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December 6, 2007

BY HAND DELIVERY

Patricia S. Connor, Clerk
U.S. Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, Virginia 23219-3517

Re: Petition for Review, *Montgomery County, Maryland v. FCC*, Case No. _____

Dear Ms. O'Connor:

Please find enclosed:

1. An original and three (3) copies of the Petition for Review of Montgomery County, Maryland with respect to the Second Report and Order of the Federal Communications Commission ("FCC"), *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, 72 Fed. Reg. 65670 (the "Second Report and Order"), adopted on October 31, 2007, released on November 6, 2007, and published in the Federal Register on November 23, 2007.
2. A check in the amount of \$ 450.00 in payment of the docketing fee. L.R. 15(a).
3. Two (2) additional copies of the Petition for the Court to serve upon the following Respondents pursuant to Federal Rule of Appellate Procedure 15(c)(3):

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- 2 -

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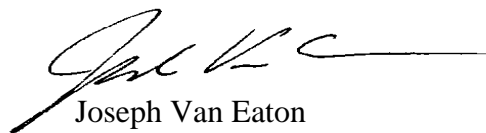
Samuel L. Feder, General Counsel
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

4. Two (2) additional copies of the Petition, which we ask that you please date stamp and return to the individual who presents the Petition for filing.

An appeal of the first report and order in this proceeding is currently pending before the Court of Appeals for the Sixth Circuit, *Alliance for Community Media, et al. v. FCC*, Case Nos. 07-3391, *et al.* Montgomery County is a party to that appeal. The FCC adopted the Second Report and Order subsequent to the filing of that appeal and in connection with the same underlying rulemaking proceeding.

Thank you for your assistance.

Very truly yours,



Joseph Van Eaton

Counsel for Montgomery County, Maryland

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

Montgomery County, Maryland,

Petitioner,

v.

United States of America

and

Federal Communications Commission,

Respondents

Case No. _____

**PETITION FOR REVIEW
of Order of the Federal Communications
Commission**

Pursuant to Section 402(a) of the Communications Act of 1934, as amended, 28 U.S.C. § 2344, and Federal Rule of Appellate Procedure 15, Montgomery County, Maryland (the “County”) hereby petitions the Court for review of the Second Report and Order of the Federal Communications Commission (“FCC”), *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, 72 Fed. Reg. 65670 (the “Second Report and Order”), adopted on October 31, 2007, released on November 6, 2007, and

published in the Federal Register on November 23, 2007.¹ The Second Report and Order is Attachment A hereto.

This Petition for Review has been filed within ten days of the issuance of the Second Report and Order,² and thus is subject to the procedures established under 28 U.S.C. § 2112(a) in the event that other qualified Petitions for Review are filed in different Courts of Appeals. Venue is proper under 28 U.S.C. § 2343 because Montgomery County is located within this judicial circuit.

The Second Report and Order addresses issues regarding the impact of the federal Cable Act, 47 U.S.C. § 521 *et. seq.*, on certain provisions in existing cable franchises. The County is a local franchising authority within the meaning of Section 602(10) of the Cable Act of 1984, 47 U.S.C. § 522(10) and as such is adversely affected by the Second Report and Order. The County filed comments in the FCC proceeding leading up to the Second Report and Order.

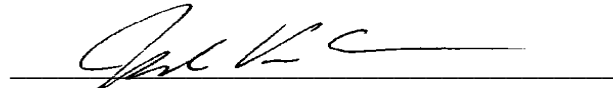
The County seeks review of the Second Report and Order on the grounds that it exceeds the FCC's statutory authority, is arbitrary and capricious, an abuse of discretion, unsupported by substantial evidence, in violation of the United States Constitution, including, without limitation, the Fifth and Tenth Amendments, and is otherwise contrary to law. The Second Report and Order also violates the public notice requirements of both the Communications Act and the Administrative Procedure Act.

¹ An appeal of the first Report and Order, 22 FCC Rcd. 5101 (March 5, 2007) in this same rulemaking is currently pending before the Court of Appeals for the Sixth Circuit, which was assigned the case pursuant to the procedures established by 28 U.S.C. § 2112(a). *See Alliance for Community Media, et al. v. FCC*, Docket Nos. 07-3391, *et al.* Montgomery County is a party to that appeal.

² *See* Fed. R. App. P. 26(a).

The County respectfully requests that this Court hold unlawful, vacate, enjoin, and set aside the Second Report and Order. The County also requests that this Court grant such other relief as it may deem appropriate.

Respectfully submitted,



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The County's Attorneys

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**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

Montgomery County, Maryland,

Petitioner,

v.

United States of America

and

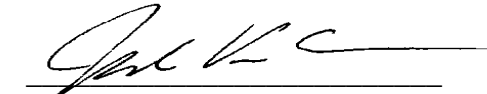
Federal Communications Commission,

Respondents

Case No. _____

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Appellate Procedure 15(c)(1), I hereby certify that I have caused to be delivered via first class U.S. Mail copies of the foregoing Petition for Review to the list attached hereto as Attachment B, which was compiled from the list of commenters maintained in the Federal Communications Commission's Electronic Comment Filing System in the underlying proceeding.



Joseph Van Eaton

Date: December 6, 2007

Attachments

6913\02\00134016.DOC

ATTACHMENT A

ATTACHMENT B

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Dartmouth, Dedham, Easthampton, Groveland,
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and Wilmington, Massachusetts; and Amherst,
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