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## FCC's Martin takes on local governments in cable reform bid

By Corey Boles

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**WASHINGTON (MarketWatch) -- Federal Communications Commission Chairman Kevin Martin this week will issue a stark challenge to the authority of local governments to decide who has the right to offer television service to consumers.**

Martin plans to assert the communication regulator's ability to influence the franchising system for broadcasting companies - be they cable, telephone or satellite - which grants them the right to offer video service to homes across the U.S.

His motivation is a fundamental belief that there isn't enough competition in the provision of video services to consumers, and that local governments act as obstacles rather than facilitators in driving competition.

"Greater competition in the market for delivery for multichannel video programming is a primary goal of federal communications policy," he said in a recent speech. "Increased competition can be expected to lead to lower prices and more choices for consumers."

For 30 years, the cable TV operators have enjoyed a virtual monopoly in offering video service, with the exception of satellite companies who, it is fair to say, haven't been successful in offering up competition in many parts of the country.

But now, traditional telecommunications companies, the likes of Verizon Communications (VZ) and AT&T Inc. (T), facing the prospect of rapidly declining revenue in other areas of business, are determined to break the hegemony of cable companies.

The current rules dictate that providers must apply for a franchise at every local jurisdiction in which they want to broadcast. This could mean as many as 10,000 licenses for those with national aspirations.

There is plenty of anecdotal evidence to suggest this process is subject to substantial delays as well as requests from local governments for financial contributions from companies over and above that which has become the accepted standard licensing fee of 5% of gross revenue.

According to Tom Tauke, executive vice president with Verizon - the most active of the telecom companies in the video market - one mayor of a Texas town was willing to grant a license but only if Verizon paid \$20,000 for a sculpture to decorate the town hall's front lawn.

While these types of alleged incidents are largely a thing of the past, the fact they exist at all does no favors for those who are proponents of the current system.

The FCC's Martin clearly thinks that this system is antiquated and unrealistic in today's ever-changing business climate. He has highlighted the fact that cable rates are rising at a time when the price of most other domestic services are falling. The cable industry vociferously disputes this claim.

But Martin is partially hamstrung as to what measures he can take to introduce competition in the TV market.

He cannot unilaterally do away with the local franchise system, as that would require legislation from Congress.

Lawmakers on Capitol Hill attempted to create a single national framework for video franchising earlier this year, but despite have bilateral support in the House, it wasn't ultimately successful as it became part of a wider bill that didn't

make it through the Senate.

Instead Martin is reduced to tinkering around the edges, although it might prove to be tinkering that opens up the video market to more competition.

At Wednesday's monthly open meeting of FCC commissioners, Martin is expected to try to pass a rule that would impose a 90-day deadline on local governments to decide on a franchise application. It would also give the FCC authority to determine what are reasonable or unreasonable requests made on companies to get those licenses.

Were he to be successful, and most market observers suspect he will be, the effort could be enough to satisfy the telecom companies.

On the other hand, it will anger local governments - who will almost certainly challenge the rule in court - as well as the cable companies who feel that the rules are being unfairly altered to the benefit of their fierce rivals.

Verizon's Tauke pointed to the fact that local franchising means that Verizon would need 2,200 franchises in Pennsylvania alone.

#### 'Build-Out Requirement' A Sticking Point

One of the key criticisms of franchising that companies like Verizon have is the requirement that companies offer service over time to the entire population in a particular area. This "build-out requirement" is a key sticking point, as telecom companies argue that when cable companies went through the franchise process they were granted a monopoly over the area, and therefore it made sense they would have these requirements.

"If it is not economically feasible to provide service then I don't think we should be required to do so," said Tauke.

The removal or even standardization of TV franchises has outraged local governments themselves, who have been lobbying hard to keep the current system in place.

"Local governments have never been a barrier to competition," said Alex Ponder of Washington-based lobby group the National League of Cities. "No local official wants to stand up and say we kept cable prices high by not allowing video competition."

Ponder is a staunch defender of the build-out requirements and said his members would resist any attempt to remove them.

"When you use the public infrastructure you have some responsibility to provide, in a reasonable time, service for everyone," he said.

Cable, too, is wary of any changes to the system. While they say they would support any move to introduce reforms to the system, it would have to be reform that benefits everyone, not just the new telecom entrants.

"Telephone companies have not encountered any difficulty in obtaining franchises; the companies themselves have declared to Wall Street that the franchising process is not holding back their deployment of video service," said Brian Dietz, a spokesman for the National Cable and Telecommunications Association.

But they are not the only one involved in lobbying.

The telecom companies have been increasingly successful in convincing state governments to create statewide franchises or to standardize the application process.

So far, 14 states have introduced some form of franchise reform. The most recent to do so is Michigan, which has passed a bill standardizing the franchising process that Gov. Jennifer Granholm, a Democrat, is expected to sign into law before the end of the year.

According to Joe Fivas of the Michigan Municipal League, the bill's passage means his members face the possibility of losing up to \$57 million in annual revenue.

This argument is often employed by defenders of the status quo - that by removing the ability of local governments to negotiate a deal, they would be stripped of a lucrative source of revenue.

But according to The Phoenix Center, a right-of-center think tank, this argument doesn't hold any water. A study from the center earlier this year concluded that as competition lowered prices for video service, people would order more services and generate more revenue for local governments.

"Revenue would go up by as much as 30% if there was more than one player in a market," said Larry Spiwak of the Phoenix Center.

Any decisions reached at Wednesday's FCC meeting are almost certain to be challenged in court.

And even if they are ultimately successful, the issue won't be settled permanently but it would be, say analysts, a definite statement of intent by Martin to both local governments and the cable industry.

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