

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
(Southern Division)**

<p>VERIZON MARYLAND INC.,</p> <p>1 East Pratt Street Baltimore, MD 21202 Baltimore City</p> <p style="text-align:center">Plaintiff,</p> <p style="text-align:center">vs.</p> <p>MONTGOMERY COUNTY, MARYLAND,</p> <p>Executive Office Building 101 Monroe Street Rockville, MD 20850 Montgomery County</p> <p style="text-align:center">Defendant.</p>	<p>Civil No.: _____</p>
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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. Plaintiff Verizon Maryland Inc. (“Verizon”) brings this action to challenge Defendant Montgomery County’s (the “County”) unlawful scheme governing applications to provide cable television service. The County’s cable ordinance and regulations, on their face, violate the First Amendment to the United States Constitution, the federal Communications Act, and Maryland law. The County’s application of its cable laws to Verizon’s request for a cable franchise likewise is illegal under federal and state law. Verizon seeks relief to protect its

constitutional right to free expression and to enjoin the further application of the County's invalid and preempted cable requirements.

2. As part of a national initiative begun in 2004, Verizon has launched a campaign to upgrade its communications facilities in Maryland by extending fiber-optic cables to customers' premises ("Fiber-to-the-Premises" or "FTTP"). This effort will permit the delivery of both higher-speed Internet services and cable television programming over the same physical network used to provide telephone service to local consumers. Verizon's upgraded network is known as "FiOS."

3. Verizon's cable television offering—known as "FiOS TV"—is a sorely needed new alternative to the traditional cable television services offered in the County, which suffer from steeply rising prices and poor service due to the lack of competition. Verizon's FiOS TV offering promises lower prices, a far richer array of programming choices, and better service than is offered by incumbent cable operators. In those localities where a Verizon affiliate has been permitted to provide cable service, customers have flocked to the FiOS service, and incumbent cable operators have been forced to slash prices by 28-42 percent. Consumers in Montgomery County stand to reap similar benefits from Verizon's entry into the local cable market.

4. Although state and federal law authorize Verizon to construct and upgrade its fiber-optic telecommunications network in Montgomery County, a local cable ordinance requires Verizon to obtain a cable franchise from the County—an authorization identical to a permit or license—before making FiOS TV available to local consumers. In May 2005, Verizon approached Montgomery County and asked local officials to grant it such a franchise. Over one year later, the County still has failed to approve Verizon's request to provide cable service. Instead of welcoming Verizon's desire to provide FiOS TV as a boon to local consumers,

Montgomery County has used its power to withhold a necessary franchise to force Verizon to accede to the County's demands for payments, in-kind contributions, and burdensome local regulatory authority—all of which are illegal under federal law. County officials have made clear that unless Verizon agrees to the County's unlawful terms—and then waives its right to challenge the illegality of many of them—the County will indefinitely delay further consideration of Verizon's request for a franchise. The County's position is made possible by a county cable ordinance that vests local officials with boundless authority over whether and on what terms to award cable franchises.

5. Montgomery County's recalcitrance in preventing Verizon from competing with the incumbent cable operator stands in sharp contrast to the actions of other local governments. To date, Verizon affiliates have obtained cable franchises to offer FiOS TV service in roughly 100 jurisdictions throughout the country. In the Washington, D.C. metropolitan area, Verizon affiliates have obtained or are obtaining a franchise everywhere they have sought one, with the sole exception of Montgomery County. In Maryland, Howard County, Bowie, and Laurel have all granted Verizon a franchise; Anne Arundel County is expected to grant a franchise in the next few weeks. Negotiations with Prince George's County are proceeding well. In northern Virginia, a Verizon affiliate has obtained franchises from Arlington County, Loudoun County, Fairfax County, Herndon, the City of Fairfax, Falls Church, the Marine Corps Base at Quantico, and Prince William County. The company expects to receive a franchise from the remaining community, Leesburg, in the next few weeks.

6. Montgomery County's cable franchise system is illegal in many respects. First, the County's cable ordinance, on its face, violates the First Amendment. By adding cable television to its menu of communications services, Verizon seeks to engage in a form of speech

protected by the First Amendment. *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 636 (1994); *City of Los Angeles v. Preferred Commc'ns, Inc.*, 476 U.S. 488, 494 (1986). Montgomery County's cable ordinance operates as a prior restraint on this speech because it obligates entities like Verizon to obtain government approval before engaging in protected expression. The ordinance violates the First Amendment because it delegates to local authorities unbridled discretion to approve or withhold franchises at will, to charge any application-related fees they wish, to condition franchises on any demands they see fit, and to render franchise decisions on any timeline they choose.

7. Second, the County's cable ordinance, together with its binding regulations, on their face subject Verizon's telecommunications facilities and its telecommunications and Internet access services—not just its *cable* services—to the jurisdiction of County authorities, including the obligation to pay to the County a fee of 5% of the revenues derived from such services. These obligations directly violate federal and state laws.

8. Third, in applying its cable ordinance to Verizon, the County has violated federal law. The County has unreasonably delayed Verizon's ability to engage in protected speech and has unlawfully required Verizon to agree to provide a host of services and fees, and to submit to a thicket of regulations, as a condition of granting it a franchise.

9. Fourth, the County's actions violate the federal antitrust laws. The County has entered into an agreement with the incumbent cable monopolist, Comcast, that ensures that the County will impose on any new cable entrant the same onerous terms and conditions to which Comcast has agreed. Because the costs of such terms are an unreasonable barrier to entry for a new competitor that has not yet signed up a single customer, the County's agreement with Comcast is an unlawful agreement in restraint of trade.

10. Although this action does not challenge the County's authority to require Verizon to obtain a franchise before providing cable service, Verizon seeks relief from the County's laws and actions implementing that franchise requirement. In particular, to protect its rights under the First Amendment, federal statute, and Maryland law, Verizon seeks a declaration that the County's cable laws are illegal on their face and an order directing the parties to engage in good-faith negotiations over the terms of a franchise agreement, with the objective of reaching agreement within sixty days, or to return to the Court for further relief in the event no agreement is reached.

#### **JURISDICTION AND VENUE**

11. This Court has jurisdiction over the parties and subject matter at issue in this complaint.

12. Verizon's federal claims arise under the Constitution and laws of the United States, including the Supremacy Clause, the First Amendment, the Fourteenth Amendment, the federal Communications Act (47 U.S.C. §§ 151 *et seq.*), the federal Sherman Act (15 U.S.C. §§ 1 *et seq.*), and 42 U.S.C. § 1983. Jurisdiction is proper under 28 U.S.C. § 1331, 28 U.S.C. § 1337, 28 U.S.C. § 1343, and 47 U.S.C. § 555. This Court may enter declaratory relief under 28 U.S.C. §§ 2201-02. This Court has supplemental jurisdiction over Verizon's state law claims pursuant to 28 U.S.C. § 1367(a).

13. Venue in this district is proper under 28 U.S.C. § 1391(b) because the defendant resides here and because a substantial part of the events giving rise to Verizon's claims arose in this judicial district. Venue in this district is also proper under 47 U.S.C. § 555(a)(1).

## PARTIES

14. Verizon is a local telephone company that offers voice and data services to consumers in Montgomery County and the state of Maryland pursuant to a franchise granted by the State of Maryland in 1884. That franchise, which is codified in Maryland statute and is perpetual in term, confers on Verizon the right to construct telecommunications facilities in the public rights-of-way within the state's borders. By exercising its rights under this franchise, Verizon has obtained easement rights that, among other things, entitle it to access its facilities for necessary repairs. Verizon currently provides service to over 250,000 households in Montgomery County. Verizon has its principal place of business at 1 East Pratt Street, Baltimore, Maryland 21202. Verizon is an indirect, wholly-owned subsidiary of Verizon Communications Inc.

15. Montgomery County, Maryland is a Charter County within the State of Maryland, having elected home rule pursuant to Article XI-A of the Constitution of Maryland and having adopted a Home Rule Charter, pursuant to which legislative power is vested in the County Council and executive authority is vested in the County Executive. The County Council and the County Executive are officially located in Rockville, Maryland, the County seat.

## BACKGROUND

### **I. VERIZON WILL INTRODUCE MUCH-NEEDED CABLE COMPETITION TO MONTGOMERY COUNTY.**

16. Verizon's FiOS TV offering will introduce much-needed competition for video services and create significant benefits for cable consumers in the County. In the communities where a Verizon affiliate has succeeded in obtaining a competitive cable franchise, consumers

have seen lower rates, improved service, and expanded programming diversity. The introduction of Verizon's FiOS TV in Montgomery County promises the same results for local consumers.

A. **Video Competition Is Currently Lacking in the County.**

17. Comcast is the dominant supplier of video service in Montgomery County. Approximately 65% of the approximately 347,000 households in the County purchase video services from Comcast. Among cable subscribers, approximately 95% subscribe to Comcast. Because of its dominant position and the lack of meaningful competition, Comcast has been able to raise prices over 25 percent since 2000, nearly three times the annual rate of inflation. From 2004 to 2005, Comcast raised prices by 6 percent.

18. Only meaningful wireline competition—that is, competition from an operator that provides video programming over a physical network of wires and cables—can constrain Comcast's ability to charge these supracompetitive prices. The Federal Communications Commission ("FCC"), in its most recent competition report released in March 2006, found that in the places where incumbent cable companies face competition from a wireline competitor, monthly cable rates are 15% lower. *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Twelfth Annual Report, MB Docket No. 05-255, FCC 06-11, ¶ 41 (FCC rel. Mar. 3, 2006) ("*FCC Video Competition Report*"). The General Accounting Office similarly found that wireline competitors "induce incumbent cable operators to respond by providing more and better services and by reducing rates and offering special deals." U.S. General Accounting Office, Report to the Subcommittee on Antitrust, Competition Policy, and Consumer Rights, Committee on the Judiciary, U.S. Senate: Telecommunications, *Wire-Based Competition Benefited Consumers in Selected Markets* at 12 (Feb. 2004). The

availability of satellite television (also known as “Direct Broadcast Satellite”), by contrast, has lowered cable rates only slightly. *FCC Video Competition Report* ¶ 5.

19. In Montgomery County, the only wireline competitor for video service is RCN (formerly known as StarPower), which obtained a cable franchise from the County in 1999. Since that time, RCN has declared bankruptcy and has significantly scaled back its build-out plans in the County. RCN’s network reaches only 75,000 households in the Silver Spring area (the southern part of the County) and serves only about 15,000 customers. Most video customers in the County who do not subscribe to Comcast purchase service from satellite television providers.

20. The lack of wireline competition imposes enormous costs on consumers. Nationally, the delays in wireline competition for video service caused by the local cable franchise process are resulting in economic losses estimated at between \$8.2 billion and \$21.4 billion per year.

**B. Verizon’s New FiOS Network Offers Significant Advantages Over Other Alternatives in the County.**

21. Verizon and its affiliates are the first telecommunications carriers in the country to extend the next generation of telecommunications facilities—fiber-optic facilities—all the way to customers’ homes and businesses on a national scale. At a cost of several billion dollars, Verizon and its affiliates are upgrading their existing telecommunications facilities to create FiOS fiber-optic networks in Maryland and 15 other states. By the end of 2005, the FiOS network had reached three million homes nationwide. That number is expected to grow to six million homes by the end of 2006. In Montgomery County, FiOS now reaches approximately 142,000 households.



22. Verizon's FiOS network has superior capabilities that translate into wider programming choices and faster Internet speeds for consumers. In Montgomery County, Verizon's FiOS network will provide much greater capacity for transmitting video, music, and data than Comcast's traditional cable system.

23. Because of its technological advantage, Verizon will be able to offer local consumers more digital channels, more high-definition channels, and more features. Verizon customers will be able to choose from nearly 400 digital video and music channels and over 20 high-definition channels. By contrast, Comcast currently offers its Montgomery County customers only up to 240 digital video and music channels and 14 high-definition channels.

24. Verizon's FiOS TV will provide customers in the County many channels that Comcast does not currently offer, including: ESPNU (sports); CNN International, CNBC World, Bloomberg TV, and ABC News Now (news); Science Channel, Pentagon Channel, and Military History Channel (information); Lifetime Real Women and Oxygen (women); Shop at Home, America's Store, EXPO, Jewelry and Shop NBC (shopping); Wisdom, Fit TV, and Wealth TV (home and leisure); Crime & Investigation Network, Sleuth, Ovation, Fox Reality, and Fuel (pop culture); Gospel Music Channel, VH1 Country, BET Gospel, Great American Country, and Soundtrack Channel (music); Family Net and AmericanLife TV (family); Boomerang (children); Galavisión, Mun2, and Si TV (people and culture); and Church, I-Life, and JCTV (religion). In addition, Verizon will give customers in Montgomery County the opportunity to watch Washington Nationals baseball games on the Mid-Atlantic Sports Network—a channel that Comcast also does not offer.

25. Verizon will also offer customers diverse programming packages tailored to customers' particular entertainment interests. Whereas incumbent cable operators typically

structure their premium packages based on the number of channels the customer purchases, Verizon also offers premium packages of themed programming (e.g., a Movie Package, a Sports Package, and a Spanish Language Package). Verizon's Spanish-language package (called La Conexión) includes more than 20 popular Spanish-language channels, in addition to popular English and digital music channels.

26. Because of its superior technological capacities, Verizon also can offer faster Internet service in the County. Internet traffic on Verizon's network will travel at speeds of up to 30 megabits per second ("Mbps")—more than five times faster than the fastest broadband service that Comcast currently offers in the County. High-speed Internet access services offered by satellite television providers are considerably slower: they offer a maximum speed of only 1 Mbps downstream and only 56k upstream.

27. Verizon's prices are lower than those of the County's current operators. Verizon's standard FiOS TV package (called Expanded Basic) will offer local channels such as ABC, CBS, NBC, and Fox, nearly 180 digital cable and movie channels, 47 all-digital music channels, and more than 20 high-definition channels for \$39.95 per month. Verizon will offer Internet access service with 15 Mbps downstream bandwidth for an additional \$45 per month—an average price of \$3 per megabit. Comcast's most comparable video offering in Montgomery County (called Digital Plus) costs \$68.60 per month, and its most comparable high-speed Internet service offers only 6 Mbps for \$52.95 per month—an average of nearly \$9 per megabit. Comcast charges even more, \$67.95 per month, for high-speed Internet service for customers who do not subscribe to Comcast's cable service. Verizon's offering will also surpass that of RCN, which only serves a small number of homes in the County.

28. Verizon's entry into the Montgomery County cable market will bring the benefits of competition to local consumers, even for those who do not choose to subscribe to FiOS TV. In communities where a Verizon affiliate has been permitted to offer FiOS TV, consumers have seen lower prices and improved service from their incumbent operators.

29. For example, in Keller, Texas, where a Verizon affiliate first launched FiOS TV service, the incumbent cable provider, Charter, reduced its price by \$16 per month, or over 28 percent compared to surrounding areas where FiOS TV is not offered. To date, nearly one quarter of homes in Keller to which FiOS TV is available have signed up for the service. In Herndon, Virginia, after a Verizon affiliate won a franchise and began competing there, incumbent Cox dropped its video price from \$52.44 per month to \$30.00 per month. After a Verizon affiliate began competing in Temple Terrace, Florida, incumbent Bright House dropped its video price from \$58.45 per month to \$36.33 per month.

## **II. STATUTORY AND REGULATORY LIMITS ON LOCALITIES' AUTHORITY OVER CABLE AND COMMUNICATIONS SERVICES**

30. Federal and Maryland law both protect Verizon's effort to enter the video market. Federal law expressly precludes localities from erecting barriers to entry, and both federal and state law bar local authorities from asserting regulatory jurisdiction over telecommunications and Internet services provided by companies like Verizon.

31. The Communications Act of 1934, as amended, comprehensively regulates the communications industry in the United States. 47 U.S.C. §§ 151 *et seq.* The Act, which covers various types of voice, data, and video services, "recognizes that some facilities can be used to provide more than one type of service" and "that multi-purpose facilities will receive different

regulatory classification and treatment” depending on the particular service they provide.

*MediaOne Group, Inc. v. County of Henrico*, 257 F.3d 356, 364 (4th Cir. 2001).

32. Verizon’s multi-purpose FiOS network is capable of providing services that are governed by three separate sections of the Communications Act: Title I, Title II, and Title VI. Traditional voice services—known as “Plain Old Telephone Service”—are regulated as “telecommunications services” under Title II of the Communications Act. Verizon also offers high-speed Internet access through its FiOS network. The FCC has classified such wireline broadband Internet access services as “information services” that are governed by Title I of the Communications Act. Finally, Verizon seeks to provide cable television service using the same facilities that it uses to provide telecommunications and information services. Cable service is regulated by Title VI of the Communications Act.

**A. Federal Regulation of Cable Service**

33. From the birth of cable television in the late 1940s to the early 1980s, local governments exercised essentially plenary control over cable television. Cable operators required permission (a “franchise”) from local governments to string their wires through the public rights-of-way. Historically, local governments generally granted an exclusive franchise to a single cable company and resisted the entry of new cable providers. In particular, local governments required cable operators to pay large fees for the privilege of obtaining a franchise; demanded that cable operators provide large subsidies for public, educational, and governmental (“PEG”) programming; and otherwise stymied competition in the provision of cable services.

34. Beginning in 1984, Congress took action to correct municipal abuses and anti-competitive action in the cable area. When Congress’s initial efforts did not fully succeed in reining in municipal overreaching and in opening markets to competition, it again intervened in

1992 and 1996. These three legislative efforts, taken together, comprehensively restrain localities from imposing burdensome conditions on new cable entrants and establish a firm national policy in favor of competition.

1. ***The 1984 Cable Act: Removing Barriers to Entry***

35. In 1984, Congress began its effort to establish a national cable policy by passing the Cable Communications Policy Act of 1984 as a new Title VI to the federal Communications Act (as amended, the “Cable Act”). 47 U.S.C. §§ 521 *et seq.* The Cable Act was intended to “defin[e] and limit[] the authority that a franchising authority may exercise through the franchise process.” H.R. Rep. No. 98-934, at 19 (1984), *as reprinted in* 1984 U.S.C.C.A.N. 4655, 4656. In enacting the Cable Act, Congress expressed its intent to “promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems.” 47 U.S.C. § 521(6). Accordingly, the Cable Act recognized the continuing authority of state and local governments to issue cable franchises consistent with state and local law, *see, e.g., id.* §§ 522(10), 541, but sharply limited localities’ power to impose barriers to new cable entrants.

36. As one such measure to constrain local authority over cable franchising, Congress capped the maximum permissible “franchise fee[]” that a franchising authority may demand as a condition of granting a franchise. *Id.* § 542(b). The Act provides that a locality may charge a cable operator no more than 5% of its gross revenues derived from the provision of cable services. *Id.* The 5% cap applies broadly to “any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator . . . solely because of [its] status as such.” *Id.* § 542(g)(1). The cap thus restricts the ability of franchising authorities

to demand both monetary payments and in-kind contributions that exceed 5% of the operator's gross cable revenues.

37. For franchises issued after October 1984, the Cable Act specifies four narrow exceptions to the 5% cap: (a) generally applicable taxes (such as sales or income taxes); (b) "capital costs . . . incurred by the cable operator" for PEG access facilities (such as the capital costs a cable operator agrees to incur to construct a public access studio); (c) "requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages"; and (d) copyright fees. *Id.* § 542(g)(2)(A), (C), (D), (E). Any fees or assessments that do not fit within one of these exceptions—such as PEG expenditures other than capital costs, requirements that a cable operator furnish in-kind benefits such as free video services or equipment, and substantial franchise application or acceptance fees—count against the 5% cap.

38. In addition to the 5% cap, the Cable Act establishes separate limits on the PEG contributions that a locality may require a cable operator to provide. Under the Act, local governments may require cable operators to designate channels for PEG programming, but may not demand that they provide other forms of PEG contributions such as cash or in-kind support. Thus, "a franchising authority may establish requirements . . . with respect to the designation or use of channel capacity for [PEG] use," *id.* § 531(a), but may not demand that cable operators provide any PEG services, facilities, equipment, or funding unless they are "proposed by the cable operator," *id.* § 531(c). Prospective franchisees may volunteer to support PEG beyond the provision of channel capacity and, to the extent that they do, may be held to such commitments, *id.*, but localities cannot impose such requirements on unwilling franchise applicants.

39. The Cable Act also limits the contributions for “institutional networks” that a local franchising authority may demand. Institutional networks (also known as “I-Nets”) are specially dedicated communication networks that serve customers who are not residential subscribers. *See id.* § 531(f). The extent of localities’ authority to impose I-Net demands is delineated in section 531, which provides that a locality may require that “channel capacity on institutional networks be designated for educational or governmental use.” *Id.* § 531(b). Thus, localities may not require cable operators to construct an I-Net or demand payment for constructing or operating an I-Net. As the Fifth Circuit stated, “localities may require that cable operators devote space on their existing institutional networks, if there are any such networks, to educational or governmental use, but the statute does not authorize local governments to *require* the construction of institutional networks.” *City of Dallas v. FCC*, 165 F.3d 341, 350 (5th Cir. 1999).

40. The Cable Act also bars localities from imposing any requirements on cable operators that do not relate to the provision of cable services. 47 U.S.C. § 544(a), (b). The Act provides that a franchising authority has no power to regulate services, facilities, and equipment provided by a cable operator “except to the extent consistent with this subchapter.” *Id.* § 544(a). The Act goes on to provide that localities may establish requirements for facilities and equipment only “to the extent related to the establishment or operation of a cable system.” *Id.* § 544(b). A locality therefore may not impose requirements on cable operators that do not relate to the cable system.

41. The Cable Act also makes clear that localities’ role in the cable franchising process does not empower them to regulate telecommunications networks. The Act provides that a “cable system” that may be subject to local regulatory jurisdiction includes a

telecommunications provider's facility only "to the extent that such facility is used in the transmission of video programming directly to subscribers." *Id.* § 522(7). Thus, a locality's authority to issue cable franchises does not give it regulatory authority over the entirety of an integrated mixed-use network, even when that network is used, in part, to deliver cable service.

2. ***The 1992 Amendments to the Cable Act: Prohibition on Monopolies and Unreasonable Refusals to Award Competitive Franchises***

42. After the Cable Act was enacted in 1984, Congress found that competition was not developing as it intended and that many consumers were facing ever-increasing costs for cable television. "For a variety of reasons, including local franchising requirements," most cable television subscribers had "no opportunity to select between competing cable systems," because the distributors did not face sufficient "local competition." Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 2(a)(2), 106 Stat. 1460. The result was "undue market power for the cable operator as compared to that of consumers and video programmers." *Id.*; *see also* S. Rep. No. 102-92, at 8-9 (1991), *as reprinted in* 1992 U.S.C.C.A.N. 1133, 1141 (noting that "[a] cable system serving a local community, with rare exceptions, enjoys a monopoly" and that "the cable industry itself recognizes that it holds monopoly power").

43. In the Cable Television Consumer Protection and Competition Act of 1992, Congress sought to remedy these problems by eliminating the ability of state and local governments to award exclusive cable franchises or to unreasonably refuse to award additional competitive franchises. Congress declared: "A franchising authority may award, in accordance with the provisions of this subchapter, 1 or more franchises within its jurisdiction; except that a franchising authority may not grant an exclusive franchise and may not unreasonably refuse to



award an additional competitive franchise.” 47 U.S.C. § 541(a)(1). The prohibition against “unreasonabl[e] refus[als] to award” competitive franchises requires localities to grant franchise requests in a timely fashion.

3. ***The Telecommunications Act of 1996: Encouraging Telecom Providers to Enter the Cable Market***

44. Congress acted again to promote cable competition in the Telecommunications Act of 1996 (“1996 Act”). As originally enacted in 1984, the Cable Act prohibited telephone companies like Verizon from providing cable service within the same territory they were assigned for providing telecommunications services. *See* 47 U.S.C. § 533(b), *repealed by* Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56. Every court to consider the constitutionality of this ban, however, invalidated the prohibition as violating telephone companies’ First Amendment rights. *See, e.g., US West, Inc. v. United States*, 48 F.3d 1092 (9th Cir. 1994), *cert. granted and judgment vacated and remanded by* 516 U.S. 1155 (1996), *dismissed as moot in light of the 1996 Act sub nom. Pac. Telesis Group v. United States*, 84 F.3d 1153 (1996). Accordingly, the 1996 Act authorizes telephone companies to offer video services in their telephone service areas. *See* 47 U.S.C. § 571.

45. The 1996 Act took further steps to encourage telephone companies to provide cable service by limiting the power of local franchising authorities to exert burdensome regulatory control over telecommunications services. First, the Act states that the cable franchising authority granted in Title VI does not extend to the cable provider’s provision of telecommunications services. *Id.* § 541(b)(3)(A)(ii). This means that localities may not leverage their cable franchising authority to interfere with telecommunications services. Second, the Act prohibits a locality from imposing any requirement as part of the cable franchising process that

“has the purpose or effect of prohibiting, limiting, restricting, or conditioning the provision of telecommunications services by a cable operator.” *Id.* § 541(b)(3)(B). Third, the Act prohibits localities from requiring a cable provider “to discontinue the provision of a telecommunications service” under any circumstances. *Id.* § 541(b)(3)(C)(i). Fourth, a locality may not *require* a cable provider to provide any telecommunications service or facilities as a condition of obtaining a franchise. *Id.* § 541(b)(3)(D).

46. The 1996 Act further makes clear that local authorities may not levy franchise fees on revenues generated from non-cable services. The 5% franchise fee permitted under the Cable Act may be levied only on “gross revenues derived . . . from the operation of the cable system *to provide cable services.*” *Id.* § 542(b) (emphasis added). Localities may not use their franchising authority to impose fees upon telecommunications and information services.

**B. Federal Regulation of Telecommunications Services**

47. Unlike the regulatory regime for cable services, which allows localities to play a franchising role subject to express federal limitations, telecommunications services are governed exclusively at the federal and state levels. Under Title II of the Communications Act, the FCC has exclusive jurisdiction to regulate interstate and international telecommunications service, and states generally have jurisdiction to regulate intrastate telecommunications service.

48. Under Title II, telecommunications providers are regulated as common carriers. This means that they must, for example, charge reasonable and nondiscriminatory rates for telecommunications services, design their systems so that other carriers can interconnect with their telecommunications networks, and make contributions to a “universal service” fund.

49. Title II explicitly prohibits state and local governments from imposing excessive burdens on telecommunications providers. The statute provides that “[n]o State or local statute