

Randolph J. May: Montgomery Co.'s outdated policies hurt cable consumers

Randolph J. May, The Examiner
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In June, Verizon filed a lawsuit in federal court against Montgomery County asking the court to declare that the county's cable franchise process violates the federal communications law, as well as its First Amendment free speech rights. Verizon asks the court to issue an injunction invalidating the county's franchising law and directing the county to negotiate a franchise with Verizon within 60 days.

Verizon alleges that the county is acting unlawfully by seeking to assess franchise fees on its non-video services such as Internet access and Internet telephone services, in demanding that it set aside an excessive number of channels for public access and government programming, and in demanding cash and free services as a condition of granting Verizon the franchise authority the county says it needs before Verizon can offer television services over its newly-installed (and very expensive) fiber optic lines. What's more, Verizon claims the county is even demanding that it pay hundreds of thousands of dollars to cover the fees of the county's lawyers and consultants.

I do not know whether all of Verizon's allegations against the county are true or not, although based on practices in some other localities around the country and Montgomery County's own excessively pro-regulatory history, the allegations have the ring of truth. In the past, the county has tried to regulate Comcast's provision of high-speed Internet service, which it lacks the legal authority to do, and shouldn't do anyway as a matter of policy.

Tellingly, the county's response to Verizon's complaint says that Verizon has the right "to provide video service in the county on a common carrier basis." This is an indication that, even in an era of competition made possible by the digital revolution, the county is still stuck in a public utility regulatory mindset more appropriate to the last century.

Whether or not all of the specific allegations are proven, in a more fundamental sense they are beside the point. The requirement that a local franchise be required before "cable" service can be offered has outlived whatever usefulness it may have had in the past. The requirement that cable television operators obtain a local franchise has been used primarily as a means of economic regulation on the theory cable television service is a monopoly service.

Of course, this is not true in today's technologically-dynamic environment. Cable operators still may have the largest share of the multichannel video market, but consumers already have available the robust alternative of satellite television providers. And now Verizon wants to enter the video market in a big way using its newly-installed high-capacity fiber network to offer consumers a TV package of several hundred digital video and music channels, with access to an on-demand video library.

Apart from the strict legalities of the county's position, its foot-dragging harms the very consumers it claims it seeks to protect. Studies by respected scholars and the GAO and the FCC have confirmed

that when telephone companies enter a local market the prices for “cable television” service drop quickly. (I put “cable television” in quotes, because cable operators, telephone companies, and satellite operators all are scrambling to offer various packages of services that include video, voice, and Internet access in competitively priced bundles. And, of course, your kids — and maybe you too! — are already watching some of your favorite TV shows on cellphone screens.)

Put simply, Verizon’s lawsuit illustrates why it is time to change the law to establish a national video franchise regime, one that treats telephone companies and incumbent cable television operators alike in all respects. In today’s competitive environment, there is no sound reason why either cable operators or other video providers such as Verizon should remain subject to local franchise requirements.

A national regime would still protect the localities’ interest in establishing reasonable regulations to govern the providers’ use of local rights-of-ways. But a national franchise regime would prevent localities from holding up new entry into the video marketplace while they try to extract maximum concessions from franchise applicants and it would treat incumbents and new entrants alike.

It is unclear whether federal legislation will pass this year removing the county’s local franchising roadblock. It really shouldn’t have to matter. Montgomery County citizens should not have to wait any longer for additional video and communications competition.

The county should quickly get on with the process of granting Verizon permission to enter the market. More competition means consumers benefit from lower prices and better quality of service. This simple proposition should not be that hard for the Montgomery County’s elected leaders to grasp.

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