institute (ANSI). TIA members produce the equipment that the Nation's evolving communications networks are comprised of, and are affected by a number of issues raised in the NCTA Petition.

II. TIA SUPPORTS THE NCTA PETITION'S PROPOSAL TO REMOVE BARRIERS TO INFRASTRUCTURE DEPLOYMENT.

TIA, a long-time supporter of the Commission's priority on reducing barriers to innovation and infrastructure buildout,² believes that the Commission has an important role in ensuring that American citizens enjoy the most robust broadband services in the world. With the need for broadband deployment ever-increasing, the Commission has an opportunity through the NCTA Petition to advance policies and incentives to encourage facilities-based entry into the broadband

² See The FCC's Broadband Acceleration Initiative: Reducing Regulatory Barriers to Spur Broadband Buildout (rel. Feb. 3, 2011) available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0209/DOC-304571A2.pdf. See also Remarks of FCC Chairman Julius Genachowski, Broadband Acceleration Conference (Feb. 9, 2011) at 1-2 ("One thing government at all levels can do is ensuring efficient, effective regulation. We need rules that serve legitimate public needs without erecting costly or unnecessary barriers...Overly burdensome rules and regulations can slow down deployment and raise costs. It also can limit businesses ability to invest in new technologies and hire new workers.").

market and to help stimulate consumer demand. As TIA has long advocated, the Commission can pursue these goals by taking action to encourage investment in intelligent network infrastructure, foster competition in the broadband industry, promote consumer access to information and connectivity of devices, and allow the market, instead of government, to reflect consumer choice.³

In its petition for forbearance, NCTA notes for the Commission the burdensome effects of the LFA approval requirement in Section 652's waiver provisions.⁴ As NCTA describes, any affected LFA has the ability to potentially hold up a waiver indefinitely in order to gain concessions from the parties to the transaction as a condition of approval. NCTA is also able to provide an example of the consequences of this allowance to LFAs in their example in the City of Detroit, Michigan.⁵

Noting that TIA takes no position on the applicability of Section 652 to CLEC-cable transactions, TIA agrees that to allow for LFAs to act with such wide latitude is unreasonable and wholly at odds with the Commission's above-noted broadband deployment goals. TIA further concurs that the Commission's enforcement of Section 652 without restricting the discretion of LFAs in approving waivers could violate the non-delegation doctrine and Due

³ *See, e.g.*, Comments of TIA, GN Docket No. 09-51 (Jun. 5, 2009).

⁴ NCTA Petition for Forbearance at 4 (noting that the 47 U.S.C. § 572(d)(6)(B)-required LFA approval process lacks guidelines and “makes obtaining a waiver highly burdensome and potentially impossible.”).

⁵ *Id.* at 5.

Process Clause.⁶ The Commission is strongly encouraged to take steps to ensure that LFAs do not have the ability to arbitrarily hold up transactions, and to at least establish guidelines and timetables for the LFA waiver approval process, which, as noted by NCTA, Congress has done with cable systems and services.⁷ Doing so would further the Commission's strategy for bringing broadband to all Americans through the removal of roadblocks to deployment, increasing investment certainty, and accelerating infrastructure investment that will expand broadband network reach and robustness across the country.

III. CONCLUSION

For the foregoing reasons, TIA urges the Commission to adopt policies consistent with the recommendations above.

Respectfully submitted,

TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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⁶ *Id.* at 17-20.

⁷ *Id.* at FN 31.

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