

# VIDEO FRANCHISING

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## HEARING

BEFORE THE

COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

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FEBRUARY 15, 2006

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

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## **VIDEO FRANCHISING**

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**WEDNESDAY, FEBRUARY 15, 2006**

U.S. SENATE,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10 a.m. in room SD-562, Dirksen Senate Office Building, Hon. Ted Stevens, Chairman of the Committee, presiding.

### **OPENING STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA**

The CHAIRMAN. If there is no disagreement, what we will do is have our opening statements of not more than 5 minutes, and then we'll listen to Ms. Blackburn and then go to our witnesses as quickly as possible. I have a short statement.

As different industries begin to emerge into each other's space, it's the consumer that is poised to win.

First, it was cable providers offering phone service. Now, Americans see wireline phone providers eager to offer video service.

As traditional communications providers move into new services bringing choice, innovation and lower prices to consumers, Congress is confronted with reexamining our legacy regulations.

This Committee has scheduled a series of hearings on communications issues this session through March, about the middle of March. Including this hearing today, the Committee has had eight hearings so far. As with all of our hearings, I look forward to working with the interested parties and the Members of this Committee to craft fair and even-handed legislation for the digital communications world that's expanding far beyond our dreams, and I do hope we're successful. It's going to take a lot of patience and a lot of understanding to get a bill. Senator Inouye?

### **STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII**

Senator INOUE. Thank you very much. This morning, the Committee turns its attention to video competition and our current framework under the Communications Act for regulating the provision of cable services to consumers.

In some respects, today's discussion returns the Committee to familiar ground. Over a decade ago, Members of this Committee heard similar testimony from witnesses who explained how new technology would allow cable companies to provide telephone service, telephone companies to provide cable service, and consumers to reap the benefits of this competition. While this promised competi-

tion did not emerge as rapidly as we once hoped, further advances in technology and new competitive realities are increasingly driving traditional telephone companies to enter the video services market.

As a result, these developments lead us back to an all-too-familiar question—namely, what changes to our communications laws, if any, are needed to promote fair competition and to protect consumers in the video services market?

Toward that end, as we begin to think about legislative proposals to promote robust video competition, there are certain fundamental principles that should guide us in this debate. These principles are not Republican or Democratic principles, but rather, bipartisan and pragmatic. That is why I was pleased to join with my colleague, Senator Burns, earlier this month in bringing these ideas into the debate.

First, our laws should promote competition and ensure speedy entry on fair grounds. The process for obtaining a franchise should be expeditious and should not be used to frustrate entry. But in addition to procedural fairness, a government franchise to provide video services must also ensure that new operators deal fairly with the communities they serve.

Second, our laws should strive to regulate providers of video services in a competitively neutral manner. Whether a video service is called “cable” or “IPTV,” or is based on some other type of technology, the regime for regulating these types of services—where the provider controls the content included in the service offering—should be consistent.

Third, our regulatory framework should recognize the significant role that states and localities play in tailoring the obligations of video service providers to the needs of particular communities, and in enforcing such obligations. As we have seen since the beginnings of the cable industry, this historic reliance on state or local authorities to manage public rights-of-way and to protect the public interest has played an essential role in preserving localism.

In my view, our efforts to facilitate fair and robust video competition, to strengthen universal service, and to ensure network neutrality will represent the central elements of telecommunications reform. As a result, I look forward to listening to today’s testimony and to working with my colleagues in the weeks ahead.

And I thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Senator. Following the early bird rule, I recognize Senator Bill Nelson.

**STATEMENT OF HON. BILL NELSON,  
U.S. SENATOR FROM FLORIDA**

Senator BILL NELSON. Thank you, Mr. Chairman. Mr. Chairman, the landscape has changed significantly since 1996 and its Act because in this digital age now, we now have cable TV providing broadband voice service, and we have the telephone companies providing broadband video service. So, now it’s time to spur vigorous competition, lower prices and very significantly, broadband choices for all consumers.

Now, there are some people that are uptight about all of this change and how’s it going to turn out, and one of the areas is the question of the local franchising process. It’s outmoded, and it’s

cumbersome. I support statewide or national video franchising. But of course, the municipalities have a good bit of concern about streamlined franchising.

So, I think we've got to be clear that there are ways to reform the system that will protect the municipality's franchise fees, and it will protect their rights-of-way authority, and it will give them the authority to reasonably negotiate terms of service.

Now, we know that the cable TV industry has some concerns. So, let me state it clearly again, I support a level playing field where all the broadband video providers are regulated the same. And at the end of the day, if we're going to get this reform bill passed, then we're going to have to work together. And I feel confident that we can find a good way to reach statewide or national video franchising by all sitting down together and finding a way to unleash what is going to be a broadband revolution for consumers.

The CHAIRMAN. Thank you very much. Our next senator under the early bird rule, Senator Burns.

**STATEMENT OF HON. CONRAD BURNS,  
U.S. SENATOR FROM MONTANA**

Senator BURNS. Thank you, Mr. Chairman. Thanks for this hearing today. I'll just make a couple of points along with the points that Senator Inouye made. We've been in dialogue now for about a month and working together and about ready to really get into the subject because we know it's important. I would ask you now that my full statement be made part of the record.

The CHAIRMAN. Yes, sir.

Senator BURNS. I think the outcome of any policy is removing Federal barriers to competition while supporting the best government, the one that's closest to the people. I believe this legislation can gain strong industry and local government support. We should work with all those entities in streamlining the franchising of the prospect, but I think we need to work toward—I think, you know, a long time ago, I can remember a little video dial tone amendment when I first came to this Committee, and everybody's eyes glazed over, and we were discussing then putting new regulations on cable to re-regulate them, and I thought that was a bad idea, and I still think it's a bad idea today. But nonetheless, we have come a long way. And then, when we start talking about digital and digital technology, we've also—we quit talking about identifying video data or voice, and now we start talking about bandwidth. And then, that's it. Ones and zeros, we can't identify them anymore. So, we're talking about almost the same thing.

The franchising process must not be permitted to become a barrier for entry, and we're very much aware of that. So, as we work through this, I'm looking forward to the witnesses today and their testimony, and it will be interesting, I think, but we're—and I want to thank Senator Inouye and the rest of the Members of this Committee as we move this legislation along. I'm sure there'll be spirited debate, and there'll be different ideas, but we want to hear them. And somewhere in the middle, we'll find a way to be of service to the industry and the competition and the American way of doing business. Thank you, Mr. Chairman.

[The prepared statement of Senator Burns follows:]

## PREPARED STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Chairman Stevens, And Co-Chairman Inouye:

Thank you for holding this important hearing on video franchising. I would also like to thank our guests for taking the time to share their views with us today.

As Senator Inouye stated, we have been talking about new franchising legislation that serves the common interests of new entrants, existing providers of voice, video, and broadband services while preserving control at the local level. My anticipated outcome of any policy is removing Federal barriers to competition while supporting the best government—the one closest to the people. I believe this legislation can gain strong industry and local government support.

Our goal is to promote competition wherever possible. Coming from the great State of Montana, I am well aware of how competition for video services has grown over the past decade, even in rural states. Satellite competitors, have a significant impact on the marketplace and most of our constituents can now choose among service providers for their video programming.

We can do better. Technology has enabled cable companies to compete for telephone customers, and telephone companies are beginning to compete for cable and satellite television customers. A March of 2004 GAO study shows that cable TV rates are substantially lower (by 15 percent) in markets where competition exists. Local government has the opportunity to reduce consumer costs by allowing competition.

The traditional telephone companies seem eager to offer video services to customers, and our constituents seem eager to have more options. I've long encouraged additional investment in broadband networks and additional choices for consumers. These important national policy objectives should be accomplished without tilting the rules against existing providers, discourage additional investment, or by trespassing on the legitimate responsibilities of local governments.

Under existing law, cable operators and telephone companies must obtain a franchise from local governments before they can provide cable service. The franchising process ensures that local governments can continue to manage their rights-of-way. But the franchising process must not be permitted to become a barrier to entry.

Given the benefits of increased competition, it is important to remove barriers impeding. Our policy needs to provide that new entrants and existing providers compete on similar terms and conditions. Video is only one piece of "leveling the telecommunications playing field." Voice and broadband rules should also be the same for all providers.

The policy Senator Inouye and I have discussed will achieve this balance. Our policy will treat all video providers the same regardless of the technology they deploy. The policy will establish a level playing field between new entrants and existing cable operators, without undermining the role of local authorities. Franchising authorities will have to act on applications on an expedited schedule. Local government oversight will ensure that consumers have access to new video offerings that are responsive to local community needs.

I look forward to joining with other Senators on this Committee, local officials, and other interested parties as we move forward with our legislation. Much is at stake for industry, local governments, and consumers. I hope the Federal role will be the smallest among them.

The CHAIRMAN. Senator Ensign?

**STATEMENT OF HON. JOHN ENSIGN,  
U.S. SENATOR FROM NEVADA**

Senator ENSIGN. Thank you, Mr. Chairman. This is one of the most important in the series of telecommunications reform hearings, that we will have. I want to make a couple of points. It's been mentioned today by local governments and other concerned parties about the video franchise agreements, how they're put together today, whether they should be put together in the future and whether there should be regulation in today's marketplace at the local level. Some believe that there shouldn't be. Some believe that there should. One question is, what do we do about the 5-percent franchise fee? I think that everybody's pretty much come to agree-



ment that we will preserve that for the local governments. It's an important source of revenue for them.

But does local regulation make sense in today's world where we have many providers, and we're going to have more providers for video coming into the home, just like telephone. In a monopoly situation, it made sense to have regulation, tight regulation to protect the consumer. But in a competitive marketplace, the best protection for the consumer, the best way the consumer's going to get the most services at the best price is through competition. The more competition, the more protection for and the more choice that the consumers will have.

The legislation that I have put together, accomplishes that. It's going to need some tweaking as we go through the process, but the bottom line is is that people say we need to get video services into the home with more competition. Well, how do we that when over 30,000 local cable franchise authorities today? We'll hear from one company today that has formed agreements with just 50 of the 10,000 that they deal with, and 29 of those 50 come from Texas, which has passed a streamlined video franchising bill.

There is a barrier today. Video choice is happening too slow. And one of the reasons that we should all be interested in getting more video choices into the home and more competition into the home is because we want to encourage broadband into everybody's home. Well, there's a reason people want broadband. Why do they want faster higher speed broadband coming into their home? Why are they going to be willing to pay for it? They have to have some kind of incentive there. This is one of the incentives, probably the major incentive for consumers to want higher speed Internet access, because they will get another option in video programming. And that's why it's so critical for us as we're going forward, to take as many barriers down as we possibly can to bring more competition into the local marketplace.

So, Mr. Chairman, I look forward to working with everyone on this Committee. I think it's an exciting time for us, and I think that we can do some great things for the American consumer as well as the American economy if we can get more choices coming into the American home. Thank you.

The CHAIRMAN. Thank you. Next, Senator Ben Nelson?

**STATEMENT OF HON. E. BENJAMIN NELSON,  
U.S. SENATOR FROM NEBRASKA**

Senator BEN NELSON. Thank you, Mr. Chairman, and thank you, Mr. Chairman and Senator Inouye for scheduling the hearings on telecom issues and particularly, the one we're dealing with today. Obviously, the integration of network technologies that we're discussing means that the networks that were designed for voice, video or data can now be used to offer all three types of service, and advancements can continue to contribute to economic growth while simultaneously resulting in a richer selection of telecommunications services that lower prices to consumers. That's obviously what we're interested in exploring today, what regulatory barriers exist that discourage innovation and growth. I believe the franchising process needs to be looked at and needs to be streamlined in order to facilitate competition in the video market.

The communications marketplace has changed significantly since the 1996 Act, and I believe it's appropriate that Congress act to accommodate those changes. It's clearly in the best interests of consumers to encourage competition in the video market, and I look forward to hearing from all the witnesses today as to how they believe we can best accomplish that. Technology continues to be dynamic. The question is whether we can make regulation dynamic at the same time and also where it's necessary to protect consumers.

Municipalities should be able to protect their community interests to a reasonable degree, and there should be a role for state and local regulators in addressing consumer concerns. But while I believe vigorous competition is one of the best ways to benefit consumers, at the same time, I think it's appropriate to consider where a public role can help foster advancement and at the same time, safeguard public interest. I thank you very much, and I'm anxious to hear from the witnesses today, and thank you very much, Mr. Chairman.

[The prepared statement of Senator E. Benjamin Nelson follows:]

PREPARED STATEMENT OF HON. BEN NELSON, U.S. SENATOR FROM NEBRASKA

Thank you, Mr. Chairman.

I'd first like to thank Senators Stevens and Inouye for scheduling this series of hearings on telecom issues.

These are all important issues that deserve full debate, and I believe these hearings are crucial in ensuring we as a Committee develop legislation in a responsible and thoughtful manner.

The integration of network technologies we are discussing in these hearings this year means that networks that were designed for voice, video, or data can now be used to offer all three types of service.

Such advancements can contribute to economic growth while simultaneously resulting in a richer selection of telecommunications services at lower prices to consumers.

What I am interested in exploring at today's hearing is how we can best capitalize on these advancements in technologies to benefit consumers the most.

What regulatory barriers exist today that discourage innovation and growth?

I believe the franchising process must be streamlined in order to facilitate competition in the video market.

The communications marketplace has changed significantly since the 1996 Act, and I believe it is appropriate that Congress act to accommodate those changes.

It is in the best interest of consumers to encourage competition in the video market, and I look forward to hearing from all the witnesses today as to how they believe we can best accomplish that.

I also believe we must make sure that regulation remains where it is necessary to protect consumers.

Municipalities should be able to protect their community interests to a reasonable degree, and there should be a role for state and local regulators in addressing consumer concerns.

While I believe vigorous competition is one of the best ways to benefit consumers, at the same time, I do think it is appropriate to consider where a public role can help foster advancement and safeguard public interests.

Finally, I believe that technology holds enormous economic promise to rural America, and innovation and competition must be encouraged in even the most remote areas of our country.

Therefore, I would like to hear from the witnesses today about how we can encourage the deployment of infrastructure and new services in rural areas of the Nation.

Thank you, Mr. Chairman. I look forward to hearing the testimony.

The CHAIRMAN. Senator Kerry?

**STATEMENT OF HON. JOHN F. KERRY,  
U.S. SENATOR FROM MASSACHUSETTS**

Senator KERRY. Mr. Chairman, thank you very much. I was listening to a couple of the comments, and I think everybody here has obviously got a pretty good sense of the big stakes that are on the table here. And as we look back, this has been a really interesting journey for this Committee. I think it's important for the Members, for all of us, to sort of look back at that journey as we think about where we're going. I mean you can go back to the 1972 Cable Rule, and you can go to the 1984 Cable Act, and you can look at what we thought about then, and then you can go to 1992 and 1996.

1996, I remember when we passed that, Mr. Chairman. Senator Inouye, Senator McCain, a few others of us were here. The entire conversation was about telephony. Despite the fact that data was literally right around the corner, I don't think many of us had a lot of conversations about the data components of this. And obviously, the choices that we make on this Committee have a profound impact in the marketplace, profound impact on investment, on jobs. And I think the underlying principles that we signed yesterday, many of those are really what ought to guide us in this effort.

There's obviously always also a great struggle here by those with high stakes, financial interest on the table already. You look at the cable industry with billions of dollars of fiber investment and so forth, certain set of rules they've played by. But the rules are changing, and the game is changing. And our job is going to be to try to sort through that in a way that really does put a level playing field and the best competitive practices ahead of any other kind of specialized interest.

Now, as we all know, the marketplace is so profoundly different from what it was in 1996 with VoIP, Vonage, wireless companies, cable companies, everybody, and a massive restructuring is still going on. And if you look back on some of the decisions that we made in 1996, and as a nonpolitical nonpartisan analysis of that, has to conclude that what we did had a profound impact on the outcome. So similarly, this is going to have the same thing, and I think we've got to be really careful.

I applaud Senator Rockefeller and Senator Smith, who I think made a bonafide effort here to try to move us toward a beginning center working place from which we can try to figure out, you know, how do we accommodate the interests of mayors and local communities and others without becoming so burdensome and over-encumbering that we prevent this explosion from taking place in a positive way? At the same time, Mr. Chairman, we don't want to micro-manage it, and we need to allow the competition to play out appropriately.

So, this is going to be a delicate balancing act for this Committee. And again, I say the history, the road we have traveled, is really informative as to how we might behave at this moment. And I applaud you for beginning this process and look forward to working with you to try to make it work out as reasonably as possible.

The CHAIRMAN. Thank you, Senator. Senator Rockefeller?

**STATEMENT OF HON. JOHN D. ROCKEFELLER IV,  
U.S. SENATOR FROM WEST VIRGINIA**

Senator ROCKEFELLER. Thank you, Mr. Chairman. I want to thank you and Co-Chairman Inouye for having this hearing. We've been after it for a while, and we've got it. And I also want to say that I'm very pleased that Mr. Seidenberg and Mr. Whitacre are here because they play a large role in this.

In the case of Verizon, I think what Mr. Seidenberg will talk about is their commitment to bring competition in the marketplace. Verizon's deployment of the most advanced communication network will be transformational, and I will assert, at least for the purposes of this hearing, will change the way we think about communications altogether. I know West Virginia has looked forward to Verizon's deploying something which we have not yet seen in local settings, which is broadband. Ten years ago, we debated. Senator Kerry said the 1996 Act, which was a lot prettier than 1993 Non-Act, which was a cable fight, and it was important that any new laws advanced three core principles, and that one is obviously competition, the second is broadband deployment, and the third is universal service. Universal Service is a separate subject which we will be pursuing in other ways.

Now, with the technology and the industry changes over the last decade, we find ourselves having to address areas where competition did not take hold. Repeat, did not take hold, to wit, cable television. I believe the best way to advance competition to cable and broadband deployment is to pass the Video Choice Act of 2005, which Senator Smith and Dorgan and myself and Senator Kerry pointed out, introduced, and I think this bill's going to be enormously beneficial for consumers and because it will spur competition, it'll deliver broadband by encouraging traditional telephone companies to offer the bundle of Internet, video and telephone services.

Some of the local officials may be nervous, but I predict to you that they will not end up nervous because they will find in the end that we hold them harmless—we hold them harmless, and all public services we now require will continue to be required. This isn't just about more television choices, it's about our economic future. When we were last on this subject a number of years ago, we were fourth in the world. We're now 16th in high-speed Internet access. That's fairly depressing for a nation like ours. This isn't just a number, it's a marker for our future.

As good as this legislation is, we believe—I understand that many local governments are concerned, and I repeat again, I was a former Governor. I'm very aware of the important local revenues, and I think that the local governments are going to end up quite satisfied with this, although they will be skeptical at first as they should be. Legislation mandates that all vital social policy obligations of current cable television operatives that they have to do will have to be met by the competitive video industry. It's a short year. There's no guarantee that we can pass legislation even. We have hearings, and people get worked up, and then nothing happens. This cannot be one of those years on this subject because I think the stars are aligned.

We've tried, Senator Smith and I, to craft a narrowly tailored bill. We've taken into consideration the worries and thoughts of others, but we really want competition, and we think—and as for me, I really want broadband. I need broadband for my people in West Virginia out in the rural areas. This will cause it to happen through the free enterprise system. That, my friends, is exciting. I thank the Chairman.

The CHAIRMAN. Thank you. Senator DeMint?

**STATEMENT OF HON. JIM DEMINT,  
U.S. SENATOR FROM SOUTH CAROLINA**

Senator DEMINT. Thank you, Mr. Chairman. I appreciate you holding this hearing. Franchise laws are a legacy instrument from the era of rotary telephones written before the Internet, before Internet television, satellite television, voice over the Internet and before soon-to-come high-quality digital broadcasting. When there was no competition to the telephone and cable companies, local governments could tax and over-regulate both of them and use the extracted revenues for perks and to cross-subsidize consumers or finance unrelated public services.

Cable television and phone companies submitted to this over-regulation and overtaxation because their government-sanctioned monopolies meant they could recover their investment by raising prices. Consumers had no choice but to pay. The cable TV and telephone companies are no longer monopolies. Today, there are more cell phones in use in the United States than land line phones, and many consumers have dropped their traditional land lines completely for cell phones. Voice over the Internet is rapidly eating into the telephone companies' subscriber base. Cable companies lost over a million subscribers last year, and alternative methods of video distribution, such as satellite, are beginning to reach more and more households. And we know, from action on this Committee, that digital broadcasting will soon add additional high-quality choices to consumers.

Competition makes it impossible, or at least very inefficient, to use regulations to force companies to be tax collectors for local and state governments or to force some consumers to subsidize others. In our new era of competition, local governments must find a way to pay for unrelated services other than through traditional franchise agreements. Cable companies have paid a hefty price to operate under local franchise. And so, they have a good reason to be concerned about the transition out of local franchising systems. It is never comfortable for existing companies when increased competition makes existing regulations obsolete.

But our focus in Congress, and hopefully, Mr. Chairman, on this Committee, is not on the companies, but on the consumers. We know that consumers benefit only when regulations and taxes are reduced on the incumbents instead of being imposed on new competitors. Local video franchises have become unnecessary regulatory barriers and need to be removed to allow competition and choice to flourish. That's why I've introduced Senate bill 2113, the Digital Age Communication Act. It phases out local franchises over a 4-year period. All the same legislation maintains the right of localities to manage and be compensated for the use of right-of-ways.

This bill also allows incumbent providers to get help from new competitors with any legacy regulatory costs that may have burdened them because of ongoing franchise obligations.

To benefit consumers and pave the way to investment in broadband networks, Congress should act swiftly to reform the franchise process that reflects the realities of the extraordinary advancements in the communication marketplace. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator. Senator Lautenberg?

**STATEMENT OF HON. FRANK R. LAUTENBERG,  
U.S. SENATOR FROM NEW JERSEY**

Senator LAUTENBERG. Thank you, Mr. Chairman. We've got, obviously, a significant interest in this fairly complex question, and as I heard colleagues discuss those events of years past and looked at what's happened with the technology, and almost as spectators, we see changes that were never anticipated, satellite services, et cetera. So, we've got to try and be constructive here and see where we can take the demand that we hear so much about from our constituents for better services and lower prices. We all receive letters from constituents concerned about the high cost of cable TV. In fact, cable prices have increased 50 percent on average in the last 5 years, 50 percent. And in many instances, TV rates and need and demand are almost at a level with other household utilities, like gas and electric and things of that nature. In many instances, cable is, or TV itself, is an outlet that includes learning and company for the aged or disabled and so forth.

So, these are very serious needs, and new competition in the television market could reduce prices. And indeed, GAO has found that where there is competition to cable, rates are 15 percent lower on average. So, we should make sure that our laws don't prevent a new provider from serving our constituents. But we've got to recognize that the cable companies have put significant time and capital into upgrading their infrastructure, somewhere around \$100 billion over the last 10 years. And local communities have been rewarded with new technology and better services. And there are significant benefits that flow from oversight of providers by local authorities.

Local governments use franchise agreements to manage their rights-of-way and ensure consumer protection. For their part, the cable companies provide public service and educational channels. They wire schools and municipalities, and build out community-wide systems to ensure that everyone has the benefits of new technology. And a new entrant ought to be willing to embrace and to provide these important benefits.

Mr. Chairman, I welcome the competition in the video marketplace, and I'm pleased that new providers are poised to enter the market in the state of New Jersey, but I hope that their entry doesn't escape review and simply suggest that prices would drop, but without providing consumer protections. And I hope that all of our constituents will see the benefits of this competition. If new entrants are being denied franchises or facing unreasonable delays under the current system, we've got to make changes.

But any new proposal we consider must not allow competitive advantages by dropping the existing service demands for one provider

over another. It must ensure that local community leaders will still have the ability to oversee consumer protection and receive reasonable franchise fees. These are an important flow of revenue to the communities, and that new providers shouldn't be able to cherry pick, like pick off the wealthiest consumers and forget about the rest.

So, I thank you, Mr. Chairman and Senator Inouye, and I look forward to the testimony of the witnesses today.

The CHAIRMAN. Thank you very much. Senator McCain?

**STATEMENT OF HON. JOHN MCCAIN,  
U.S. SENATOR FROM ARIZONA**

Senator MCCAIN. Thank you, Mr. Chairman. Every year, the cable companies visit their customers each December with their song of rising programming costs, which of course requires them to increase consumer rates. *The Wall Street Journal* reports that this year, consumers can look forward to increases of as much as 6 percent for cable and 4 percent for satellite subscription services. These rate hikes are on top of increases of approximately 4 percent in 2005, according to media reports, preceded by increases of 5.4 percent and 7.8 percent in 2004 and 2003, respectively.

Since 1996, cable rates have spiked 56.6 percent, three times the rate of inflation. One of the key reasons that the cable industry can boost its rates each year and still retain its customer base is because consumers have very few options. Satellite subscription services now serve more customers than ever before, according to the FCC, and have provided some competition.

However, in October 2003, a General Accounting Office study found that competition from another wire-based company is the only real check on rising cable rates. Specifically, the GAO found that cable rates were as much as 15 percent lower in markets where another wire-based competitor is present. This finding has proven true in Keller, Texas, where, according to Bloomberg News, Charter Communications cut their rates 25 percent when Verizon deployed its television delivery service. Now, citizens in Keller, Texas, can choose from four different providers.

I hope this is a phenomenon that will quickly take hold nationwide. Due to deregulation by Congress and the FCC, consumers have several choices for high-speed Internet access such as DSL service from their phone company, cable modem service from their cable company and wireless access from a wireless carrier. This robust competition has led to lower rates for consumers from \$46 per month in 2002 to \$39 per month in 2004. Tellingly, when Comcast announced a 6-percent rate increase for cable television service this year, it did not raise its rates for its high-speed Internet service. Unfortunately, cable industry deregulation has not led to more choices and reduced prices. Cable rates, as I mentioned, have increased 56 percent since 1996. Meanwhile, the prices of apparel, eggs, beef, airline travel and long-distance telephone service have fallen.

However, consumers should not only have a wider choice of providers, but a wider choice of pricing options. The average customer, pays almost \$50 for 72 channels, but a study by Booz Allen Hamilton commissioned by the cable industry last year estimated that

customers only watch about 16 channels and would probably subscribe to only nine if they could pick individual channels on an a-la-carte basis. The FCC's most recent study found consumers could save as much as 13 percent a month if they're able to pick and choose the channels they wish to purchase. This avenue shows that many consumers would like the choice to only buy the channels they watch.

Therefore, I will soon introduce legislation that would entice all providers of television services to offer an a-la-carte option in addition to bundles of channels in return for regulatory relief, including freedom from local franchising. I look forward to hearing from the witnesses today.

Mr. Chairman, I don't see why a retired person in Sun City, Arizona, should have to pay an exorbitant fee to watch ESPN. I don't see why people on fixed incomes should face ever-increasing cable rates, and the reason for it is that they have access to more channels to watch when they don't want more channels to watch. We need to have a-la-carte if we're going to give consumers a better break, and we are going to get parents the ability to exclude channels which contains material that they find patently offensive. I thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator. Senator Smith?

**STATEMENT OF HON. GORDON H. SMITH,  
U.S. SENATOR FROM OREGON**

Senator SMITH. Thank you, Mr. Chairman. In the interest of time, may I have my statement put in the record.

The CHAIRMAN. All statements of senators and witnesses will be put in the record.

Senator SMITH. I would note the unanimity that seems to be on this committee with the fact that we have to do something. It's not partisan. It's, frankly, a recognition that we're back to the future. And frankly, the future, for the sake of consumers and for the sake of American competitors, demands that we do something on this committee.

Senator Rockefeller and I have put out a letter of principles, that we've been joined by Senator Ensign, Senator DeMint, Senator McCain and Senator Kerry, in laying out those principles. I am not insensitive to the concerns of municipalities and certainly think there are things we must do to help the cable guys with deregulation as well so that they're not at a competitive disadvantage.

But on the other hand, there is a point to what we should do. We simply have to recognize that the future will overtake us if we don't catch up with it. To these ends, I have introduced, with Senator Rockefeller, the Video Choice Act of 2005. Our bill eliminates redundant and unnecessary video franchise agreements while preserving important local prerogatives and authority.

Specifically, our legislation permits any company that has already obtained a network franchise to offer video services without obtaining a second video-specific franchise. These competitive video service providers will still be subject to the core social and policy obligations that Congress has always imposed on providers of video service, including the obligation to pay fees to local governments, to comply with the retransmission consent and must-carry provi-



sions of the Communications Act, to carry public, educational, governmental and noncommercial educational channels, to protect the privacy of subscribers and to comply with all statutory consumer protections and customer service requirements.

Our legislation also preserves state and local government authority to manage the public rights-of-way and to enact or enforce any consumer protection law. I believe that local communities must continue to play a meaningful role in the management of these networks.

And again, I recognize that the video franchising process imposes burdens on cable operators and support efforts, either as part of this legislation or separately moving simultaneously, to address their concerns. It's important to note however, that the cable operators do not have to comply with the legacy phone regulations for their voice services. Likewise, telephone companies should not have to comply with legacy cable regulations for their video services.

So, Mr. Chairman, I think this hearing is timely and very, very important to consumers, competition and America's future. Thank you.

[The prepared statement of Senator Smith follows:]

PREPARED STATEMENT OF HON. GORDON H. SMITH, U.S. SENATOR FROM OREGON

Thank you, Mr. Chairman and Co-Chairman Inouye, for convening this hearing to examine the decades old system of local video service regulation.

The video marketplace was vastly different in 1984 when Congress first authorized local regulation of cable television service. In those days, a typical American community was served by a local cable company that had a few hundred or a few thousand subscribers. More than twenty years later, nearly all of those communities are still served by just a single cable company, but that company likely serves millions of subscribers across the country.

Today, the video market is truly national, but our regulations remain local.

Some of the largest communications companies in the country are investing billions of dollars in high speed networks capable of offering video and other services that will compete with cable. Under current law, companies like Verizon, AT&T, and BellSouth must negotiate and sign local franchise agreements before they can offer competitive video service. There are over 33,000 franchise authorities in the United States and the slow pace of negotiations has delayed competition.

The longer consumers go without effective video competition, the higher their bills will be. Year after year, cable price increases outpace inflation. According to a January 25, 2006 article from The Oregonian newspaper, Portland-area cable rates are set to increase by another 7 percent this year. Although satellite TV services have made great strides during their 12 years of existence—serving over 20 million subscribers—they have failed to exhibit price control on cable.

A recent Government Accountability Office (GAO) study underscores the benefits of wire-based competition in the video market. In August 2004, GAO concluded that cable rates are on average 15 percent lower in the few markets with a wire-based competitor to the incumbent cable operator. As Ivan Seidenberg, Chief Executive Officer of Verizon, notes today in his testimony, cable prices have dropped by about 20 percent since Verizon entered the video market in Keller, TX.

I believe that Congress must reexamine the local regulation of video services to ensure that barriers to competition and costs to new entrants are as low as possible. The benefits of lower prices, better service, and billions of dollars invested in local economies are clear.

To these ends, I have introduced the Video Choice Act of 2005 with Senator Rockefeller. Our bill eliminates redundant and unnecessary video franchise agreements while preserving important local prerogatives and authority.

Specifically, my legislation permits any company that has already obtained a network franchise to offer video services without obtaining a second video-specific franchise. These "competitive video service providers" will still be subject to the core social and policy obligations that Congress has always imposed on providers of video service, including the obligation to pay fees to local governments, to comply with the retransmission consent and must-carry provisions of the Communications Act, to

carry public, educational, governmental and non-commercial, educational channels, to protect the privacy of subscribers, and to comply with all statutory consumer protections and customer service requirements.

Our legislation also preserves state and local government authority to manage the public rights-of-way and to enact or enforce any consumer protection law. I believe that local communities must continue to play a meaningful role in the management of these networks.

I recognize that the video franchising process imposes burdens on cable operators and support efforts to address those concerns. It is important to note, however, that cable operators do not have to comply with legacy phone regulations for their voice services. Likewise, telephone companies should not have to comply with legacy cable regulations for their video services.

I look forward to the testimony today and encourage the Members of this Committee to act swiftly on video franchise reform legislation.

The CHAIRMAN. Thank you. Senator Pryor?

**STATEMENT OF HON. MARK PRYOR,  
U.S. SENATOR FROM ARKANSAS**

Senator PRYOR. Mr. Chairman, thank you. I do not have an opening statement. I'm ready to get on with the hearing. Thank you.

The CHAIRMAN. Thank you very much. Senator Lott?

**STATEMENT OF HON. TRENT LOTT,  
U.S. SENATOR FROM MISSISSIPPI**

Senator LOTT. I'd like to associate myself with Senator Pryor's remark and hear the witnesses which I came to hear.

The CHAIRMAN. Senator Dorgan?

**STATEMENT OF HON. BYRON L. DORGAN,  
U.S. SENATOR FROM NORTH DAKOTA**

Senator DORGAN. Mr. Chairman, I was necessarily delayed this morning, and I was very worried I was going to miss the first panel, but it appears I shouldn't have worried very much. At any rate, let me do the same. I'll put my statement in the record. It's a very important hearing. I'm glad that we're holding it, and I'll ask my entire statement be part of the record.

[The prepared statement of Senator Dorgan follows:]

PREPARED STATEMENT OF HON. BYRON L. DORGAN,  
U.S. SENATOR FROM NORTH DAKOTA

As we sit here today, it is amazing to me how much, and how little has changed from the 1996 Telecommunications Act. Back then, the fight was over phone service—whether regulations encumbered providers from entering into the lucrative long distance market.

Then, the issue became broadband—whether those regulations hampered entry into the broadband market.

Now the issue before us today is whether regulations hamper entry into the video market.

I support competition—I want to ensure that we have as much competition and benefit to consumers as possible.

But that should not come at the cost of important priorities—build-out, rights of way fees, community access programming, consumer protections.

I agree that we should take a close look at how the system can be changed to facilitate the entry into a market when there are so many thousands of different franchises.

But I think we must tread carefully and I look forward to today's hearing to hear the interests that are at stake.

**Net Neutrality**

I want to point out, just as there is a recognition that there is insufficient competition in the video market—there is insufficient competition in the broadband market.

In North Dakota, 49% of consumers have only one choice for a broadband provider. Yet now broadband providers' executives have made statements that they believe Internet content providers are "freeloading," or "using the pipes for free."

I do not agree with that—content providers pay for their Internet service, and consumers pay for their Internet service—and when they pay, they assume that they will have unfettered access to whatever content they choose.

That is the way the Internet was structured—Internet freedom drives innovation, competition, and frankly—it has driven the deployment of broadband. We should keep it that way.

The CHAIRMAN. Thank you. We agreed to let Congresswoman Blackburn make a statement. Congresswoman?

**STATEMENT OF HON. MARSHA BLACKBURN,  
U.S. REPRESENTATIVE FROM TENNESSEE**

Ms. BLACKBURN. Thank you, Mr. Chairman and Co-Chairman Inouye. Thank you for holding the hearing on the issue so that we can discuss video franchising, and it is so relevant in light of your comments that you made, sir, on Monday regarding the need for uniformity in franchising. And as Senator Smith said, it seems as if everyone is in agreement here that something needs to be done.

My colleague, Representative Wynn, and I introduced legislation in the House similar to the bill that Senators Smith and Rockefeller introduced here in the Senate, that would reform the video franchising process. And Mr. Chairman, the issue is simply stated, my constituents don't support government regulations that stifle competition and stifle innovation. They don't believe a system that restricts video choice to nothing more than a cable, rabbit ears or a satellite service is where we should be in our option of choices in 2006.

The House Energy and Commerce Committee is in the process of drafting an initial telecom reform bill, but I want to take the opportunity to testify before you about the importance of the issue in the hopes that the legislation coming out of both chambers will contain franchise reform language.

The bill Representative Wynn and I introduced H.R. 3146, the Video Choice Act, will help eliminate the red tape new entrants into the video market must cut through to lay fiber and offer new services.

Senator Inouye mentioned that the importance in crafting a bill and crafting legislation, is that it strike a reasonable balance between the need to promote competition in the video TV market and the needs of municipalities to govern their rights-of-way. I agree with that. Simply put, the current laws that govern the franchising process serve as a barrier to competition and prevent new video technologies from entering the marketplace.

I have heard more than one executive from an incumbent video service provider say that this is all about giving the big Bell companies and the big providers an unfair advantage. And I can't speak for those companies, but I can tell you about a small rural ILEC based in Tennessee that is laying fiber to offer a robust array of services. The bill will help the little guys who are being kept out of the marketplace under the current structure.

Senator DeMint raised the issue about this being about consumers, and I agree, but this isn't only about offering consumers a choice in video service. These pipes that deliver the video product will also have more space for data, and cutting the regulations that prevent these companies from entering in the video market will only help broadband penetration in the U.S. We've heard several of your panel mention the need for expanding our broadband today.

The U.S. has fallen to 16th in the world in broadband penetration, and we believe our bill would improve this standing. Senator Rockefeller, you said we were at fourth before we started over the last few years. I join you. We would love to see the United States return to that standing.

Quite frankly, I think the cable companies know that competition is coming, and they are fighting hard to preserve the status quo. In my own district, I am disappointed to say the current incumbent cable provider used its position as a Goliath to prevent that small, rural ILEC that I previously mentioned, from offering video service to their customers over their own fiber.

Senator Ensign said we don't need more studies to tell us that competition is good for consumers. I agree with that. In a competitive marketplace, quality and competition does become our regulator. We already have a few real-world examples of what competition can do for prices. Senator McCain mentioned Keller, Texas, and the FCC just held a meeting there to highlight the issue. Right now, Verizon is offering its video package for about \$37 a month in Keller, Texas. Almost overnight, Charter Communications cut its price just to be able to compete.

The message, I believe, is quite simple. Reducing the barriers to video competition is good for consumers. I want to commend you, Mr. Chairman, for your Committee's aggressive hearing schedule. I hope that any legislation passed out of your Committee will address franchise reform, and I look forward to working with you on the issue. Thank you. I yield back.

[The prepared statement of Representative Blackburn follows:]

PREPARED STATEMENT OF HON. MARSHA BLACKBURN,  
U.S. REPRESENTATIVE FROM TENNESSEE

Chairman Stevens and Ranking Member Inouye,

Thank you for holding this hearing today to discuss video franchising. Mr. Chairman, it is especially relevant in light of your comments on Monday about the need for uniformity in franchising. My colleague Rep. Wynn and I introduced legislation in the House similar to the bill Senators Smith and Rockefeller introduced here in the Senate that would reform the video franchising process. Mr. Chairman, this issue is simply stated, my constituents don't support government regulations that stifle competition and innovation. They don't believe a system that restricts video choice to nothing more than a cable provider, satellite service, or rabbit ears is where we should be in 2006.

The House Energy and Commerce Committee is in the process of drafting an initial telecom reform bill, but I wanted to take the opportunity to testify before you about the importance of this issue in the hopes that the legislation coming out of both chambers will contain franchise reform language.

The bill Rep. Wynn and I introduced, H.R. 3146, the "Video Choice Act," will help eliminate the red tape new entrants into the video market must cut through to lay fiber and offer new services. We sought to craft a bill that strikes a reasonable balance between the need to promote competition in the video TV market and the needs of a municipality to govern their rights of way. Simply put, the current laws that govern the franchising process serve as a barrier to competition and prevent new video technologies from entering into the market.

I have heard more than one executive from an incumbent video service provider say that this is about giving the big Bell companies an unfair advantage. I can't speak for those companies—but I can tell you about a small rural ILEC based in Tennessee that is laying fiber to offer a robust array of services. This bill will help the little guys who are being kept out of the marketplace.

But this isn't only about offering consumers a choice in video service. These pipes that deliver this video product will also have more space for data—and cutting the regulations that prevent these companies from entering in the video market will only help broadband penetration in the US. The United States has fallen to 16th in the world in broadband penetration and we believe our bill would improve this standing.

The cable companies know competition is coming, and they are fighting hard to preserve the status quo. In my own district, I am disappointed to say, the current incumbent cable provider used its position as a Goliath to prevent that small rural ILEC I mentioned from offering video service over their own fiber.

We don't need to fund any more studies to know that competition is good for consumers. We already have a few real world examples of what competition does to prices. And I was pleased to see the FCC just held a meeting in Keller, TX to highlight this issue. Right now Verizon is offering its video package for about \$37 a month in Keller, TX. Almost overnight Charter Communications cut its price in half to compete.

The message is simple. Reducing the barriers to video competition is good for consumers. I want to commend you Mr. Chairman for your Committee's aggressive hearing schedule. I hope that any legislation passed out of your Committee has franchise reform and I look forward to working with you to address this issue.

The CHAIRMAN. Thank you very much. I don't know what makes me think of the 20-mule team model that's on my piano. No inference intended, but we've all got to go in the same direction with this bill. I would hope that you would agree that we could have all of the witnesses come to the table now, that we might hear them. I think it's more important to hear all of them than to have us have two rounds of questions. We've all made our statements.

So, if there's no objection, I would ask that all eight of the witnesses come to the table. Thank you very much, Congresswoman. We appreciate your courtesy of coming. And we will listen to the witnesses first. Believe me, this is one you should stay and listen to because these are two diametrically opposed panels, I think, but we should listen and listen carefully. If we can line up the way you're on the schedule, Ivan Seidenberg, Chairman and Chief Executive Officer of Verizon on my left; next to him, Ed Whitacre, Chairman and Chief Executive Officer of AT&T; next to him, Thomas Rutledge, Chief Operating Officer at Cablevision Systems Corporation; next to him, Lori Panzino-Tillery, of the National Association of Telecommunications Officers and Advisors; next to her, Brad Evans, Chief Executive Officer of Cavalier Telephone; next to him, Anthony Riddle, Executive Director of Alliance for Community Media; next to him, Gene Kimmelman, Senior Director of Public Policy of the Consumers Union, and next to him, Gigi Sohn, President and Co-Founder of Public Knowledge in Washington would be on this end, down at the end.

I apologize for sort of squeezing you in there, but I think you would rather have the opportunity to talk before 1 o'clock. And let me commend you all for coming because of this, and we intentionally have the situation where every member can make the statements so everyone can understand the differences of opinions. We are all in agreement that something must be done, but unfortunately, we're not in agreement what to do, so we're here to listen to you.

Mr. Seidenberg, you would be first. As soon as the arrangements are made, we'd be happy to have your statements. All of the statements you have presented to us will be put in the record in full. We hope you will summarize the best as you can within the time limits, but we want to hear you.

**STATEMENT OF IVAN G. SEIDENBERG, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, VERIZON COMMUNICATIONS**

Mr. SEIDENBERG. OK, Mr. Chairman. Chairman Stevens, Co-Chairman Inouye and Members of the Committee, thank you very much for holding this hearing and giving us an opportunity to present our views here. Let me begin by explaining why video franchise reform is an urgent matter for Verizon and for the customers we serve. Today's video franchising laws are out of date with technology, as you've heard this morning, out of touch with consumer demands and so mainly delay competition and deny choice for consumers.

Last September, Verizon began offering our new video service called FiOS TV to customers in Keller, Texas, just outside of Dallas. Since our launch there, we've entered the video market in communities in New York, California, Massachusetts, Florida, Virginia, while greatly expanding in Texas, where we have statewide franchise authority.

It's early in the game, but customers appear to really love this service. In Keller, 20 percent of the market signed up for FiOS TV in the first 3 months when we offered the service.

Actually, even consumers who don't have FiOS TV like it. That's because, where FiOS TV competes with cable, consumers see their cable bills go down. Incumbent cable operators have offered customers price cuts of between 28 and 42 percent, although cable companies generally haven't advertised these discounts or made them available to areas not served by FiOS TV. For consumers, this is an important kitchen-table issue.

The FCC found that unlike every other competitive communications market, cable prices have increased 86 percent since 1995. The key to lowering cable cost is competition. Where there is wireline competition, cable prices are more than 15 percent lower.

Unfortunately, that kind of competition exists in less than 2 percent of communities. A recent study by The Phoenix Center found that this lack of wireline alternative in 98 percent of communities throughout the country costs consumers more than \$8 billion per year in excess cable rates.

Verizon thinks we can help you change that. The major obstacle in our path and the biggest limiting factor to how fast we can offer video over our fiber network is the existing local franchise process that requires us to negotiate separate agreements with thousands of local franchise authorities all over the country.

As you know, Verizon already has authority to deploy and operate networks for voice and data services. But under Title VI of the Communications Act, we're required to obtain a second local franchise in order to use those networks to offer a competing video service. By the way, as has been mentioned, cable companies were not required to obtain a second franchise to offer a competing voice service over their networks.

There are three down sides to a current market-by-market franchising process: First, the incumbent cable providers worked the process to derail or delay the entry of a competitor in their markets. They sent their lawyers to lobby local officials to impose on Verizon a laundry list of onerous obligations. In one community, for example, the incumbent cable provider has refused for almost a year to license cable channels to Verizon that it freely licenses to others or to negotiate agreements for the carriage of public, educational and government channels. It also filed a lawsuit to block local franchise after it was approved by the community. That suit was thrown out in court, but threats of similar suits have popped up everywhere around the country and created a disincentive for municipalities to want to tackle the question; second, while most local communities welcome Verizon's entry, some communities use the process to place restrictions, requirements or to mandate additional contributions that have little to do with our being permitted into the marketplace. One community asked us to buy new streetlights and to open a Verizon lot as a free parking lot for a public library. Another demanded free broadband access for all municipal employees. Other communities have sought free or subsidized cell phones and service for its employees; third, the required negotiations are time consuming and sometimes taking well more than a year. Taken together, these three facets of the franchising process delay our entry into the market, deny consumers of choice and video services and create a disincentive to investment in broadband.

Now, we are not unsympathetic to legitimate concerns of local and state interests in the franchising process. As a matter of fact, and for the record sir, let me spell out Verizon's position on key issues so critical to the interests of local communities: First, we're prepared to pay local governments the same franchise fees that cable pays; second, to serve our customers, we will carry the public, educational, and government channels in local communities; third, we support preserving the authority of state and local governments to manage public rights-of-way as we always have; and fourth, we have a strong record of serving customers across our market and would expect to be subject to the Federal redlining rules which also apply to cable.

We have been working diligently town by town, local franchise area, by local franchise area, to play by the existing rules that obtain franchises on a local level. We have also been working in a number of states to obtain statewide reform as we have in Texas. However, as we multiply these efforts across the country, this process quite simply takes too long, it's too expensive, and ultimately, it's too big an impediment to investment and competition.

We believe a streamlined national video franchising process combined with our willingness to ensure that legitimate local concerns are met, presents a win for localities, consumers and the marketplace. Consumers gain a long-delayed competitive edge and a technologically-advanced alternative for their video services. State and local governments preserve and possibly grow revenues. The marketplace sees continued investment in fiber deployment and growth in broadband services.

The time for a national streamlined franchising process is now, because the era of broadband video is here.

I thank you very much for hearing our comments, and we stand ready to answer any questions you might have.

[The prepared statement of Mr. Seidenberg follows:]

PREPARED STATEMENT OF IVAN G. SEIDENBERG, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, VERIZON COMMUNICATIONS

Chairman Stevens, Ranking Member Inouye, and Members of the Committee, thank you for the opportunity to testify today. We appreciate this chance to discuss what Verizon is doing to bring consumers true video choice through our investment in broadband, and what Congress can do to bring the benefits of competition to *more* Americans, *faster*, through reform of today's outdated franchising laws.

Today, Verizon is the single largest investor in broadband technology in America. We now have the most extensive wireless broadband network in the U.S., which is stimulating a wave of innovation in multimedia applications. We're also deploying the Nation's most advanced fiber network, which is transforming customers' broadband experience.

We are deploying our fiber network directly to homes in almost 800 communities in 16 states. As of the end of 2005, we passed our 3 millionth home. By this time *next* year, we intend to *double* that, to 6 million, or somewhere around 20 percent of current Verizon households. By 2010, we expect to deliver fiber facilities to around 18–20 million homes and businesses.

This next-generation network equips us to compete through innovation, as other technology companies do. We are using it today to deliver broadband capacity to customers of 5, 15, and 30 megabits per second for Internet access and data services. That's the fastest mass-market broadband service in the country. In addition, our fiber investment means that we now have the technology to deliver something for which customers have been clamoring for a long time—true video competition.

Last September, Verizon began offering our new video service, called FiOS TV, to customers in Keller, Texas, outside of Dallas. Since our launch in Keller, we've entered the video market in communities in New York, California, Massachusetts, Florida, and Virginia, while greatly expanding in Texas where we have statewide franchise authority. Because of our fiber network, we enter the market with a highly competitive product that's as good as or better than anything in the market today:

- We have hundreds of digital video and music channels, more HDTV content than any incumbent cable operator, and 2000 on-demand titles.
- We have a diverse line-up of channels, including more than 50 channels targeted to African-American, Hispanic, and other ethnic audiences.
- And we're using IPTV *today* to deliver video on demand and an interactive program guide.

It's early in the game, but so far we've learned one thing for sure: customers love this service. In Keller, 20 percent of the market has signed up for the service in the first three months alone.

Actually, even consumers who *don't* have FiOS TV like it. That's because, where FiOS TV competes with cable, consumers see their cable bills go down. That's happened in Keller, where cable prices have dropped by about 20 percent since we entered the market. In fact cable incumbents have cut prices sharply in each market where we've introduced FiOS TV.

For consumers, this is an important kitchen-table issue. Unlike prices in highly competitive services like local and long distance, wireless and broadband, cable prices have continued to go up. The FCC found that from July 1998 to January 2004, cable prices rose almost 50 percent—more than four times as fast as the Consumer Price Index. On the other hand, the FCC found that prices were more than 15 percent lower in markets where cable has wireline competition.

Unfortunately, that kind of healthy competition exists today in less than two percent of cable franchise areas. Verizon wants to change that. However, a major impediment to our rapid entry in the video marketplace—and a big obstacle to investment in broadband—is the existing local franchise process, which time and technology have passed by.

As you know, Verizon already has authority to deploy and operate networks for voice and data services. But under Title VI of the Communications Act, we're required to obtain a *second* local franchise in order to use those networks to offer a



*competing* video service. This requires us to negotiate with thousands of local franchise authorities all over the country.

There are three downsides to this process:

- First, the required negotiations are time-consuming and, we believe, redundant processes that unnecessarily delay our entry into the market;
- Second, they allow the incumbent cable providers to work the process to derail or delay the entry of a competitor in their markets; and,
- Third, they permit local communities to place restrictions, requirements, and in some cases, mandate additional contributions that have little to do with the question of whether we should be permitted into the marketplace.

Let me be clear: we are committed to being a video provider. To that end, we are diligently using the existing process to obtain franchises in local communities across the country. We are also working at the state level to find broader solutions. Texas, of course, is the pioneer in this area, and its citizens are now enjoying the fruits of their “first mover” legislation.

However, we strongly believe that a streamlined, national franchise process is the fastest and fairest route to bringing much-needed choice and competition to the video market.

I also want to set the record straight on where we stand relative to the franchising issues so critical to the interests of local communities:

First, we’re prepared to pay local governments the same franchise fees that cable pays.

Second, to serve our customers, we will carry the Public, Educational, and Government channels in local communities.

Third, we support preserving the authority of state and local governments to manage public rights-of-way, just as we have throughout our history.

Fourth, we have a strong record of serving customers across our market and would expect to be subject to any Federal redlining rules which also apply to cable.

Verizon believes a streamlined, national video franchising process—combined with our willingness to ensure that legitimate local concerns are met—presents a win-win-win for localities, consumers and the marketplace. Consumers gain a long-delayed competitive edge and a true, superior choice for their video services. State and local governments preserve and possibly grow revenues. The marketplace will see continued growth and investment in fiber deployment across the country, as demand for broadband services continues to grow.

The time for a national, streamlined franchising process is now, because the era of broadband video is here. Verizon is eager to deliver it to our customers, and to tap the full potential of this great, new technology that will empower consumers, transform communities, and encourage innovation and economic growth across America for years to come.

Thank you. I look forward to answering any questions you may have.

The CHAIRMAN. Thank you very much. Our next witness, Ed Whitacre, Chairman and Chief Executive Officer, AT&T.

**STATEMENT OF EDWARD E. WHITACRE, JR., CHAIRMAN/CHIEF EXECUTIVE OFFICER, AT&T INC.**

Mr. WHITACRE. Chairman Stevens, Senator Inouye, Members of the Committee, thank you for the opportunity to be here this morning. You know, if you look back, both AT&T and cable companies operate in many cities. And for years, AT&T used its lines to provide telephone service, and cable companies used their lines to provide television. Cable companies have begun using their lines, as you know, to provide telephone service and broadband service. AT&T wants to begin providing video services with our lines. In other words, both industries would compete. Consumers would benefit from competition because cable has a history of raising rates, 86 percent between 1995 and 2004. Let me repeat that for you. Since 1995, consumer cable rates have increased 86 percent. These cable price increases continue in 2005. Some of these increases are truly striking, for example, Charter’s 25-percent increase in Fort

Worth, Time Warner Cable's 14-percent increase in Houston, and Comcast's 16-percent increase in Spokane. In contrast, wireless broadband Internet access and voice services are all highly competitive. If you look at those, prices are declining, and consumers have more choice. Why is that? Because you and the FCC made the right decisions as new entrants entered the market. You did not subject them to the legacy regulatory structure of the incumbent provider.

However, it seems some want us to get TV franchise agreements with the cities we wish to serve even though we already have franchise agreements for our telephone-type services. I don't think cable companies had to get a franchise to offer telephone service.

The current video franchising process of application, review, negotiation and approval routinely takes between 12 and 18 months. If the existing franchise process is applied to AT&T's video offerings, we have to obtain more than 1,600 separate local franchises. If we were somehow able to sign one franchise agreement every week of the year, it's going to take us 30 years to complete this process.

In any case, AT&T wants to enter the TV business. It would give much-needed competition and certainty, and consumers will benefit. There are real-world examples. In Texas, the Governor signed a bill into law that created a simple statewide franchise process. Within weeks, the incumbent cable company in Keller, Texas, lowered its rates by almost 30 percent and added new features to its service. And soon after the law passed, we, AT&T, announced an \$800 million investment in rolling out new services in Texas.

We are prepared and have offered to pay what cable companies pay so that cities will lose no revenue. In addition, any law can expressly preserve local government's historical power over the time, place and manner for the use of public rights-of-way, but any such rules must be clear and consistently applied on a nationwide basis.

I commend Senators Ensign, McCain, Rockefeller and Smith for introducing legislation that would reform the current video franchising process and allow many of us to bring competition into the video market. This will only result in lower prices for your constituents. I am hopeful that the Committee will move forward and pass this needed legislation soon.

Again, thank you for inviting me here today. It's a pleasure to be here, and I'll be happy to answer any questions you have. Thank you.

[The prepared statement of Mr. Whitacre follows:]

PREPARED STATEMENT OF EDWARD E. WHITACRE, JR., CHAIRMAN/CHIEF EXECUTIVE OFFICER, AT&T INC.

Good morning. Thank you, Chairman Stevens, Co-Chairman Inouye, and Members of the Committee for offering me the opportunity to address the important subject of video competition.

I will confine my remarks to five basic points.

- First, more than twenty years after the passage of the Cable Act, cable operators still are not subject to effective competition.
- Second, the best evidence of the lack of effective video competition is that, unlike the pricing trends in every major segment of the communications marketplace, cable prices continue to rise—over three times the rate of inflation.

- Third, new video providers stand ready to bring real competition to the video market, but this cannot happen if they must first negotiate thousands of separate local franchises.
- Fourth, Congress should enact legislation that encourages video competition in the same way it has encouraged competition across the communications industry—by removing legacy regulatory barriers to entry.
- Fifth, in doing so, Congress can and should protect legitimate local interests by both requiring that all video providers pay a reasonable, consistent fee to municipalities and maintaining the cities' long-standing authority over public spaces and rights-of-way.

Today, wireless, broadband Internet access, and traditional telephony services are all highly competitive—as reflected in declining prices and an array of choices for consumers.

Unfortunately, the same cannot be said for cable service. Between 1995 and 2004, the price for traditional cable service increased by *86 percent*. Cable price increases continued in 2005. While a number of the price increases were in the 6–8 percent range (still more than double the rate of inflation), some of the increases were truly striking, such as Charter's 25 percent increase in Fort Worth; Time Warner Cable's 14 percent increase in Houston; and Comcast's 16 percent increase in Spokane.

Cable operators will tell you that they do face significant competition, in the form of direct broadcast satellite (DBS) services, but this is not the case. While DBS providers have taken share from the incumbents, this penetration has been uneven, and the existing DBS technology, standing alone, limits the ways in which EchoStar and DIRECTV can compete with cable companies. Cable overbuilders, thwarted by cable opposition, misuse of the franchise process, and lacking sufficient scale or resources, are present in just a small fraction of cable franchise areas. The proof is in the prices: Cable prices continue their steady, stubborn rise—in contrast to the price declines that characterize other communications services.

True competition for cable is, however, just around the corner. A number of providers are in the process of introducing robust, wire-based and advanced satellite video competition that can match the scale of the incumbents and meet—and exceed—the technical capabilities of the cable plant.

AT&T already has begun offering video services in competition with cable, and we hope to ramp up significantly over the course of this year. Using a variety of technologies, including AT&T's IP-based Project Lightspeed technology and its integrated new DSL/satellite technology known as HomeZone, AT&T will offer an integrated suite of broadband-based voice, data and video applications, including interactive video services that will be unlike, and better than, the cable services available today. Indeed, AT&T will give customers unprecedented control over the way they watch TV, surf the web and use other broadband applications. We plan to make advanced video services available to nearly 80 percent of the households in our territory. The fiber-based Project Lightspeed component of our video offerings, in just its initial deployment, will be available to approximately 18 million households over the next three years.

These kinds of wire-based alternatives can truly make the competitive difference. In 2003, the GAO found that the rates of cable incumbents facing competition from a wire-based video provider are approximately 15 percent lower than in the absence of such competition. Likewise, FCC Commissioner Adelstein noted just last week in connection with the Commission's Annual Report on Video Competition that telco "investment could bring the most substantial new competition into the video marketplace that this country has ever seen." There are real-world examples: In just the last few months, the introduction of new video competition in places like Malibu, California, Herndon, Virginia, and Temple Terrace, Florida, have compelled the incumbent cable operators to lower prices, freeze prices for the first time in years, or offer new features, like free broadband service.

The problem that AT&T and other new video entrants face is the uncertainty, delay and prohibitive costs driven by the current cable franchising process, which was designed for cable incumbents when they entered with a monopoly franchise.

- The process of franchise application, review, negotiation and approval routinely takes between 12 and 18 months—if all things go well. It took BellSouth almost three years to negotiate some of its key franchises in just two counties in Georgia. Likewise, Qwest expended three years of intensive effort just to renegotiate seven franchises in the Phoenix area and obtain eight others in areas around Phoenix, Denver and Salt Lake City. If the existing franchise process is applied to AT&T's video offerings, we would have to obtain as many as 2,000 separate local franchises. If we were somehow miraculously able to sign one franchise

agreement every single business day of the year, it would still take over 7½ years to complete this process.

- And delay is just one of the problems inherent in the current system. Our own experience with the now-defunct Ameritech New Media cable service proved to us how futile the franchising process can be. In over 40 communities, Ameritech had to abandon the franchise process, and its video investment and plans, sometimes after two or more years of negotiations. We faced a range of demands that would have rendered our plans uneconomic, including fees that exceeded the limit under Federal law, extensive build-out requirements, as well as more outlandish requests, such as for the construction of fire stations or recreation centers.

These unreasonable demands added untold layers of complexity, cost, frustration and delay into what was already a difficult negotiation and approval process.

This outmoded and anticompetitive system will do nothing but stifle new competitive entry. Accordingly, we strongly encourage Congress to enact legislation that fosters new video competition by eliminating the municipal franchise process. In doing so, Congress need look no further than the success of wireless, Internet and traditional telephony services: New entrants were not saddled with the full weight of regulation designed for incumbents, competition flourished, and prices dropped.

At the same time, any reform legislation should provide that all video competitors pay a fee to municipalities in connection with their video services that is substantially similar to what cable operators pay under their franchise agreements. In addition, any law should expressly preserve local government's historical police power over the time, place and manner of a particular provider's use of public property. But any such rules must be clearly articulated and consistently applied on a nationwide basis.

In this regard, we applaud the efforts of Senators Ensign and McCain for introducing their bill, S. 1504, and Senators Smith and Rockefeller for introducing their bill, S. 1349. Both bills would reform the video regulatory system, protect important municipal interests, and, in the process, foster greater investment in broadband deployment and video competition.

The CHAIRMAN. Thank you very much. Next witness is Thomas Rutledge, Chief Operating Officer of Cablevision Systems Corporation.

**STATEMENT OF THOMAS M. RUTLEDGE, CHIEF OPERATING OFFICER, CABLEVISION SYSTEMS CORPORATION**

Mr. RUTLEDGE. Good morning, Mr. Chairman, Senator Inouye and Members of the Committee. I am Tom Rutledge, and I'm the Chief Operating Officer of Cablevision Systems Corporation. Thank you for inviting me to this hearing.

In 1996, Congress established a telecommunications framework to promote competition and encourage investment. Since then, cable operators have invested more than \$100 billion and brought in an array of new broadband services to consumers. By contrast, over the same period, the phone companies have done little to enter the video business despite the opportunity Congress created for them.

Now, without any coherent rationale or factual premise other than for special treatment, the Bell operating companies are insisting that Congress discard the franchise framework that has successfully balanced local right-of-way management and advanced service deployment. Creating new rules in the middle of the game to accommodate the Bells' latest business plan is unnecessary and will jeopardize sustainable competition. Broad Federal preemption of local franchising undercuts companies that have made substantial investments based on Congress's existing framework and will weaken the unique and legitimate local interest reflected in their franchises.

Further, local franchising has already been shown to accommodate new entry. Cable has invested more than \$100 billion to bring customers competitive video, high-speed Internet and voice services. Having made that investment, our primary concern is ensuring that we face our competitors on a level playing field. A level playing field means that we succeed or fail based on the value and quality of our product rather than because our competitor has more favorable rules.

Franchising is a key part of the level playing field. Our franchises contain commitments that are important to the communities we serve, but they do impose some costs. For example, Cablevision regularly commits in its franchise to serve every resident in a community, but the Bell is focusing their cable fiber upgrade on wealthier suburban areas and avoiding more costly rural and urban areas and will not guarantee service to all. Instead, some customers will get a new fiber-based service, and others will be left on an unmaintained, old copper plant.

Cablevision provides free video and Internet service to more than 5,000 schools and libraries and supports an array of local programming and provides training and other opportunities for public access programs. Sustainable competition requires that new entrants embrace comparable franchise commitments. Adopting new rules that undermine local control and allow phone companies to serve only affluent neighborhoods will undermine long-term competition by putting government's thumb on the scale and thereby, distorting markets and ultimately, reducing investment.

Cable television is a local business. In New York, New Jersey and Connecticut markets alone, Cablevision operates seven full-time news stations, dozens of small-area news services and 99 community programming and public access channels that deliver community news, information and local services to our customers. Franchise agreements embody that localism and other legitimate municipal interests. These include requirements for universal service, nondiscrimination, construction standards, zoning, aesthetics and public safety.

The balance struck by the Federal Cable Statute for franchising recognizes that these matters are best left to local officials that know their community. It might be impossible to address meaningfully if local accountability were removed to the Federal level.

Finally, the franchising system has demonstrated sufficient flexibility, both to accommodate competitive entry and to serve the values of localism and fair competition.

Today, local and state governments are using the flexibility of the Federal franchising system to encourage Bell entry. New York, for instance, has streamlined the local franchising process for new entrants. Any new entrant that agrees to the terms of an existing franchise can get a franchise approval hearing in 30 days.

The New York Commission has also approved a pro-competitive franchise template that protects local interests and ensures a level playing field. New entrants can use this franchise as a road map for speedy approvals. Verizon called it "a framework that should help expedite future franchises", but Verizon has not used that framework to get a new franchise. Connecticut already has a state-wide franchise regime. But instead of applying for a franchise,

AT&T has spent nearly a year asking to be exempt from the state's cable and franchise law.

In New Jersey, local mayors are asking telephone companies to come get new video franchises because they welcome additional competition. But instead of signing those franchises, Verizon is pushing for state legislation to eliminate them.

Given the complaints about local franchising, one might think there are thousands of telephone company franchise applications stuck in municipal red tape. That's not the case. In our service area, which has over 400 communities, Verizon has only three franchise applications pending. While the rhetoric about franchising is potent, the facts are different. The only thing slowing down Verizon is Verizon. And the only thing slowing down AT&T is AT&T.

The truth is, local franchising works. It's proven to be a durable, stable and effective means of respecting local interests and encouraging massive investment and accommodating entry. To the extent that the Committee is considering changes to the franchise model to further speed entry while sustaining fair competition, I commend New York's approach, and I applaud the principles set out by Senator Inouye and Senator Burns.

A procedural shot clock for franchise negotiations prevents delay, and the ability of an existing operator to opt into any new competitive franchise ensures competition without bringing major disruption to a very successful statutory system. Thank you for inviting me today. I look forward to answering your questions.

[The prepared statement of Mr. Rutledge follows:]

PREPARED STATEMENT OF THOMAS M. RUTLEDGE, CHIEF OPERATING OFFICER,  
CABLEVISION SYSTEMS CORPORATION

Mr. Chairman, Senator Inouye, and Members of the Committee. My name is Tom Rutledge, Chief Operating Officer of Cablevision Systems Corporation. Thank you for inviting me to speak about fair competition and video franchising.

Since 1996, cable operators like Cablevision have invested more than \$100 billion in our networks and in innovative products for our customers. As a result, we now lead the Nation in the deployment of broadband Internet service, digital and high-definition video, and voice over Internet protocol.

During this same period, the Bell companies did little to enter the video business opened to them by Congress in 1996. Now, facing voice competition from Cablevision and other cable operators that invested and planned for this competition, AT&T and Verizon argue that they can make up lost time if free from local regulation, such as franchising.

My comments will focus on the importance of a level playing field and why the existing franchising regime does support fair competition while allowing local officials to protect community interests.

**Level Playing Field is Essential**

Our primary concern is ensuring that we face our competitors—including the phone companies—on a level playing field. A level playing field means that we succeed or fail based on innovation and effort rather than because our competitor may get better rules. Franchising is an important part of fair competition.

Our franchises contain commitments that are important to the communities we serve, but are being questioned by phone companies in their new video plans. For example, Cablevision has made service to every neighborhood in a community a key part of its local franchises. In New York and New Jersey, Verizon's fiber upgrade is focused on wealthier, suburban areas but leaves rural and urban centers virtually untouched. Similarly, while new entrants want to avoid franchise commitments of interest to local officials, under its franchises Cablevision provides free video and Internet services to more than 5,000 local schools and libraries. Sustainable competition requires that new entrants embrace comparable franchise commitments.

### **Franchising Sustains Localism**

Broadcast television and professional sports programming services are local businesses, as is cable television. Franchises are an important aspect of cable television's localism. Far more than any other media business, cable has a rich tradition of community programming. In the New York, New Jersey, and Connecticut markets alone, Cablevision operates seven full-time news stations, dozens of small, community news services, and 99 government, educational and public access channels to deliver local news and information to our customers. In our franchise agreements with the communities we serve, Cablevision also agrees to provide local programming services that enable residents to see their local City Council hearing or the meeting of the local planning board.

Franchise agreements reflect other local priorities of the community. These include requirements for universal service, nondiscrimination, construction standards, zoning, aesthetics and public safety. These priorities are most effectively selected and enforced by local officials that know their community best. For example, if a resident's driveway were damaged by a contractor, or if a neighborhood were improperly denied service because of its demographic profile, the local government is best positioned to address those concerns.

Localism in cable television and local accountability in the community are rooted firmly in the franchise relationship.

### **Streamlined Franchise Processes Accommodate New Entrants**

Finally, the franchising scheme has demonstrated sufficient flexibility both to accommodate competitive entry and to serve the values of localism and fair competition. Today, local and state governments are using the flexibility of the Federal franchising scheme to encourage and accelerate Bell video entry.

New York, for instance, has streamlined the local franchising process for new entrants. Any new entrant that agrees to the terms of an existing franchise can get a franchise approval hearing in 30 days. Yet, no new telco entrant has sought to exploit this quick entry mechanism.

The New York Commission has also approved a pro-competitive franchise template that protects local interests and ensures a level playing field. New entrants can use this franchise as a roadmap for speedy approvals. Verizon called it a "framework . . . that should help expedite . . . future franchises."

Connecticut already has a statewide franchising scheme that allows providers to negotiate authority to serve broad geographic areas. Instead of asking for a franchise there, AT&T has spent close to a year asking the state to exempt it from the state's cable and franchise law.

In New Jersey, local mayors are calling on the telephone companies to come get new video franchises quickly and bring additional competition. Instead of signing those franchises, Verizon is pushing for new state legislation to eliminate local franchising.

Given the complaints about local franchising, one might think that there are thousands of Bell video franchise applications stuck in municipal red tape, delaying the promise of new competition. That is not the case. In our service area of more than 400 communities, Verizon has only three local franchise applications pending. If this is any indication of the national experience, it appears that it is the business decisions of the telephone companies, not the local franchising process itself, that are causing delay.

The truth is, local franchising works. The "failures" that have repeatedly been cited by its opponents are not due to the regulatory framework. Franchising has proven to be a durable, predictable and effective means of ensuring competition develops on a level playing field.

To the extent that this Committee is considering modifications to the franchise model to further accommodate new entry without sacrificing localism and fair competition, I recommend New York's approach. There, the procedural "shot clock" protects against delay, and the ability of an existing operator to "opt in" to any new competitive franchise provides for fair competition, all within the current regime and without sacrificing the legitimate local interests that it sustains.

Thank you for inviting me here today. I look forward to answering your questions.

The CHAIRMAN. Our next witness is Lori Panzino-Tillery, President of National Association of Telecommunications Officers and Advisors. Thank you.

**STATEMENT OF LORI PANZINO-TILLERY, PRESIDENT,  
NATIONAL ASSOCIATION OF TELECOMMUNICATIONS  
OFFICERS AND ADVISORS (NATOA)**

Ms. PANZINO-TILLERY. Mr. Chairman, I want to begin by thanking you for your leadership on this issue, for holding this hearing and for the opportunity to appear here today. We would also like to thank Senator Inouye and Senator Burns for their recent statement of principles on local video franchising. Local government shares this Committee's commitment to competition. In addition, we'd like to express our appreciation to Senators McCain and Lautenberg's support of community broadband initiatives.

Mr. Chairman, let me state it plainly. Local government wants and needs competition, the same competition Title VI is designed to promote. Like the Members of this Committee, local elected officials work hard to be responsive to their constituents. Local governments have and will continue to grant competitive franchises because that's what their constituents want. Local government plays an indispensable role in assuring modern communication technologies are available to all consumers. The Communications Act explicitly recognizes local government's responsibilities for managing public property and for assuring nondiscriminatory treatment of all communication service providers. These private companies enjoy privileged access to public and private property to deliver their services. In return, they must pay appropriate compensation, which may include in-kind capacity and services identified to meet community needs and interests.

Thanks to Congress's wisdom and foresight, Title VI has worked well for more than 20 years. Of course, some continue to complain that even with 300 channels of programming, there's still nothing on television. They must not get C-SPAN 2. But clearly, Title VI has not only kept pace with rapid advances in communications technology, it has helped fuel them. Institutional networks are leading the way in making local government more efficient, keeping the public safer and improving coordination between government agencies. The local franchise process has broadly and widely delivered much-needed community video and governmental communication networks. It gives citizens in cities and towns in each of your states greater information and involvement in their government, both through televised town council and board of education meetings and through programs featuring elected officials at the local, state and Federal level. It makes us all more secure because local public safety officials can reach area residents with important information in a timely fashion.

Title VI gives people like Cornell Hutton, a 57-year-old factory worker who lives in Salina, Kansas, the chance to use his local access television facilities to produce a movie he wrote and realizing a lifelong dream. Title VI serves our communities well. Communications technology has undergone enormous change over the last two decades, making Title VI and local government's role more relevant and necessary than ever.

Nevertheless, some are seeking to eliminate local government oversight. They will tell you that it is necessary to expand access, ensure competitiveness and encourage innovation. What they really



want though, is to tilt the playing field to their own advantage. We believe it should be kept level.

The radical changes some are seeking would lead to communications redlining. Income will determine who gets access to competition. Rural America will be the last to gain competitive service. Just as the Federal Government requires spectrum users to serve the public interest, local government requires those who use public rights-of-way to serve community interests. Local government is best equipped to balance, neighborhood by neighborhood, the conflicting interests of spreading competition and maintaining economic feasibility. We've successfully managed this balance for more than 20 years.

Eliminating local government's role would also make providers far less accountable for the service they provide. Can you imagine having to call the FCC in Washington every time you have a problem with your video provider? Local governments are better equipped for that role as they have demonstrated for more than a decade. While we believe Title VI has worked well, local government does support improvements that do not undermine the significant benefits of the Act or the important role government plays in protecting our citizens. We support, for example, efforts to streamline the franchising process, such as setting reasonable time frames for the completion of franchise agreements and using preestablished criteria to avoid unnecessary negotiations. Speeding new entrants to the market is, after all, a goal we share.

However, any changes should be akin to the evolution we saw when telephone dials were replaced by buttons. The basic instrument remains the same. It's just easier to use.

Mr. Chairman, Senator Inouye and Members of this Committee, we know that you understand the many benefits that Title VI has brought to varied communities in your home states. We simply ask that you move forward, that you maintain those benefits for the people you serve. The best way to do that is by maintaining local responsibility for protecting and defining the needs and interests of each community to be served. Thank you.

[The prepared statement of Ms. Panzino-Tillery follows:]

PREPARED STATEMENT OF LORI PANZINO-TILLERY, PRESIDENT, NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS (NATOA)

#### **I. Introduction**

Good morning Chairman Stevens, Senator Inouye and Members of this Committee. My name is Lori Panzino-Tillery, and I am the franchise administrator for the County of San Bernardino, California, the largest county in the continental United States, where I oversee 39 franchises for essential utilities as well as 13 individual cable franchise agreements. I am the regional liaison to the California Public Service Commission and appear frequently before the various committees of jurisdiction in the California legislature. I am also currently serving as the President of the National Association of Telecommunications Officers and Advisors (NATOA) and previously served as the Association's California and Nevada State Chapter President. I am honored to appear here today on behalf of not only NATOA, but also on behalf of the local governments across this Nation, as represented by the National League of Cities (NLC), the United States Conference of Mayors (USCM),

the National Association of Counties (NACo), the Government Finance Officers Association (GFOA), and TeleCommUnity.<sup>1</sup>

On behalf of local government, we would like to thank you for the opportunity to dispel many of the untruths that have been circulated recently pertaining to local government involvement in video franchising. We would like to be your “myth-busters” for today—to cut through some of the deceptive claims and to provide you with a truthful picture of the status of cable franchising in the market today, and how that franchising supports the desired delivery of competitive new entrants and new services.

Local governments embrace technological innovation and competition and actively seek the benefits such changes may bring to our communities and to our constituents. We want and welcome genuine competition in video, telephone and broadband services in a technologically neutral manner. We support deployment as rapidly as the market will allow. Local governments have been managing communications competition for many years now—it is not new. What is exciting is the potential new entry into video by a few well-funded and dominant players who appear to have finally made a commitment to enter into the video arena. We look forward to developing an even more successful relationship in bringing these competitive services to our citizens.

For local government, this debate is about core local government functions: streets and sidewalks, public safety, first responders, citizen involvement in local politics. These companies have chosen to put their equipment in the local streets and sidewalks. Local leaders are responsible for managing those streets and sidewalks, and no legislative franchising proposal put forward thus far adequately ensures that our citizens will not be greeted with open potholes and cracked sidewalks as a consequence. Local government remains concerned that rhetoric and not facts have led members of Congress to believe that competition and innovation will flourish only if local government is removed from the equation. We are here today to help you understand that nothing could be farther from the truth. Throwing away local franchising is not the solution that will bring competition or rapid entry by competitive providers. We believe that quite the opposite is true. We have voiced our concerns relating to the legislation introduced by Senators Smith, Rockefeller, DeMint, and Ensign—each of which would eliminate the local franchise process entirely. These bills would deprive local governments of the tools necessary to ensure the timely deployment of services within our communities.

Local government has been anxiously seeking the competitive provision of video services for many years—and indeed the Communications Act has explicitly guaranteed such opportunities since 1992. Despite several previous changes in Federal law to ease their entry into the video market, the telecommunications companies seeking new laws today have not brought forth the competition they promised. The reason is not local governments. The reason is not the current Federal law. The reason is market place economics. The provision of video services has not yet proven to be as financially attractive as the telephone companies apparently require in order to provide the services they claim are the new linchpin to their success. I believe that a brief review of the current law will demonstrate this trend.

#### **Neither Franchising nor Current Regulation is a Barrier to Competition**

The concept of franchising is to grant the right to use property and then to manage and facilitate that use in an orderly and timely fashion. For local governments, this is true regardless of whether we are franchising gas or electric service, or multiple competing communications facilities—all of which use public property. As the franchisor we have a fiduciary responsibility to our citizenry that we take seriously, and for which our elected bodies are held accountable by our residents.<sup>2</sup>

<sup>1</sup>NLC, USCM and NACo collectively represent the interests of almost every municipal or county government in the U.S. NATOA's members include elected officials as well as telecommunications and cable officers who are on the front lines of communications policy development in cities nationwide. GFOA's members represent the finance officers within communities across this county, who assist their elected officials with sound fiscal policy advice. TeleCommUnity is an alliance of local governments and their associations that promote the principles of federalism and comity for local government interests in telecommunications.

<sup>2</sup>As of five years ago, it was estimated that the valuation of the investment in public rights-of-way owned by local government was between \$7.1 and \$10.1 trillion. Federal agencies such as the United States Department of Transportation, the U.S. Department of the Interior (Bureau of Land Management “BLM”), the United States Department of Agriculture (U.S. Forest Service) and the National Oceanic and Atmospheric Administration (NOAA) have all been actively engaged in assessing value for rights-of-way for years. Valuation of rights-of-way, and the requirement that government receives fair market value for their use, can be found in regulations (43 C.F.R. Sections 2803 and 2883) statutes, and case law.

Our constituents demand real competition to increase their options, lower prices and improve the quality of services. As you know, a GAO<sup>3</sup> study showed that in markets where there is a wire-line based competitor to cable, cable rates were, on average, 15 percent lower. Please understand that local governments are under plenty of pressure every day to get these agreements in place and not just from the companies seeking to offer service. I know this Committee has heard some unflattering descriptions and anticompetitive accusations regarding the franchise process, and I would like to discuss with you the reality of that process.

#### **Managing Streets and Sidewalks is a Core Function of Local Government**

Even as technologies change, certain things remain the same. Most of the infrastructure being installed or improved for the provision of these new services resides in the public streets and sidewalks. Local leaders are the trustees of public property and must manage it for the benefit of all. We impose important public safety controls to ensure that telecommunications uses are compatible with water, gas, and electric infrastructure also in the right-of-way. Keeping track of each street and sidewalk and working to ensure that installation of new services do not cause gas leaks, electrical outages, and water main breaks are among the core police powers of local government. And while it seems obvious, these facilities are located over, under or adjacent to property whose primary use is the efficient and safe movement of traffic. It is local government that best manages these competing interests. While citizens want better programming at lower prices, they do not want potholes in their roads, dangerous sidewalks, water main breaks, and traffic jams during rush hour as a consequence.

Thus far, several bills have been introduced in the Senate addressing franchising. Unfortunately, none of them adequately protects local government's ability to manage local streets and sidewalks. We look forward to working with Committee Members to make sure any legislation that is approved by the Senate does not abrogate this core tenet of federalism.

#### **Private Companies Using Public Land Must Pay Fair Rent**

At the same time that we manage the streets and sidewalks, local government, acting as trustees on behalf of our constituents, must ensure the community is appropriately compensated for use of the public space. In the same way that we charge rent when private companies make a profit using a public building, and the Federal Government auctions spectrum for the use of public airwaves, we ensure that the public's assets are not wasted by charging reasonable compensation for use of public right-of-way. Local government has the right to require payment of just and reasonable compensation for the private use of this public property—and our ability to continue to charge rent as a landlord over our tenants must be protected and preserved.

#### **Social Obligations Remain Critical Regardless of Technological Innovation**

Communications companies are nothing if not innovative. When you think back over the course of the past 100 years, the changes in technology are mind-boggling. At the same time, the social obligations developed over the last 60 years have endured. I strongly urge the Committee to engage in a deliberative process, and take the time necessary to engage in dialogue and debate to ensure that any legislative changes adopted this year will be as meaningful 20 years from now as two years from now.

#### **Historical and Current Role of Social Obligations**

I appreciate the opportunity to discuss with you the important social obligations inherent in current video regulation, and to explain why these core functions must be preserved, no matter the technology used to provide them. These include the allocation of capacity for the provision of public, education and government (PEG) access channels, prohibitions on economic redlining, and a basic obligation that local government evaluates, and the provider meets, the local needs of the community it serves, including public safety needs.

##### *Public, Educational and Governmental (PEG) Access Channels*

Historically and today, locally produced video programming performs an important civic function by providing essential local news and information. Under the existing law, local government can require that a certain amount of cable system capacity and financial support for that capacity be set aside for the local community's

<sup>3</sup>United States General Accounting Office, *Telecommunications Issues in Providing Cable and Satellite Television Service*, Report to the Subcommittee on Antitrust, Competition, and Business and Consumer Rights, Committee on the Judiciary, U.S. Senate, at 9, GAO-03-130 (2002) (“GAO 2002 Study”), available at [www.gao.gov/cgi-bin/getrpt?GAO-03-130](http://www.gao.gov/cgi-bin/getrpt?GAO-03-130)

use. This capacity is most often used in the form of channels carried on the cable system and are referred to as PEG for public, educational and governmental channels. Once the local franchising authority has established the required number of channels and amount of financial support required to meet community needs, it then determines the nature of the use, which may be mixed between any of the three categories. Public channels are set aside for the public and are most often run by a free-standing non-profit entity. Educational channels are typically reserved for and are managed by various local educational institutions. Government channels allow citizens to view city and county council meetings, and watch a wide variety of programming about their local community that would otherwise never be offered on commercial television. Whether it is video coverage of governmental meetings, information about government services or special programs, local law enforcement's most wanted, school closings or classroom instruction, the government access or PEG programming is used to disseminate this information and to better serve and interact with our constituents. Local governments continue to make innovative uses of this programming capacity as new interactive technology allows more valuable information to be available to our constituents.

#### *Economic Redlining*

One of the primary interests served by local franchising is to ensure that services provided over the cable system are made available to all residential subscribers within in a reasonable period of time. These franchise obligations are minimal in light of the significant economic benefits that inure to these businesses that are given the right to make private use of public property for profit. While there may be those who find franchise build out obligations unreasonable—we find them to be essential. The concept of “universal service” in telephone, which the Chairman and the Ranking Member have long defended, is no less important than in the case of broadband. Those who are least likely to be served, as a result of their economic status, are those whom we need most to protect. This deployment helps to ensure that our citizens, young and old alike, are provided the same opportunities to enjoy the benefits of cable and broadband—regardless of income. The capacity that broadband deployment offers to our communities is the ability of an urban or rural citizen to become enriched by distance education, and other opportunities that until recently were not available. But that will never happen if only the most fortunate of our residents, and the most affluent of our neighborhoods, are the ones who receive the enormous benefits of broadband competition.

#### *Public Safety and Community Needs*

Local leaders often focus on the needs of their first responders when evaluating community needs. The current law provides that local governments may require cable franchisees to provide institutional networks as part of the grant of a franchise. An institutional network is a network dedicated to the purpose of governmental and institutional communications needs. These are essentially “intra-nets” serving government facilities including police and fire stations, hospitals, schools, libraries and other government buildings. Institutional networks are typically designed to use state-of-the-art technology for data, voice, and video and allow local governments to utilize advanced communications services at minimal taxpayer expense. It has proven effective not only for day to day municipal and educational training and operations—but essential in emergencies such as September 11, 2001.<sup>4</sup>

It may be possible that, through deliberative processes such as this hearing, we will identify new technological opportunities to assist us in our outreach to our citizens. But I suggest to the Committee today that these public interest obligations continue to serve an important purpose and must be preserved, regardless of the technology that allows us to make the programming available. I hope that you'll join with me in calling for the preservation and enhancement of institutional networks to serve local public safety and first responder needs. I hope that you would not yield to the simplistic notion that reducing public obligations on providers is always the best course.

#### *No Preemption of Core Local Government Police Powers*

Local government also must emphasize that telecommunications legislation is not where we should reform tax policy or interfere with other local police powers such as zoning obligations. We strongly urge the Committee to avoid preempting local government in these areas.

<sup>4</sup>Hearing on the Nation's Wireline and Wireless Communications Infrastructure in Light of September 11 Before the Committee on Commerce, Science, and Transportation, 107th Cong. (2002) (statement of Agostino Cangemi, Deputy Commissioner and General Counsel of New York City's Department of Information Technology).

*Strong Enforcement*

Local government cannot be stripped of its power to enforce these local obligations. Currently, local government is able to audit companies that submit revenue and to enforce public safety obligations pertaining to rights-of-way in Federal court. The Federal Communications Commission has no expertise in these areas and should not be given any authority over arbitrating revenue disputes or rights-of-way disputes. Such a radical expansion of Federal power into local affairs is not warranted.

*Title VI Franchising is a National Framework With an Essential Local Component*

Congress struck the right balance in 1984 when it wrote Title VI into the Act, and again in 1992 when it made appropriate consumer protection improvements to it. Title VI established a light-touch national regulatory framework for cable television video services that includes appropriate local implementation and enforcement. The Act authorizes local governments to negotiate for a relatively limited range of obligations imposed on cable operators. Virtually none of these obligations is mandatory, and each is subject to decision-making at a local level. The current legal structure provides for something I hope we would all agree is important: local decisions about local community needs should be made locally. For example, while some communities require significant capacity for PEG or INet capacity, others seek little or none.

We are encouraged that the telephone industry executives and staff tell us that they fully support local governments' management and control of rights-of-way; that they are willing to pay the same fees as cable providers; that they are willing to provide the capacity and support for PEG access programming, and even that they are aware of and agree to carry emergency alert information on their systems. And yet—at least one company claims it is not subject to current law and they do not have to do these very things by virtue of individual local franchise agreements. And they are often unwilling to pay franchise fees on the same gross revenues as cable or to permit the use of audits to ensure proper payment. They have stated that customer service protections are unnecessary, yet provide no recourse to consumers. We hope that they will follow through on their public statements and work closely with local government to preserve our core functions. We welcome competition and welcome the telephone companies to offer their services under our streets. It would appear to be simply a complaint against having to actually speak with the local governments whose rights-of-way they are tearing up in order to provide the service. Congress should realize that local government franchising has facilitated the deployment of not only the largest provider of broadband services in this country—namely the cable industry—but that we also facilitated the entry of literally thousands of new telephone entrants immediately after the passage of the 1996 Telecommunications Act. We are well versed in the issues of deployment of new services, and have managed competitive entry for the benefit of our communities for many years. However, we are uncomfortable with current proposals because these companies want preferential treatment. Some of the telephone companies apparently want to avoid the franchise applications and negotiation process as they argue to state and Federal legislators that they should be allowed to by-pass the local process and avoid competing on the same terms or under the same social obligations as cable operators. Local government supports treating like services alike.

*Local Franchising is Comparatively Efficient and Must Be Fair to Protect All Competitors*

Franchising need not be a complex or time-consuming process. In some communities the operator brings a proposed agreement to the government based on either the existing incumbent's agreement or a request for proposals, and with little negotiation at all, an agreement can be adopted. In other communities, where the elected officials have reason to do so, a community needs assessment is conducted to ascertain exactly what an acceptable proposal should include. Once that determination is made, it's up to the operator to demonstrate that it can provide the services needed over the course of the agreement or demonstrate that the requirements would be unreasonable under the conditions of the particular market.

Furthermore, while some of the new entrants have asserted that franchise negotiations have not proceeded as fast as they would like, it is important to recognize that every negotiation must balance the interests of the public with the interests of the new entrant. Some new entrants have proposed franchise agreements that violate the current state or Federal law and subject local franchise authorities to liability for unfair treatment of the incumbent cable operator vis-à-vis new providers. Some also seek waiver of police powers as a standard term of their agreement. No government can waive its police powers for the benefit of a private entity.

In the same way, the Federal Government cannot waive the constitutional rights of its citizens. Unlike other business contracts that are confidential or proprietary, local government franchise agreements are public record documents, so a new provider knows the terms of the incumbent's agreement well before it approaches a local government about a competitive franchise.

Local governments are obligated to treat like providers alike, and we believe in the concept of equity and fair play. In addition, many states have level playing field statutes, and even more cable franchises contain these provisions as contractual obligations on the local government. If the new competitor is seriously committed to providing as high a quality of service as the incumbent, the franchise negotiations should not be complicated or unreasonably time consuming. Moreover, local government has no desire to make new entrants change their current network topologies to duplicate the incumbent cable operator's technology or network design. Local government's concern is to treat all providers fairly, as required by current franchise agreements, by Federal law, and good public policy.

*Franchising Provides for Reasonable Deployment Schedules—Objections to Reasonable Build Obligations are Red Herrings*

Nothing in franchising or current Federal law requires a new video entrant to deploy to an entire community immediately. Local governments have been negotiating franchise agreements with new entrants for many years. In these cases, newly built developments may have one schedule while existing areas may have a different schedule.

By managing the deployment as we do, we protect the new provider's investment in infrastructure. We protect the public from unnecessary disruption of the rights-of-way, including safe use and enjoyment of the public rights-of-way. And, we ensure that new entrants are provided with unfettered access in a reasonable and timely fashion, while ensuring that they comply with all safety requirements. This system has worked well for cable, traditional phone and other providers for many years, and is necessarily performed by the local government. Congress, when it authored Section 253 of the Act, preserved local government authority and evidenced its desire to maintain the federalist, decentralized partnership that has served our country well for 200 years. We trust that under your leadership and guidance these important principles of federalism will be maintained.

*The Current Framework Safeguards Against Abuse and Protects Competition*

The current framework ensures that all competitors face comparable obligations and receive the same benefits, ensuring a fair playing field and avoiding regulatory gamesmanship. Federal safeguards protect against abuse. Local governments generally are prohibited from requiring a video service network provider to use any particular technology or infrastructure such as demanding fiber or coaxial cable. Local governments can require that construction and installation standards be adhered to and that systems are installed in a safe and efficient manner. Local governments require compliance with the National Electric Safety Code to protect against the threat of electrocution or other property damage. Local rules can also require that signal quality be up to Federal standards, and that systems are maintained to provide subscribers with state-of-the-art capabilities. Similarly, it is local government that inspects the physical plant and ensures compliance on all aspects of operations. We work closely with our Federal partners and cable franchise holders to ensure that cable signal leaks are quickly repaired before there is disruption or interference with air traffic safety or with other public safety uses of spectrum.

**Title VI is Technology Neutral**

Digital electronic transmissions were developed almost 40 years ago. Internet protocol, as a format for digital packet transmissions, was developed many years ago, at the time the original Internet was being developed. Its use today to deliver data, telephone and video, is something that has evolved and improved over time, and is now so prevalent as to warrant public attention. The promise of competitive services being delivered through the use of IP is exciting and challenging—it's just not necessarily new. The communications tools we use every day have all evolved under the careful eye of federal, state and local governments, as should the communications tools of the future. These Internet innovations are meaningless if the networks used to deliver them are not widely available to all of our citizens and tailored to meet local needs. Deployment of the infrastructure used to deliver these services is of specific interest and concern to those of us who manage the physical property where this infrastructure resides and will be installed. This is why local governments have long promoted the efficient and effective deployment of infrastructure within and through our communities. At no time has Title VI limited or constrained the use of new technology to deliver the services under its umbrella.

### **Local Government Helps Ensure Broadband Deployment**

We all share the concern of a lack of broadband access throughout America, in urban and rural areas alike. Regardless of the locality, it is likely that communications technologies will be a driving force in the economic opportunities enjoyed by these communities that have access to advanced services. I believe that the Cable Act has provided significant benefits to consumers and communities alike, and I believe that local governments should be applauded for ensuring that those benefits are provided in a timely, fair and efficient manner. Under the current regulatory regime, cable enjoys the highest deployment rate of broadband in this Nation, with over 105 million homes having access to cable modem service. The cable industry is now reaping the economic benefits of an infrastructure that is capable of providing broadband access to all of our citizens. It is local government's oversight and diligence, through the franchise process, that has ensured that our constituents are not deprived of these services. Local government is the only entity that can adequately monitor and ensure rapid, safe and efficient deployment of these new technologies when they are being installed on a neighborhood-by-neighborhood level in our local rights-of-way.

### **Changes Local Government Agrees Would Enhance the Competitive Environment**

We appreciate the opportunity to share with the Committee, based on our extensive expertise, those sections of the Act that, with some modification, would enhance the provision of competitive services within our communities.

#### *Application of Title VI*

Local government seeks modifications to clarify that the provision of multichannel video services through landline facilities, regardless of the technology used, falls within the scope of Title VI. The Act does not permit local government to dictate the nature of the technology employed by the provider. It does permit the local government to require that once the technology has been selected, that the quality of the service is acceptable. The quality of service should be maintained, and it should apply in a technology neutral manner.

#### *Uniform Assignment of Responsibilities Among Levels of Government*

Local government should retain authority over local streets and sidewalks, no matter what provider is offering service, or what service is being offered. At the same time Congress is considering allowing Federal agencies to determine which companies can offer video services, all companies in the local rights-of-way should be responsive to the local government.

#### *Streamlining of Franchise Negotiations*

Title VI establishes the broad framework for those elements that may be negotiated in a local cable franchise. The provision of PEG access capacity and institutional networks is specifically protected in the Act. Requirements in that regard should be presumptively reasonable, and a local government should be given the flexibility to determine the appropriate amount of capacity and the appropriate level and use of funding support necessary to meet its local community's own particular needs. The Act permits extensive community needs assessments, which while valuable, may be costly and time consuming, and may prove unnecessary when considering the applicability of the obligation on a new entrant. We believe that when a competitive franchise is under consideration, the local government should have discretion to use these tools on an as-needed basis to verify, but not be obligated to "prove," the need for the particular PEG or institutional network requirement. The Act should require a new entrant to provide at least comparable capacity and support for the provision of PEG access, as well as for the provision and support of institutional networks. Similarly, local governments must be authorized to require the interconnection of these services between the incumbent provider's system and new entrant's system, to ensure seamless provision of services to our citizens.

#### *Time Limits for Negotiations*

Local governments have experienced just as much frustration as many in the industry with regard to the time consumed by franchise negotiations. While it is easy to claim that local governments are the cause for delay, let me assure you that the industry is at least equally to blame for not pursuing negotiations in a timely and efficient manner. Just as the industry would call upon local government to be under some time constraint for granting an agreement, so too should they be held to time frames for providing the necessary information on which a decision can be made and for responding to requests to negotiate in good faith. Otherwise, a time frame merely gives the applicant an incentive not to reach an agreement but to wait until the

time frame expires. We do not believe that it is unreasonable to establish some time frames within which all parties should act, whether it is on an application for the grant of an initial franchise, for renewal, transfer or for grant of additional competitive franchises. But these obligations must apply to both sides and must be respectful of the principles of public notice and due process. Applicants must be required to negotiate in good faith rather than insisting on their own "form" agreement. No community should be forced to make a determination without permitting its citizens—your constituents—the opportunity to voice their opinion if that is the process that government has put into place for such matters.

*Network Neutrality*

While traditional cable operators under Title VI operate on closed platforms, the Act itself does not address the variety of services or content that may be provided over that platform. Recent press accounts have indicated that telephone company new entrants in the video marketplace also want to be able to control the ability of the end user to access information purchased over the network. Faster speeds for those who pay more; and faster access to those locations on the Internet for which the content provider has paid a higher price to the network owner. Local government believes that permitting such favoritism and content control by a network owner is bad for the end user, bad for business and bad for the future of the Internet. To the extent that such issues need to be addressed within Title VI, we encourage the Committee to do so.

*Consumer Protection and Privacy*

The Communications Act has significant and meaningful consumer protection and privacy provisions. These are national rules with local enforcement and they include the ability of the local government to continue to enforce more stringent local consumer protection requirements. These rules must be extended to all video providers—to ensure that information on your personal choices of what you watch on whatever device you choose to receive your video signal on—is not being used in an impermissible or improper manner.

Finally, we continue to support the ability of local governments and the citizens they serve to have self-determination of their communications needs and infrastructure. Title VI has always recognized our ability to do so in the video marketplace, and we hope that Congress will continue to agree that such should be the case regardless of the services delivered over the network. Where markets fail or providers refuse, local governments must have the ability to ensure that all of our citizens are served, even when it means that we have to do it ourselves.

**Conclusion**

In the rush to embrace technological innovation, and to enhance the entry of new competitors into the market, it is still the responsibility of local government to ensure that the citizens of our communities are protected and public resources are preserved. We value the deliberative processes, such as this hearing today, to be sure that we are accumulating verifiable data and are making informed decisions. Local control and oversight has served us well in the past and should not be tossed out simply as the "old way." This year, as the discussion of the delivery of new products and services over the new technology platforms includes not just video but new and enhanced video products and other potential services, I strongly encourage this Committee to proceed deliberately. The Committee should continue its excellent work of accumulating information and ensuring a strong record in support of any decisions to change the law.

Thank you. I look forward to answering any questions you may have.

The CHAIRMAN. Thank you very much. Our next witness is Brad Evans, the Chief Executive Officer at Cavalier Telephone in Richmond, Virginia.

**STATEMENT OF BRAD EVANS, CHIEF EXECUTIVE OFFICER,  
CAVALIER TELEPHONE**

Mr. EVANS. Thank you, Mr. Chairman. We appreciate the opportunity to testify here today.

Cavalier Telephone is a competitive local exchange telephone company. We're headquartered in Richmond, Virginia. We provide local, long distance and broadband services over 207,000 residential



and 173,000 commercial telephone lines from Virginia to Southern New Jersey.

We are the success story of the 1996 Telecom Act. Unlike many other competitors, Cavalier has embraced the residential market and is adding 15,000 new residential customers each month. Our high-speed Internet access is second to none. Cavalier began in Virginia in 1999, and since that humble beginning, we have grown to revenues of \$290 million, and we are profitable. We have made significant capital investments, and we now own one of the largest fiber networks on the East Coast.

The 1996 Telecom Act permits Cavalier to interconnect its network with Verizon and enables Cavalier to access customers through the leaseings of Verizon's local loops covering the so-called last mile. The preservation of access to unbundled loops is a primary importance to Cavalier and all other competitive providers. The reason I am here today is to describe to you a new technological innovation that will revolutionize how consumers obtain and pay for cable TV service and how current laws may impede the deployment of this service.

Cavalier is an industry pioneer and is preparing to launch a competitive TV service in Richmond, Virginia. The TV service dubbed IPTV utilizes MPEG-4 video compression, and we can deliver 150 channels over our existing DSL broadband network. This service has a crystal-clear digital picture quality. It has an interactive programming guide and all sets will have access to video-on-demand and other advanced features.

Cavalier's "triple play" will offer consumers video, local telephone service and high-speed broadband at a significant savings.

The Cavalier TV network will reach out to approximately 2 million potential customers in the markets of Philadelphia, Baltimore, Wilmington, Washington, D.C., Richmond and Virginia Beach. We are not digging up the streets, nor are we trenching on consumers' property. We can stream our TV signal over the existing copper-based DSL network. If you can get a Cavalier high-speed interconnection, then you can get Cavalier TV.

A unique aspect of our service is that it runs over existing telephony infrastructure. Our TV service will have greater availability for the condensed inner-city residents, even more so than the suburban residents.

But the real beauty of our technology is that it is readily deployable, and it can be easily adapted into small-town rural communities. Already, small, rural telephone companies are asking Cavalier to provide IPTV video feeds. With video, rural telephone companies will finally have an economically feasible way to expand their broadband footprint.

However, customers will not realize these savings unless new laws are passed to facilitate its introduction. In our service areas, there are hundreds of governmental agencies that would govern TV franchise authority. I personally believe it would be impossible to reach agreement with many of these municipalities absent any overarching framework. The time, energy and expense would stall our deployment and could result in Cavalier being forced to simply forgo service in several communities.

We therefore urge you to adopt legislation that would provide a new framework for competitive entry. First, franchise authority should be granted on a statewide basis. Second, the application process should promote ease of entry. Third, we support current governmental franchise revenues, and we support public channels being placed on our network. Fourth, copper-based IPTV providers should be exempt from any requirements for a mandatory buildout.

A legislative model that adopts these concepts would ensure a rapid deployment, not only by Cavalier, but by many small, rural telephone companies and other competitive providers all across the country. We have seen how competition works in the telecommunications market. It is now time to launch competition into the TV business.

Mr. Chairman and Members of the Committee, thank you again for this opportunity.

[The prepared statement of Mr. Evans follows:]

PREPARED STATEMENT OF BRAD EVANS, CHIEF EXECUTIVE OFFICER, CAVALIER  
TELEPHONE

Mr. Chairman and Members of the Committee, I am Brad Evans, Chief Executive Officer of Cavalier Telephone. We appreciate the opportunity to testify here today before this Committee.

Cavalier Telephone is a competitive local exchange telephone company headquartered in Richmond, Virginia. We provide local, long distance, and broadband services over 207,000 residential and 173,000 commercial telephone lines from Virginia to Southern New Jersey.

We are a success story of the 1996 Telecom Act. Unlike many other competitors, Cavalier has embraced the residential market and is adding 15,000 new customers each month. Our high-speed Internet access is second to none. Cavalier initiated services in Virginia in 1999 and since that humble beginning, has grown to a company with \$290 million in revenues and is profitable. We have made significant capital investments and now own one of the largest fiber optic networks on the East Coast.

The 1996 Telecom Act permits Cavalier to interconnect its network with Verizon, and enables Cavalier to access customers through the leasing of Verizon's local loops covering the so-called last mile. The preservation of access to unbundled loops is of primary importance to Cavalier and other competitive providers. Due to the fact that we use our own facilities and control our own telephone infrastructure up to the last mile, we are able to bring new and innovative services to our customers at considerable savings. I am here today, to describe to you a new technological innovation that will revolutionize how consumers obtain and pay for TV services and how current laws may impede the deployment of this service unless the Federal Government acts to preclude that circumstance.

Cavalier is an industry pioneer and is preparing to launch a competitive TV service in Richmond, Virginia. The TV service is dubbed "IPTV", and utilizes MPEG-4 video compression to deliver over 150 channels over Cavalier's existing DSL network. This service will have clear digital picture quality, interactive programming guide, and all sets will have access to video-on-demand and other advanced features. Cavalier will offer consumers 150 video and music channels, local telephone service, and high-speed broadband at a savings to consumers compared to current alternatives.

The Cavalier TV network will reach out to approximately 2 million potential customers, in the major markets of Philadelphia, Baltimore, Wilmington, Washington, D.C., Richmond, and Virginia Beach. *Cavalier TV service will run over the existing copper-based broadband network.* We are not digging up the streets, nor trenching on any consumers' property. We can stream our TV signal over the existing DSL network. If you can get a Cavalier high-speed interconnection, then you can get Cavalier TV.

A unique aspect of our service is that it runs over existing telephony infrastructure, and consequently the older neighborhoods which are served by copper wires will be eligible for our service. Our TV service will have greater availability for the condensed inner-city residents than suburban residents.

But the beauty of the technology is that it is readily deployable, and can easily be adapted to small town rural communities. Already, small rural telephone companies are asking Cavalier to provide IPTV video feeds. With video, rural telephone companies will finally have an economically feasible way to expand their broadband footprint.

However, customers will not realize these savings, unless new laws are passed to facilitate its introduction. Today Cavalier is faced with a patchwork franchise process, governed by individual communities and/or counties. In our service areas, there are hundreds of governmental agencies that would govern TV franchise authority. Under current law, every local governing authority exercises their own discretion, towards creating a framework for TV services. I believe that it would be impossible to reach agreement with many of the municipalities, absent any overarching framework. The time, energy, and expense would stall our deployment, and could result in Cavalier being forced to simply forgo service in several given communities. Competition and competitive choice should not be held back. Consumers should be able to obtain significant cost savings in their cable TV bill as soon as is practicable.

Cavalier hopes to deploy its IPTV service throughout all its service areas by the end of the 3rd quarter of this year. That means that the major metropolitan areas from Virginia, along the east coast, up to southern New Jersey will be relieved from the stranglehold of the current cable TV providers. Consumers stand to gain considerably. But this technology has to be fostered. We therefore urge you to adopt legislation that would provide a new framework for competitive entry:

1. Franchise authority should be granted on a state-wide basis.
2. The application process should promote ease of entry.
3. Current governmental revenues, public channels should be sustained.
4. Copper-based IPTV providers should be exempt from any requirements for a mandatory buildout. A buildout requirement would make IPTV investments totally unfeasible.

A legislative model that adopts these concepts would ensure a rapid deployment of this technology, and promote consumer choice and lower prices. We have seen how competition worked in the telecommunications market; it is now time to launch competition into the TV business, for more choice, customized services, and lower prices.

Mr. Chairman and Members of the Committee, thank you again for this opportunity to share our views with you. We look forward to working with you in any way we are able to help craft effective legislation.

The CHAIRMAN. Thank you very much, Mr. Evans. Our next witness is Anthony Riddle, Executive Director for the Alliance for Community Media. Thank you.

**STATEMENT OF ANTHONY T. RIDDLE, EXECUTIVE DIRECTOR,  
ALLIANCE FOR COMMUNITY MEDIA**

Mr. RIDDLE. Thank you, Chairman Stevens, Senator Inouye and Members of the Committee. I previously served as Executive Director of Public Access Centers in Atlanta, Minneapolis and New York. I am here to testify on behalf of a national membership organization which has for 30 years represented 3,000 public, educational and government access television centers across the country. Local PEG programmers produce more than 20,000 hours of new programs per week, more new programs than all of the broadcast networks combined.

We urge you to construct bills that will protect the future of PEG access. On the wider issues of franchising, we support the testimony of Lori Panzino-Tillery on behalf of local government organizations.

In 1994, I visited post-Glasnost Russia as a member of former President Carter's Commission on Radio and Television Autonomy and the Former Soviet States. The Commission included many industry leaders and, notably, Chairman Stevens. The Alliance for

Community Media played a small, though distinct and important role. I shared with the former Soviets the American notion that a free people must defend the ability to communicate openly with each other and must have the means to both hear and speak to their freely elected government.

They easily understood what we in the U.S. often take for granted. I asked what was the major problem with Communism. With a knowing twinkle, I was told all of the radio and television signals ran through a single switch on one man's desk at the Politburo.

To secure diversity of voices required in a Democratic society, we must support a free-standing, independent space for public dialogue. Congress did that by creating PEG facilities with financial support and placing them under the stewardship of local franchising authorities. What has blossomed in the past 30 years is a vital local communications resource that reinforces the unique character of thousands of cities, towns and hamlets across America.

Examples of PEG programming:

Montana: Missoula Community Access Television trains at-risk students at the Willard School, an alternative school, a last-chance effort to keep troubled kids in school and in the system. According to one long-time media arts teacher, the program transforms a school celebration into a community celebration.

New Jersey: County governments and PEG developed an emergency public notification system using over 150 stations across the state. Emergency command centers in mobile disaster units communicate with affected communities via PEG stations. This system will help keep the public informed and safe in the event of emergency.

Southern Oregon: Rogue Valley Television serves four cities and three counties. Since 1999, the Medford Police Department has produced a monthly live call-in program on traffic and pedestrian safety, "Rules of the Road." They use institutional network fiber and equipment purchased with PEG funds to reach homes in Medford, Eagle Point and Jackson County. PEG binds these communities as one.

Bismarck, North Dakota: Inmates at the State Penitentiary feel they have a powerful message to share, one which would help in rampant methamphetamine use. Community Access Television produced an inmate-hosted program. Inmates asked tough questions of each other. "How do you explain to your daughter that you chose meth over her?" Hardened inmates broke down on camera.

Honolulu: Palolo works with at-risk youth. They learn job skills for the future. They tell positive stories about their communities. The youth are uplifted as they share positive images of Palolo, Kalihi and Mayor Wright Housing, not normally seen on 6 o'clock news. These young people feel the power of local television, and they take responsibility for their community.

PEG access is only possible if there is adequate funding. The overwhelming majority of PEG funding comes from three sources: One, a portion of the 5-percent cable franchise fee contributed to PEG by the LFA; Two, monetary and in-kind support for PEG capital facilities from the cable operator above the 5-percent; and three, grant agreements with cable operators for direct support of PEG operating expenses. The combined elimination of PEG grants

and the reduction of franchise fee revenue would mean catastrophic funding reductions for PEG communities across the Nation.

The Alliance opposes any funding regimen that would reduce PEG funding resources and supports designating PEG funding above the 5 percent franchise fee. PEG capacity must not be tied to decades-old levels. Public bandwidth must reflect current technology use and system size.

Under The Cable Act, the number of channels for PEG use is determined by each local community based on its particular needs. LFAs can reassess these needs periodically and may reasonably increase the channel capacity for PEG. Meaningful use of PEG typically grows over time as does the system capacity. The public must not be frozen out of technical change or system growth. We embrace competition. We are interested in affecting the way that that competition affects the public interest.

We applaud the principles advanced by Senators Burns and Inouye as an indication that this process that we're going through now is ongoing and changing. Public good and public business are not terms of contradiction. Across our Nation, consumers are also citizens and active participants in society through the use of public, educational and government access.

We ask that you preserve the only true genuine form of localism and diversity in television, preserve the stewardship role that only local governments can fill. We ask that you include the Alliance as an active partner in drafting legislation. Thank you very much for hearing us, and we invite your questions and comments.

[The prepared statement of Mr. Riddle follows:]

PREPARED STATEMENT OF ANTHONY T. RIDDLE, EXECUTIVE DIRECTOR, ALLIANCE FOR COMMUNITY MEDIA

Good morning, Chairman Stevens, Senator Inouye and Members of the Committee. I am Anthony Riddle, Executive Director of the Alliance for Community Media. I previously served as the Executive Director of the Public Access Centers in Atlanta, Minneapolis and Manhattan, New York. I want to thank Chairman Stevens for inviting me to testify today on behalf of the Alliance for Community Media, a national membership organization representing 3,000 public, educational and governmental (PEG) cable television access centers across the Nation. Those centers include 1.2 million volunteers and 250,000 community groups and organizations that provide PEG Access television programming in local communities across the United States. Local PEG programmers produce 20,000 hours of new programs per week—that's more new programming than all of the broadcast networks combined. As reported in the New York Times on November 9, 2005:

“For every hour of ‘Desperate Housewives’ on ABC, the Nation’s 3,000 public-access television channels present dozens of hours of local school board meetings, Little League games and religious services.”

The Center for Creative Voices released a report last Fall that shows that as large group owners control more local broadcast stations in a market, local programming disappears, replaced by nationally produced programs that seek to draw larger audiences through more inflammatory material. Media consolidation furthers this trend. The report found that locally controlled programming is more responsive to community needs.

Congress has traditionally recognized the need to foster localism in communications. At a time when studies show that less than one-half of 1 percent of programming on commercial television is local public affairs, PEG centers serve the people in your home town, city, and district.

We urge you to oppose proposed bills that would directly and substantially threaten the future of PEG programming throughout the Nation. My testimony focuses largely on values that would most directly impact PEG funding and capacity. On

the wider issues of franchising we support the testimony of Lori Panzino-Tillery on behalf of local government organizations.

As Chair of the Alliance, I had the opportunity in 1994 to visit post-Glasnost Russia as a member of former President Carter's Commission on *Radio and Television Autonomy in the Former Soviet States*. The Commission included many industry leaders and, notably, Chairman Stevens. The Alliance for Community Media played a small, though distinct and meaningful, role on the Commission: I shared with the former Soviets the American notion that a free people, in order to remain free, must have the ability to communicate openly with each other, must have the means to both receive and send information to their freely elected government, and must vigilantly defend the need for open and accessible networks.

Their eyes lit up immediately with recognition. Having then recently emerged from the tight control of Communism they easily understood what we in the U.S. often take for granted. Across the gulf that separated us, I asked one, "What was the major problem with Communism?" With a knowing twinkle in his eye, he told me, "*All of the radio and television signals ran through a single switch on one man's desk at the Politburo.*"

It seems a hundred years since the collapse of the Soviet Empire. The reality is that we were already working at that time on what became the 1996 Telecommunications Act. It was not so long ago.

The best way to secure the diversity of voices required of a Democratic society is to create and support a free-standing, independent space for public dialogue. Congress did just that by providing for PEG facilities with financial support and placing them under the stewardship of local franchising authorities. What has blossomed in the past 30 years is a vital local communications resource that reflects the unique character of the thousands of cities, towns and hamlets which it serves.

#### **I. PEG Programming—the Last Redoubt of Local Character.**

The Federal Cable Act authorizes local franchising authorities to require cable operators to set aside capacity on their systems for PEG use,<sup>1</sup> and to require cable operators to provide, over and above the 5 percent cable franchise fee, funds for PEG capital equipment and facilities.<sup>2</sup> The amount of PEG capacity that is set aside on a particular system, as well as the level of funding provided by the cable operator, is locally determined, based on each community's determination of its own particular cable-related community needs and interests.<sup>3</sup>

The PEG provisions of the Cable Act are intended to provide all members of a community with access to the medium of television. Indeed, PEG is the only way that average citizens and community groups can interact in their communities via television. Particularly in this era of mass media consolidation, PEG Access ensures that locally-produced programming, of interest to and tailored to the particular local needs of the community, has an outlet on television.

PEG Access has served that purpose exceedingly well. Among other things, PEG provides:

- The only *unmediated coverage Congress Members* receive in the home district. Many members of Congress use Public Access channels to communicate directly with their constituents. PEG is often one of the only media outlets in a locality providing regular political and civic programming to local residents.
- *Church Outreach*—Religious programming represents 20–40 percent of programming at most Public Access centers. For the shut-in and infirm, this is often the only means by which they can participate in local services.
- *Coverage of local cultural activities*, particularly in smaller communities that do not receive commercial media attention. Examples include coverage of local historical, art and music events.
- The ability to maintain the *local cultural identities of our towns, cities and counties*. Examples include coverage of local high school football games, local parades and other civic events.
- *Local Governmental Programming*—Coverage of city/town/county council meetings, and local police, fire, and public safety programming.
- *Local Education Programming*—Cablecast of public school and local college educational programming.

<sup>1</sup>47 U.S.C. § 531.

<sup>2</sup>47 U.S.C. § 542(g)(2)(C).

<sup>3</sup>See, 47 U.S.C. §§ 546(a)(4)(B) and 546(c)(1)(d).

- *Technical training and jobs*.—PEG centers provide vocational training in television camera and production work for local residents and nonprofit groups that would otherwise have little to no access to media tools and education.
- *News for military families*.—Army Newswatch is the most-syndicated program on PEG channels, with carriage on over 300 PEG channels nationwide.

Let us provide you with some typical local examples from around the country:

*Ann Arbor, Michigan*.—At Community Television Network, the Public Access center created a program in partnership with National Kidney Foundation focused on the risks of kidney disease among African-American men and women. African-Americans are seven times more likely to get kidney disease compared to white Americans. The award winning program has been cablecast on PEG channels throughout the state of Michigan.

*Austin, Texas*.—Founded in 1972 by college students, Austin Community Television has been instrumental in the recognition of as the live music capital of the Nation. Tejano music was little known outside the small Latin clubs in Austin until producers Isidoro Lopez and Jerry Avala began their Public Access television show. Lopez, 67 years old, disabled and full of energy. His show fully involves the Hispanic community, including bands, local businesses and volunteers. Isidoro says, *“Without the Public Access Channels, no one would have known about this kind of music. The public greatly enjoys this service and wouldn’t find it anywhere else.”*

More recently, with the influx of Hurricane Katrina survivors into Austin, many have found their voices on ACTV—and they say they have found a home.

*New Jersey*.—PEG stations are working with county governments to incorporate emergency public notification via the 150+ stations throughout the state. The system will allow communication from any emergency command location or mobile disaster unit to the communities affected via PEG stations. This system will have the ability to interrupt programming instantly with text notices that include health hazard notifications, aid station locations, and evacuation instructions. Using PEG stations, this system will help to keep the public informed and safe in the event of any emergencies—from a local level crisis to support of national disaster relief organizations.

*Missoula, Montana*.—Missoula Community Access Television provides training to over 60 at-risk students at Willard School, an alternative school that is the final attempt to keep troubled kids in school and in the system. The TV class helps students connect to school, to each other and to the community. According to Gwenn Hoppe, long-time media arts teacher, *“Having a local communication channel is such a blessing for my kids, who especially need to feel included in the community. The TV show we make profiles every senior student’s courage in making it through the program. It changes a school celebration into a community celebration and the psychological effect on the seniors, and the students struggling to stay in school is positive, permanent and priceless.”*

*Olympia, Washington*.—Cherie Tessier is a 51 year-old, developmentally disabled woman who, for the past 16 years, has produced Public Access television programs at Thurston Community Television. Her show advocates for the rights of the disabled, educates the community about disability issues, and engages elected officials. Physically and developmentally challenged people participate to tell their stories, dispel myths about disabilities, and discuss public policy. Without the media tools, training, and channels provided by Thurston Community Television, Cherie’s message would be heard by very few people. There is *no other form of media* that Cherie could afford to use that would provide her with access to this large an audience.

When asked one day why she worked so hard to make her programs, her answer was simple, *“Because I’ve learned to speak for myself, and this is what I want other disabled people to learn, too.”*

*Chicago, Illinois*.—During the 2004 election season, Chicago Access Network Television (CAN TV) ran 160 hours of local election coverage, including information on candidates for presidential, senatorial, congressional, and local judicial elections, as well as in-depth interviews by *The Illinois Channel* with state district candidates. CAN TV devotes its resources to local programming with an annual budget that wouldn’t buy a single thirty second commercial during the Super Bowl. Those modest resources can be put at risk by adverse legislation. In an earlier article on CAN TV’s election coverage, the *Chicago Tribune* reported that, *“Chicago’s five access channels bring no small measure of serious politics, especially involving those largely shut out heretofore from mainstream commercial media, including blacks, Hispanics, and, of course, Republicans.”* (We are talking about Chicago.)

*Cincinnati and Hamilton County, Ohio*.—Media Bridges cablecasts more than 15,000 hours of local programming produced by and for greater Cincinnatians by organizations like the Contemporary Arts Center, the Lifecenter Organ Donor Net-

work, and Literacy Network of Greater Cincinnati, as well as better than 80 area religious organizations. According to a 2003 study, the 96 cents per subscriber per month in PEG Access support providing the majority of Media Bridges' financial support is multiplied almost *seven times* to provide an economic impact in greater Cincinnati of more than \$5.3 million per year. Loss of this support would hurt more than just the PEG community in Cincinnati.

*Knoxville, Tennessee*—Community Television of (CTV), has served the residents of Knoxville and Knox County for 30 years. For only \$24 per year, the typical volunteer community producer at CTV receives training and unlimited use of PEG equipment (including cameras, studios, and editing equipment) to produce and air their own television programs. There is no other means by which community residents can find such an inexpensive way to effectively reach 110,000 community households with information pertaining to local issues, local resources and matters of interest to them, from support for victims of Alzheimer's disease and their families, to foster care, law enforcement, and youth recreation.

*Cambridge, Massachusetts*—Every week, Cambridge Community Television (CCTV) produces 50.5 hours of live programs on its BeLive set—shows that include *Crime Time* produced by the Public Information Officer of the Cambridge Police Department, *Bed Time Stories*, *Muslims Inside and Out*, *Local Heroes* and two smoking programs, one against, and one for smokers' rights. Even though Cambridge is a city of over 100,000 residents, it is in the shadow of the Boston media market, and the commercial television stations and daily newspapers consequently do not cover the local elections. As a result, CCTV's election programming is the only place that residents can tune in to learn more about local candidates.

*Southern Oregon*—Rogue Valley TV is the PEG Access organization for four cities and three counties. Since 1999, the Medford Police Department has produced *Rules of the Road*, a monthly, one-hour live call-in program about traffic and pedestrian laws. The police average 30 phone calls per show as Medford residents jam phone lines waiting to talk with their local police officers. Without use of institutional network fiber and equipment purchased with PEG funds, the program would never reach homes in Medford, Eagle Point and Jackson County, and the phones would be silent.

*Bismarck, North Dakota*—Inmates at the State Penitentiary called CAT Channel 12 for help. They had watched, recognized the power of television and felt that they had a unique, powerful first-hand message to share—one which could help to stop methamphetamine use. They needed help in making getting the message out. Community Access Television (CAT) stepped up to work with the inmates. Programs were taped in the penitentiary treatment facility, an area that overflowed due to the drug crisis.

An inmate hosted the program, asking tough questions of fellow inmates: "*What would you tell your daughter now—why would you choose meth over her?*" And, "*What would you tell your dead mother about why you robbed her?*" Life hardened inmates sobbed.

Local schools and churches, the State Attorney General's Office and groups from Fargo all called for copies of this program which had been both televised and streamed on the Internet. Senator Conrad's office contacted CAT for further information. The inmate host of the program, now in a half-way house, says "*If only one person quits or doesn't use methamphetamine, the time to make this program was worth it.*"

In a different vein, *Tucson, Arizona's Correction* is a documentary that compares the training correctional officers receive with their real-life experiences inside prison. Four people seen negotiating the Arizona Department of Corrections' seven-week training academy reveal that officers, inmates and the correctional system itself are caught between the contradictory imperatives of security, justice, punishment and the economic realities of state government. Media-maker and University of Arizona Associate Professor Michael Mulcahy is working to break stereotypes found in most movies and television by using the experiences and perspectives of actual corrections officers. He says, "*What I saw in prison was nothing like those movies. I saw something that was incredibly complex and incredibly difficult, incredibly ambiguous.*"

*Albuquerque, New Mexico*—As an example of the diversity which can be found in even one PEG center, Sandia Prep School recently sent 30 students through *Quote . . . Unquote's* Public Access orientation class as this highly rated academy began its third year of television production. One student producer used this experience to win a scholarship to a top college. For four years *Quote . . . Unquote* cablecasts the Catholic Archdiocese of Santa Fe's daily lunch mass for shut-ins to pray *The Rosary*. It also cablecasts *Gun Club of New Mexico*, a firearms collector NRA program produced locally by volunteers.



The examples mentioned so far have dealt with a wide variety of people, organizations, educational institutions, and local governments that have used PEG access to create and distribute local programming. However, it is important to note that there is also great interest in viewing locally created PEG programming. Over the past ten years, an independent research firm has surveyed cable television subscribers in 38 different communities throughout the Nation, with populations ranging from less than 10,000 to over a million residents. Respondents to these surveys were asked how important they felt it was to have PEG channels on their cable system for use by local community groups, educational institutions, and public agencies. 74 percent of the survey respondents in these diverse communities said that having these channels available was "very important" or "important" to them.

PEG demonstrates through action that we can, indeed, all find a way to live together—and that all of us are better for it.

## **II. PEG Access Is Only Possible If There Are Adequate Funds to Support Community Use.**

The overwhelming majority of PEG funding comes from two sources: (1) monetary and in kind support for PEG capital facilities and equipment from the cable operator over and above the 5 percent cable franchise fee that is required by the local franchise agreement; and (2) contributions by the local franchising authority of a portion of the 5 percent cable franchise fee to PEG.

At Manhattan Neighborhood Network (MNN), our operating support came through an appendix to the franchise agreement negotiated directly with Time Warner Cable that provided for both operating and capital support. The operating support was paid directly to MNN by Time Warner quarterly and was less than 1 percent above franchise fees, or around 60 cents per sub per month. The capital support was paid annually at 50 cents per subscriber. Thus, the combined public access support payments averaged about 64 cents per subscriber per month. In a system of 500,000+ subscribers, this percentage provides adequate support for service to the community. In a system of 50,000, a different formula would certainly be necessary.

In other places, such as Kalamazoo, MI for example, PEG funding comes from both a portion of the franchise fee and from the cable company. The Access Center receives 35 cents/month/subscriber for PEG support and, in addition, the communities contribute 40 percent of their franchise fees. In Cincinnati and Hamilton County, Ohio, the Access Center receives 96 cents/subscriber/month in PEG support from the cable operator as required by the local franchise agreement.

We would oppose any funding regimen that would eliminate and/or substantially reduce either of those sources of funds to support PEG.

### *A. The Loss of PEG Capital Support Obligations*

The Cable Act allows local franchising authorities to require a cable operator to provide PEG Access capital facilities and equipment funding over and above the 5 percent franchise fee. We believe it is important to maintain this support mechanism. It is important that any new bill include provisions that allow municipalities to require that broadband video service providers fund PEG Access production facilities and equipment at rates comparable to those of incumbent cable operators. Otherwise, over time, the incumbent cable operators would no longer provide such PEG support, as they would no doubt refuse to continue to incur a cost not incurred by its broadband video service provider competition. Alternatively, the incumbent cable operator might eventually transform itself into a broadband video service provider, thereby freeing itself directly from its PEG support obligations. The Alliance for Community Media requests elimination of the provision in current cable law which restricts use of funds above the 5 percent franchise fees so that those funds may be used for both capital and operational support, as determined locally.

### *B. A Reduced Franchise Fee Revenue Base Would Reduce Local Franchising Authority Financial Support for PEG.*

Much of the language being proposed restricts the "gross revenue" base for the 5 percent franchise fee to *revenue collected from subscribers*. As a result, *non-subscriber revenues*, from sources such as advertising and home shopping channels, would be excluded from the franchise fee revenue base. That would represent anywhere from a 10 percent to 15 percent reduction in the franchise fees that local governments currently receive under the Cable Act. And non-subscriber revenues—especially advertising revenues—are one of the fastest growing revenue streams in the current cable franchise fee revenue base. In communities in which the local government contributes a portion of its franchise fee revenues to fund PEG Access operations, the reduced franchise fees would result in a substantial reduction in the funds that PEG Access centers currently receive from cable franchise fees.

The combined elimination of PEG grants and the substantial reduction of franchise fee revenue available for PEG use would result in a funding reduction for PEG Access that would be nothing short of catastrophic for many, if not most, PEG Access centers across the Nation.

### **III. PEG Capacity, If Tied Permanently to Current Levels, Would Deprive Communities of the Ability to Adapt to Changing, and Often Growing, Community Needs.**

Under the Cable Act, the number of channels set aside for PEG use is determined individually by each local community based on its particular PEG needs and interests. Perhaps more importantly for the discussion here, the current Cable Act allows local communities, through the cable franchise renewal process, to reassess their PEG needs periodically, and to increase the channel capacity set aside for PEG where demand warrants.

As you might expect, the number of PEG channels set aside varies widely from community to community. This is precisely the sort of local self-determination and flexibility that one would expect—and that should be cherished—if the localism that PEG programming embodies is to survive. Some proposed bills, however, would short-circuit this process, capping PEG Access capacity at, or even below, current levels. This would mean that local communities would be locked into current PEG capacity limits—limits that may have been originally set by a franchise drafted even before the 1984 Cable Act.

There is no reason to suppose that PEG capacity needs are static. In fact, those needs typically grow over time, as the local community's interest in PEG programming grows, and the volume of PEG programming grows. Experience shows that system capacity has grown parallel to this need.

*Technical Comparability*—PEG bandwidth provided in exchange for PROW use should be handled on par with that of the highest commercial user, including that of the communications service provider. Municipal users must be allowed to make any technical use of PEG bandwidth they find useful and consistent with the capabilities of the system.

Municipal users of bandwidth provided in exchange for PROW must be allowed equal access to electronic promotions and customer portals, such as menus or hyperlinks, and to interactive switching as other users, including the service provider. Any type of privileging of programmer access to customers clearly devalues the municipal bandwidth.

### **IV. Related General Principles**

*Ease of Negotiation for New Entrants*—The fastest available means of entry is for new entrants to adopt agreements equivalent to those of the incumbent provider. Manhattan, New York where I managed the Public Access facility is easily one of the most complex negotiating environments in the Nation. There, RCN and the City worked out an OVS contract to mirror the existing Time Warner franchise in about nine months—including negotiation of equivalencies where duplicate obligations would have been redundant. This is but one of many instances demonstrating that new entrants can quickly enter existing markets if they are willing to match incumbent provider obligations.

*Local Authority*—The municipalities should be free to use PROW fees as they feel appropriate, though some fees may be designated for communications needs. PEG operations are inexorably bound to the municipal owner of the PROW. The municipality should have the authority to determine how those needs are to be met with the resources available.

*Local Accountability*—Audits and payments should remain at the municipal level.

*Local Enforcement*—Regulatory authority for protecting PEG should be a function of the municipality, as should resolution of consumer complaints. We believe that the municipality should remain the first level of resolution and enforcement of PEG concerns. Local PEG centers are not adequately resourced to maintain a balanced relationship with large, national corporations.

*Local Design*—Municipalities have the responsibility to design their use of communications system as suits the needs of local citizens.

*Net Neutrality*—Alliance members provide training and equipment not only in television production, but are often providers of first contact for new communications tools and methods. Access centers across the country were among the first to share the potentials of the Internet with community organizations, providing both computer labs and connectivity. Access centers were the first to stream channels full-time. Similarly, PEG centers are providing exposure to and the skills and equipment needed for communities to use newer technologies such as peer-networking, video-blogging and podcasting. Our members have a direct interest in networks remaining

neutral and open. Such openness not only assures a vibrant community conversation, but leaves room for the thousands of small entrepreneurs whose creativity forms the basis of American innovation.

*Technical Neutrality*—The Alliance hopes that any new legislation will be technologically neutral. We would like to see all forms of video delivery located in the PROW subject to the same or equivalent public obligations. If they are not, then legislation will encourage development of technology based on diminishing public obligation rather than competition and innovation. This would launch a race to the bottom which would both harm the public interest and skew development.

In addition, the Alliance can foresee a future in which video services could potentially migrate to the “info-data” section of the pipeline. The physical use of the PROW would not be changed. The delivery to the consumer would likely appear to be the same. However, the bandwidth and fees provided in exchange for use of the PROW would be diminished. Proposed legislation should be carefully constructed to avoid providing incentives which artificially interfere with market innovation.

*Citizenship and Access to Broadband Communications*—As citizenship, education, commerce, government services and community become more intertwined with access to communications services, the Alliance upholds the need to make sure that all of us have access to those services. We don’t think that all homes will have or want the same services. We do, however, believe that any new legislation should anticipate inevitable market imbalances. Any new legislation should have tests for identifying those imbalances and concrete methods to remedy any resultant discrimination. To the degree that a community or section of a community is “unreachable”, the value of all of those working to provide PEG access is diminished. It is imperative for all people to have at least the opportunity to participate in the coming world of electronic democracy.

### **Conclusion**

Across the Nation, PEG Access centers put television in the hands of the people, not as passive consumers, but as speakers and information providers—as citizens and other active participants in our society.

The public good and good business are not terms of contradiction. We ask that as this Nation strikes out into this brave new world of competition and creativity, of wealth and opportunity, that you take the time to preserve the only truly genuine form of localism and diversity in the television medium—Public, Educational and Governmental Access. We ask that any legislation preserve the essential role that only local governments can fill. We ask that you recognize PEG as a central means of preserving the rich tapestry of local character even as these changes move us toward a homogenized national identity.

What we ask of you is not asked for the purpose of our own enrichment. We ask out of love for a society and people that can be a beacon of freedom for all the people who will come after us. We ask that you include us active participants in the many discussions to come in the drafting of this legislation. The Alliance looks forward to working with you to create legislation that honors the founding principals of democracy by preserving a balanced communications environment for all people.

On behalf of communities across the Nation, we thank you for the opportunity to speak to you today. I would be happy to answer any questions you may have.

The CHAIRMAN. Thank you very much. Our next witness is Gene Kimmelman, Vice President, Federal and International Affairs, Consumers Union, Washington, D.C.

### **STATEMENT OF GENE KIMMELMAN, VICE PRESIDENT, FEDERAL AND INTERNATIONAL AFFAIRS, CONSUMERS UNION**

Mr. KIMMELMAN. Thank you, Mr. Chairman, Senator Inouye and Members of the Committee on behalf of Consumers Union, the print and online publisher of *Consumer Reports*. I appreciate the invitation. In coming before you now, for more than 20 years, this is truly a revolutionary moment where I get to agree with so many of the industries that I’ve had problems with in the past, and I do believe it is an appropriate time for you to be considering legislation.

I want to just clarify why I think it’s time to move. You’ve heard a lot of numbers out here. It’s true what the phone companies say.

Cable rates have virtually doubled in 10 years. But also, if you give cable credit for adding new channels, of course many of which are ones people don't even watch, you find the government statistics show rates are up almost 2½ times inflation, so you've seen numbers in the 50–60 percent range. That's where that number comes from. And you often find the cable industry talking about price per channel because they add channels, which is legitimate. And you often hear the figure that where there are two wireline competitors, prices on a per channel basis are 15 percent lower for consumers. That's what is most relevant to us. You get a clear savings where you bring in another major wire-based competitor. And unfortunately, with as much benefit as satellite has added to the market, it still is not disciplining cable prices. So, we do believe it's time for you to move to advance competition with cable.

It's also interesting, in following this for 20 years, that many things don't change, but need to be thought through as you consider legislation. The cities have, for many years, been fighting for all the principles you've heard articulated, but unfortunately, sometimes their view of stewardship is getting maximum revenue for the cities and not necessarily taking care of the local community needs, the local content, putting money into real programming, into doing the maximum wiring, into supporting all the local PEG access programming that is necessary. Yes, the cable companies are right. The phone companies did not enter the cable business quickly. But you know what? Cable companies didn't enter the phone business very quickly either. And I've heard more praise of local franchising from the cable industry this morning than I have ever heard in 20 years.

So, I would urge you to think of legislation from this perspective. If it's true that this digital transition will lead to an explosion of providers out there of broadband, telephone, cable, 5–6–7 players, then you probably don't need to worry at all about legislating. That truly would be a competitive market. But just assume for a moment we end up with only two major platforms, a telephone wire and a cable wire, each delivering telephony, data services, broadband access and all our video. What are the long-term policy needs for citizens of this country if that happens to be the case five to 10 years down the road?

I would suggest many of the things you've pointed out this morning are critical. Affordable broadband for all citizens everywhere—it's critical to everything from health, education, business connections, family, and meeting basic needs. We need to make sure that those two providers, if there are only two, truly serve or provide financial support for broadband. And certainly, we should make sure that if there are only two, that as we enhance entry for one or the other, that we're not blocking the rights of communities themselves to also offer services and possibly be a third player in the market.

Consumers would also need, in that environment, to ensure that broadband and video is available to all or that each of the providers is making sure they're paying to make it available to everyone in the community. If we only have two providers offering this big package, it'll be hard for any new entrants to break in the market. We've seen how difficult it's been to get competition in video and

telephony. So, it's critical to ensure that everyone can receive all of these important services and are supported by both major providers in the community.

And don't forget local content. It's one thing to talk about PEG access, but I think we should go back to principles here. What is it we're looking for? We want people in the community to get the financial support, to develop their talents and skills, to debate local issues, to present their views and content on television, to have websites, to really take advantage of local talent.

And so, it's not so much the name, whether it's a leased access channel or a PEG channel and just saying we'll do it for one company, we'll do it for the other, we urge you to look carefully at what really gets local talent out there. And please understand the local conflicts. As long as local communities have an incentive to seek the maximum amount of money for the community itself, it will not always want to put that money into that local talent, into building out, to the libraries, to the schools, to the hospitals, to supporting the PEG access channels.

So, we think it's critically important that you think about how to serve these principles and not just the names that are there. And as you move toward a long-term goal here, a transition always requires some benefits to the new entrants. In the same way, when cable entered telephony, it was not appropriate to put a whole load of regulations on them. I think it's appropriate to look at the telephone companies in the same way. However, they already have franchise rights. They already serve communities. There's no reason why they shouldn't be required to offer their video services to everyone in the community.

We hope you'll also look at the problem of bundled programming. Chairman Stevens, we appreciate your comments about the potential benefits of moving to a per channel pricing for consumers, which the FCC says could save consumers as much as 13 percent on their cable bills. We hope that will also be on the table as you consider legislation. Thank you.

[The prepared statement of Mr. Kimmelman follows:]

PREPARED STATEMENT OF GENE KIMMELMAN, VICE PRESIDENT, FEDERAL AND INTERNATIONAL AFFAIRS, CONSUMERS UNION

### Summary

Consumers Union,<sup>1</sup> Consumer Federation of America,<sup>2</sup> and Free Press<sup>3</sup> appreciate the opportunity to testify on the issue of video franchising and competition in video services. We welcome the Committee's interest in fostering greater consumer choice by promoting competition in the video marketplace. Over the last decade, consumers have suffered under monopolistic cable pricing that has resulted in a 64 percent increase in rates—approximately two and a half times the rate of inflation—since Congress deregulated the cable industry in the 1996 Telecommunications Act. In addition to skyrocketing rates, consumers have virtually no choice of providers or channel offerings. Satellite television, the primary competitor to cable, has had virtually no price disciplining effect.

The application of broadband technologies to subscription video services now offers the promise of competition and lower monthly cable bills. The central question before Congress is how best to accelerate this new competition while maintaining a strong commitment to local community needs, and universal availability of access as a condition of video franchising. The public policy goal must be to maximize, as rapidly as possible, the benefits of new technologies and competitive markets to every American household.

Is the local franchising process a barrier for local telephone companies' entry into local video markets? Do we need a Federal franchise? That is not at all clear. We

urge the Committee to weigh the evidence in this debate—rather than the rhetoric—very carefully. The focus of any new policy must be primarily the conditions of local service in the video franchise and secondarily the process that can best achieve them. Before considering the idea of a Federal franchise, Congress must clarify precisely what local needs must be met and how to best protect legitimate local concerns.

The establishment of a national franchising mechanism would bring with it substantial risks for local communities and consumers against which any real or perceived competitive benefits must be balanced. The existing local franchise negotiating process may merely delay, rather than impede, new entrants. The balance between facilitating competition and preserving community services may be achieved through a streamlined national franchising process or a streamlined local franchising process. The key component in either scheme must be the retention of substantive consumer protections and community obligations that local franchising authorities up to now have been able to negotiate. To maximize consumer benefits, Congress should address the process of franchising to provide for greater certainty and timely entry of new competitors, but it must maintain consumer protections and preserve the carrier obligations to ensure that all residents benefit from new competition.

Unfortunately, national franchising proposals introduced to date do not strike that balance. Instead they provide a franchise exemption, retaining only minimal protections and requirements and providing equivalency with only some of the obligations of incumbent providers. Notably absent from these proposals is any requirement that new entrants provide their services to the entire franchise area, opening a wide door to economic and ethnic discrimination (“redlining”) and closing the door to rate relief for those families who most need it and who have largely been left on the wrong side of the digital divide.

Should Congress move forward to address video franchising issues, we respectfully urge you to maintain the substantive protections and providers’ obligations to the local community regardless of where the power to offer the franchise is located. Any franchising model must include strong protections for consumers and communities that include:

- Requirements to provide service to all customers within the entire local franchising area, or in lieu thereof, requirements that new entrants provide significant financial resources to the locality to improve access to affordable broadband technologies for those not served;
- Requirements that consumer protection be provided locally to ensure that customers service and billing complaints are quickly and satisfactorily resolved;
- Complete protection of the locality’s right to manage and be fairly compensated for use of the public rights-of-way;
- Minimum requirements to ensure providers are truly supporting local needs, including the provision of both capacity and resources for local access channels with independent programming that reflects the diversity of the community, and broadband networks serving schools, libraries, hospitals and governmental facilities (I-Nets).

In addition, it is essential that localities retain their right, subject to local democratic processes, to provide broadband communications services. Ironically, the Bell companies who demand new regulations to facilitate their competitive entrance into the video market seek to foreclose competition in broadband from local governments and their private sector partners. A Federal elimination of state limitations on local community broadband networks would end the practice of constraining local choices and the rights of localities. However, a policy permitting community broadband is not sufficient to address redlining concerns. Simply giving permission to localities to establish a broadband network does little to help low-income and rural communities provide service to underserved residents when those communities have few resources to do so. The inequities of redlining can only be redressed through universal build-out of like services. In the absence of requirements to provide service to the entire franchise area, providers must also be obligated to provide financial resources to allow communities to meet the communications needs of the underserved through community broadband networks.

Even with protective and uniform national standards and a streamlined franchising process, in order for true price competition to emerge in multichannel video markets, Congress must address anti-consumer bundling and anti-competitive tying requirements imposed by dominant media companies. Programming bundles serve the interests of the dominant broadcast networks and cable operators that own the lion’s share of cable programming. They impose these bundles upon their sub-

scribers and smaller distributors in the all-or-nothing expanded basic tier. If Congress does not prohibit these bundling arrangements and the coercive retransmission consent negotiations that often accompany them, new video entrants will have limited ability to compete with existing cable companies on both price and selection through greater channel choice and more diverse programming.

Finally, in an era of technology convergence, it is essential that Congress enact strong, enforceable prohibitions on broadband network discrimination. The appearance of integrated video and broadband services, like franchised video over the Internet (IPTV), must not distract us from this fundamental point. The build-out of fiber optic IPTV networks will naturally involve costs for the new operators. There will be a temptation to recover these costs by precluding subscriber access to competitive video and broadband service offerings that consumers can only reach over the same line that brings them IPTV. As Congress considers easing the entrance of the Bell companies into video service, it must include strong, enforceable network neutrality policies required to protect consumers and preserve the Internet as a source of innovation and competition. Consumers, not network operators, should determine winners and losers in the online marketplace.

### **Concentrated Video Markets Have Resulted in Skyrocketing Cable Bills**

The last decade has brought a dramatic increase in concentration and clustering of video systems. Mergers have been executed between the first, third and fourth largest companies, creating a single giant that towers over the industry, almost twice as large as the second largest cable operator. Regional markets have been drawn into huge clusters of systems. In a pending merger, the top two cable operators propose to devour the number seven cable company and sharply increase their control over regional markets. This regional clustering has increased sharply since 1994, when less than one-third of cable subscribers were in clusters.<sup>4</sup> Today, the figure is over 80 percent.<sup>5</sup> Cable systems that are part of a larger national cable operator charge prices that are more than five percent higher than those of unaffiliated, independent distributors.<sup>6</sup>

And while cable mergers abound, competition between cable systems is almost nonexistent; head-to-head competition is moribund.<sup>7</sup> Out of more than 3,000 cable systems, head-to-head competition exists in fewer than 200. In short, only about one percent of franchise territories have experienced head-to-head competition between cable companies. The failure of competition in multichannel video is most evident in local markets. Although facilities-based competitors target larger urban areas, 98 percent of the homes passed by cable companies have a choice of just one facilities-based provider.<sup>8</sup>

Competition from satellite television is weak as well. Cable's dominance as the multichannel medium is overwhelming, with a subscribership of approximately two-thirds of all TV households. Its penetration is about three times as high as satellite. Because a large number of satellite subscribers live in areas that are not served by cable, competition in geographic markets is even less vigorous than the national totals suggest. Cable has about four times the market share of satellite in areas where both are available. The Government Accountability Office has found that satellite television penetration, even with the addition of broadcast stations, has little or no impact on consumers' monthly cable bills.<sup>9</sup>

Consolidation in both distribution and programming has resulted in cable prices that have risen by more than 64 percent in the last ten years—approximately two and half times the rate of inflation as measured by the Consumer Price Index.<sup>10</sup> (Attachment 1) Last month, consumers across the country were treated to notices that their cable bills would be rising yet again. Cable rates went up by 7 percent in Seattle, Washington and Hartford Connecticut; by nearly 8 percent in Portsmouth, New Hampshire and St. Louis, Missouri; and by almost 9 percent in Deptford, New Jersey. (Attachment 2)

### **Ensuring All Subscribers Enjoy the Benefits of Competition**

In the few areas where actual facilities based competition exists, consumers enjoy cable prices that are 15 percent lower than non-competitive markets.<sup>11</sup> This suggests that the entrance of the Bell operating companies into video distribution offers the promise of lower prices. But one of the great disappointments of the 1996 Telecommunications Act has been the failure of competition from alternative technologies to break down the market power of the incumbents. This track record urges skepticism about promises about future technologies that are "just around the corner," which will break the grip of the cable monopoly.

Skepticism is particularly warranted given statements made last year by then-SBC that it would roll out Project Lightspeed, the company's IPTV video offering, to 90 percent of its high-value customers—those willing to spend up to \$200 on com-

munications services per month. These high-value customers make up just 25 percent of its subscriber base. SBC also contended it would provide the video service to just 5 percent of low value customers that constitute 35 percent of its customer base.<sup>12</sup> Assurances that “low-value customers” would still be able to receive satellite video through SBC’s affiliation with Dish Network ring hollow, given the failure of satellite to provide meaningful price discipline. Instead, SBC’s statements suggest that it might seek to offer services only in largely affluent franchise areas, disregarding franchise areas that are made up of lower or middle income communities.

Anecdotal evidence suggests that Verizon is seeking franchise agreements and its FiOS service roll out in some of the wealthiest counties in the country. For example, Verizon has negotiated or signed franchise agreements to date with largely affluent local franchise areas—such as in Fairfax County, Va. (where it has four franchise agreements in place for Herndon, Fairfax County, Fairfax City and Falls Church); Howard County, Md.; Massepequa Park in Nassau County, N.Y.; Nyack and South Nyack, in Rockland County, N.Y.; and Woburn in Middlesex County, Mass. In terms of median family income, Fairfax County ranks number one nationally; Howard ranks fourth; Nassau 10th; Rockland 12th and Middlesex 17th.<sup>13</sup> New Jersey, in which Verizon is seeking a statewide franchise but resisting state-wide build-out requirements, is home to 12 of the top 100 richest counties in the Nation in terms of median family income.

SBC’s lightly veiled admission of economic redlining and Verizon’s video franchising efforts to date raise two questions: First, will the new entrants enter only largely affluent franchise areas of the country that are densely populated? Second, if they enter mixed income franchise areas (those with both high and low income populations) will they build out service to all parts of the franchise area—even into rural segments? Verizon has committed to universal or nearly universal build-out in several of its franchise agreements. However, given the wealth of those areas, it reveals little as to whether the company will voluntarily build-out to all parts of a mixed-income franchise area, assuming it ever enters them. However, what those commitments do show is both that build-out has been important to those localities and that it need not be a barrier to the company’s entry. On the contrary, Verizon has quickly negotiated agreements that offer substantial community services and consumer protections.

Many of these agreements provide for universal or near universal build-out to the entire franchise area, franchise fees upward of eight percent, requirements that customer service remain local, compliance with customer service standards and regular submission of reports on customer complaints and service outages, support for institutional networks, up to 19 public, educational and governmental channels with resources supporting them, and franchise revocation provisions for material violations of the agreement.

These agreements, and the dozens more that Verizon is pursuing, also suggest that neither build-out nor the local franchising process need be a barrier to entry. AT&T’s failure to secure franchise agreements is not the result of the process; it is self imposed. The company has refused to concede that The 1934 Communications Act Title VI franchise requirements apply to its service and has even filed suit against counties seeking franchise agreements prior to service roll out.<sup>14</sup> Rather than seek entry to markets, it has opted to delay pending national and state exemptions from franchising requirements and the resolution by the courts.

If Congress seeks to streamline the franchising process nationally in order to speed entry, it must maintain the consumer protections and community obligations that local franchising authorities are currently empowered to negotiate, establishing national protective requirements and obligations that apply to all franchise areas entered.

The most important of these protections are requirements for universal build-out to all residents within franchise areas. Considering how important build-out requirements have been in preventing redlining in cable service and their prominence in Bell video franchise negotiations to date, it is essential that Congress impose a comparable requirement nationally should it opt for a national franchising approach to Bell video service. It is the only way to ensure that those families who most need cable rate relief will get it.

Anti-redlining provisions, comparable to those in Title VI of the 1934 Communications Act, on their own will be not be sufficient to ensure that low-income areas are not excluded from any competitive benefits that Bell entry may bring. Title VI anti-redlining provisions have only been effective because they exist in *tandem* with the ability of local franchise authorities to require service throughout the franchise area over time. Without the ability to require service to the entire area, anti-redlining provisions are toothless.



In the absence of national build-out requirements, Congress should require new entrants to provide sufficient financial resources to local communities, in addition to reasonable rights-of-way fees paid, for use in fostering alternative means of ensuring broadband competition and service to the entire community. Those resources could be used to establish community broadband networks, competitive commercial services to areas underserved by the new entrant, or other means of assistance to help low-income consumers access advanced telecommunications services at affordable prices and meet local community communications needs. In addition, such resources should be provided up-front, or on an ongoing basis to facilitate the community's efforts to meet the needs of the underserved. That is, under no circumstances should national franchising take a wait-and-see approach to build-out. If it is not mandated, then communities must have both the right and the resources available immediately to begin efforts to serve low-income residents. Given AT&T's statements and Verizon's franchising behavior, a "trust us" approach is unacceptable. Each provider must also be subject to reporting requirements that detail where service is being provided in the franchise area and to how many households. Without adequate data, there can be no enforceable assessment of discrimination.

Additionally, Congress must prohibit preemption of community broadband projects. At the same time as Verizon and AT&T tout the benefits of competition in cable, they are aggressively trying to foreclose it in broadband by seeking state preemption of community broadband projects that promise to bring a third competitor into some markets. Cable and DSL providers control almost 98 percent of the residential and small-business broadband market. And since there are no "open access" requirements for telephone and cable companies to lease their broadband lines, the only opportunities for true competition in broadband are new broadband providers using their own lines or facilities. Community broadband service may be one of the few remaining opportunities for a third competitor in high-speed Internet over which all media—TV, telephone, radio and the Web—will eventually be delivered. Where the Bells fail to offer high-speed Internet and Internet-based video services, it is essential that communities be able to step in and fill that gap. Even where service is provided, the potential threat of a third provider can help discipline prices.

#### **Lowering Costs to Subscribers**

Because the presence of actual facilities-based, video providers has lowered prices in markets where competition exists, there is reason to believe that a comparable effect will be experienced when the Bells enter previously monopoly markets. But Congress should be skeptical that a national franchise for Bell entrants will necessarily reduce prices for an entire franchise area when the new entrant offers service to just part of it. Dominant cable providers are exempt from the statutory requirement for a uniform rate structure throughout the franchise area when a competitor offers service to just half of that area and when at least 15 percent of those offered the competitive service actually subscribe to it. That provides the opportunity for the incumbent cable provider to lower rates where competitive services are offered and raise them in unserved areas. Underserved consumers would then be hit twice—they will not have the benefit of a second choice for video subscription services and they may be faced with higher cable rates.

#### **Meeting Community Needs**

In addition to nationally imposed build-out requirements or, in lieu of those requirements, significant financial resources for communities to offer their own broadband services, any national approach to franchising must retain, at a minimum, provider obligations to serve local communities by requiring national obligations for:

- *Institutional Networks*: Title VI of the Communications Act of 1934 provides for local government requirements that schools, libraries and government buildings be connected through the cable network by allowing for the creation of institutional networks (I-Nets). Any national franchise should provide either financial resources or provider obligations to provide for I-Nets.
- *Local, Independent and Diverse Programming*: Title VI also provides that franchising authorities may "assure that cable systems are responsive to the needs and interests of the local community" including Public, Education and Government (PEG) access channels. Any national franchise should provide comparable provisions to ensure that community needs are met and to provide for both capacity and resources for PEG channels.
- *Local Consumer Protection*: Title VI authorizes franchise authorities to establish consumer protections and technical qualifications to ensure that consumers get

the service they are promised. These local consumer protections must be retained in any national approach. Consumers must have a means for timely and local resolution of complaints against their service providers. Federalizing consumer protection is neither workable nor acceptable. The Federal Communications Commission is ill-equipped to address billing, services and outages complaints. Customer service, the process for resolving complaints, reporting requirements and accountability of providers to officials must remain local, with appropriate and meaningful sanctions for violations.

- *Local Control over Rights of Way and Appropriate Compensation for Their Use:* It is essential that localities retain full control over management of their rights of way. Note that Verizon has already negotiated agreements with many localities for a five percent franchise fee plus additional contributions for community needs. If a national franchising process is to replace local control, it is essential to ensure that national minimums are placed both on the franchise fee and additional resources to meet community needs.

### **True Competition Requires Prohibition on Programmer Tying Arrangements**

In order for true price competition to emerge in multichannel video markets, Congress must address anticompetitive tying requirements imposed by dominant media companies.

At the same time that the cable distribution market has consolidated, concentration in video programming has increased dramatically. Broadcast giants and cable programmers have merged; broadcast and satellite distributors have merged; and cable distributors increasingly offer their own programming or have gained ownership stake in other video programmers. The anticompetitive effects of concentration in video programming decreases the likelihood that new Bell video market entrants will be able to effectively compete on price and on channel offerings.

Program carriage contracts typically stipulate that distributors offer several or all of the programmer's channels in the most widely viewed tier (usually the expanded basic tier), regardless of consumer demand for them, and prohibit channels from being offered to consumers individually. These bundling requirements have contributed to increased size and price of the expanded basic tier, which has increased in cost by two and a half times compared to the basic tier.<sup>15</sup> Consumers are forced to pay more for channels that they don't watch, just to get the few channels that they do want.

Media companies can secure these commitments because of their market power. Six media giants, including the top four broadcasters, dominate the programming landscape, accounting for three-fourths of the channels that dominate prime time.<sup>16</sup> Four are networks (ABC, CBS, FOX and NBC) and two are cable operators (Time Warner and Comcast). The networks use the retransmission consent negotiations for carriage of the local stations they own and operate to leverage local cable carriage of their other channels. These six companies also completely dominate the expanded basic tiers and the realm of networks that have achieved substantial cable carriage. These six entities account for almost 80 percent of the more than 90 cable networks with carriage above the 20 million subscriber mark.

Moreover, cable operators are majority owners of one-fifth of the top 90 national networks—a substantial stake in the programming market.<sup>17</sup> They also own minority stakes in other networks, as well. The Government Accountability Office found that vertically integrated distributors or those affiliated with media companies are more likely to carry their own programming,<sup>18</sup> contributing to the size and cost of the expanded basic tier. These vertically integrated networks continue to have the largest number of subscribers,<sup>19</sup> and are the most popular.<sup>20</sup> Program ownership by dominant incumbent cable distributors also provides the incentive to withhold carriage of cable networks they own from competitive video distributors through use of the "terrestrial" loophole in current law.

Independent, unaffiliated cable distributors that do not own their own programming have consistently expressed concerns about exclusionary tactics, contractual bundling requirements, and coercive retransmission consent negotiations that limit their ability to respond to customer demand for more choice in program packages and for lower prices.<sup>21</sup>

Regardless of the outcome of video franchising, if Congress wishes to promote video competition, it must address and prohibit anticompetitive and coercive contractual requirements for program bundling. Failure to do so will impede the ability of any new video market entrant, including Verizon and AT&T, to compete on price. They'll be forced to buy the same channels their competitor is carrying and to pay the same or greater licensing fees. Worse, they will be precluded from offering consumers channels individually, rather than bundled in a large package, even though

doing so may give them an opportunity to differentiate their services from the incumbent cable monopoly and respond to strong consumer demand for greater channel choice.

### **True Competition Requires Network Neutrality**

While it is certainly true that head-to-head competition helps consumers, it is also important to recognize that a duopoly (cable and telephone companies) is not enough to create vigorous competition that gives consumers the full benefit of a competitive video and broadband market. As subscription video services are increasingly offered using Internet-based technologies, maintaining the Internet as a neutral platform on which network owners cannot discriminate becomes even more essential. The Bells are not the only providers who could compete with cable. Increasingly, “video on demand” is being offered over the Internet, where consumers can access movies or pay to watch a single episode of a single program. As Congress considers ways to increase competition in video services, it must not overlook independent Internet content providers as a third competitor. But that source of competition will be squelched if Congress fails to adopt strong, enforceable prohibitions on network discrimination.

As the Bells enter the video marketplace, there exists an even stronger incentive for both cable and telephone companies that own and control the broadband pipes to discriminate against companies that offer services over the Internet that compete with their own. Both cable and telephone companies who also own and control broadband networks will have an incentive to use their network control to prioritize their own content over others, preventing users from accessing competitive video services offered by Internet providers.

Moreover, there will be a temptation to recover the costs of the new video networks by charging not only broadband subscribers but also those firms offering content and services over the Internet. Recent media reports describe operators’ plans to create pay-for-play “tiers” of premium service. The fees charged to content and service providers would inevitably find their way down to consumer wallets *that have already paid for access*. Though this may be rational market behavior for short-term return on investment, it is patently discriminatory and reflects a fundamental change in the nature of the Internet.

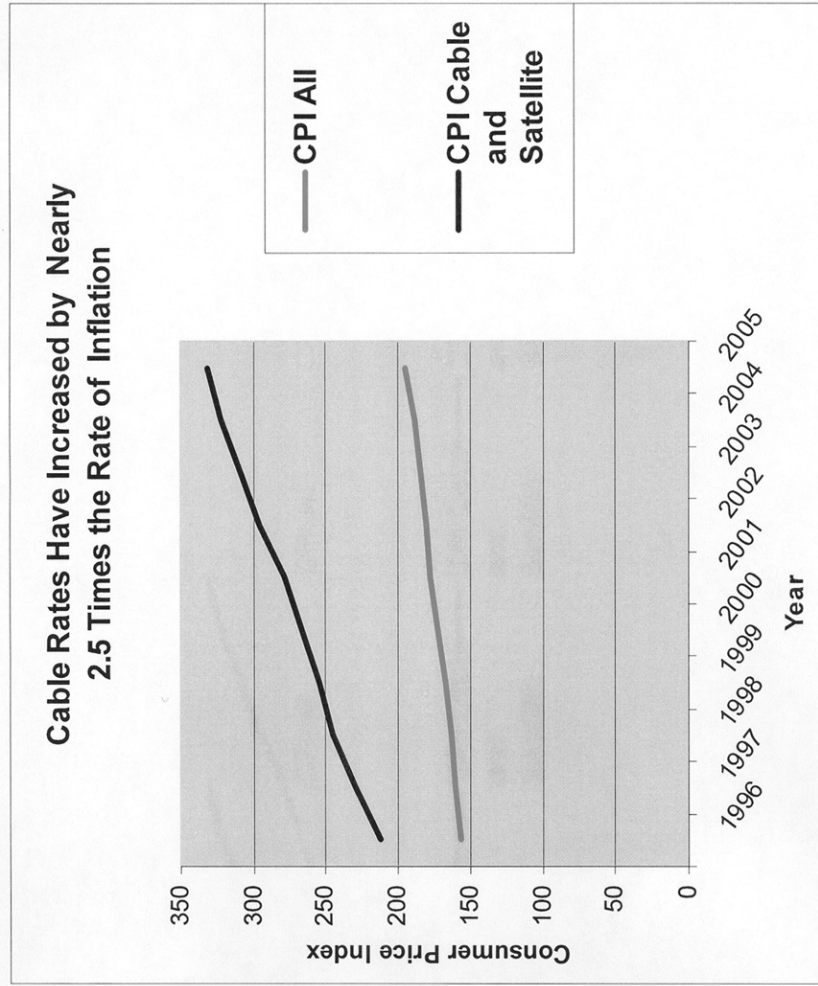
With a strong network discrimination prohibition, the promise for competition in video will come not just from Verizon and AT&T, but from any other entrepreneurial company that offers video via the Internet in a manner more appealing to consumers. Without such a prohibition, however, that promise of competition and innovation will be lost.

The appearance of integrated video and broadband services like franchised IPTV should not distract policy makers from the fundamental and pro-competitive policy of network neutrality. Similar services and content on the Internet must be treated alike, and network owners must not be allowed to favor their own services by blocking customer access to competitive services offered on the Internet or to erect barriers to entry into what has been a competitive online marketplace by requiring innovators to pay for access to the network.

It is imperative that, as part of its consideration of competition in video markets, Congress prohibit network operators from blocking, impairing, or discriminating between content and service providers. The consumer, not the network operator, should determine winners and losers in the online marketplace.

### **Conclusion**

The need for greater competition in the monopolistic video marketplace is an urgent one—but it has been urgent for ten years. We urge Congress to take the time to consider the many policy issues that must be addressed beyond the question of franchising if it seeks to spur true video competition and the consumer benefits that spring from it. These include mandatory build out requirements or in lieu thereof, resources to meet the needs of underserved consumers; consumer protections and provider obligations to serve community needs; prohibitions on preempting municipal broadband systems; prohibitions on anticompetitive contractual channel bundling requirements that reduce consumer choice and prevent product differentiation; and a strong enforceable prohibition on network discrimination.



## ATTACHMENT 2

## Announced Cable Rate Increases for 2005, 2006

Community	Cable Provider	Rate Increase (in percent)
Ann Arbor, MI	Comcast	6.0
Baton Rouge, LA	Cox	5.0
Boston, MA	Comcast	5.9
Burlington, VT	Adelphia	5.2
Cincinnati, OH	Time Warner	6.1
Clark County, WA	Comcast	7.1
Columbia, SC	Time Warner	4.9
Deptford, NJ	Comcast	8.9
Evansville, IN	Insight	8.4
Hartford, CT	Comcast	7.0
Houlton, ME	Polaris Cable	5.0
Houston, TX	Time Warner	3.4
Lincoln, NE	Time Warner	5.0
Little Rock, AR	Comcast	3.5
Madison, WI	Charter	4.4
New York City, NY	Time Warner	6.0
New York City, NY	Cablevision	2.8
Northern, KY	Insight	3.3
Oklahoma City, OK	Cox	5.0
Orlando, FL	Bright House	5.0
Phoenix, AZ	Cox	5.0
Portland, OR	Comcast	7.1
Portsmouth, NH	Comcast	7.9
Providence, RI	Cox	4.7
Reno, NV	Charter	5.9
Richmond, VA	Comcast	5.9
Rochester, NY	Time Warner	5.6
Rockford, IL	Insight	7.0
Sacramento, CA	Comcast	6.0
San Francisco, CA	Comcast	5.7
St. Louis, MO	Charter	7.8
Tupelo, MS	Comcast	5.5
Wheeling, WV	Comcast	9.0

Source: Local Media Accounts

**ENDNOTES**

<sup>1</sup> Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the state of New York to Provide consumers with information, education and counsel about good, services, health and personal finance, and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* with more than 5 million paid circulation, regularly, carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

<sup>2</sup> The Consumer Federation of America is the Nation's largest consumer advocacy group, composed of over 280 state and local affiliates representing consumer, senior, citizen, low-income, labor, farm, public power and cooperative organizations, with more than 50 million individual members.

<sup>3</sup> Free Press is a national nonpartisan organization with over 200,000 members working to increase informed public participation in crucial media policy debates.

<sup>4</sup> Federal Communications Commission, 2002b, Table C-1. Kagan, Paul Associates. *Major Cable TV System Clusters*. Carmel, California: Paul Kagan Associates 1998; Federal Communications Commission, Tenth *Annual Report*.

<sup>5</sup> Kagan, Paul Associates. *Major Cable TV System Clusters*. Carmel, California: Paul Kagan Associates 1998; Federal Communications Commission, Tenth *Annual Report*.

<sup>6</sup> General Accounting Office. "Issues Related to Competition and Subscriber Rates in the Cable Television Industry," Report to the Chairman, Committee on Com-

merce, Science, and Transportation, U.S. Senate, October 2003, GAO-04-8, Appendix IV.

<sup>7</sup> Subcommittee on Antitrust, Monopolies and Business Rights, Committee on the Judiciary, United States Congress. *Competitive Issues in the Cable Television Industry*. March 17, 1988; Committee on Energy and Commerce, Report on H.R. 4850, Senate Committee on Commerce and Science, *Report on S12*.

<sup>8</sup> Federal Communications Commission. "Report on Cable Industry Prices." *In The Matter of Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992*, Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment, 2002, p. 20.

<sup>9</sup> General Accounting Office. "Issues Related to Competition and Subscriber Rates in the Cable Television Industry," Report to the Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, October 2003, GAO-04-8, p. 11. "The Effect of Competition From Satellite Providers on Cable Rates." Report to Congressional Requesters, GAO/RCED-00-164, July 2000.

<sup>10</sup> Bureau of Labor Statistics, U.S. Department of Commerce, December 2005.

<sup>11</sup> GAO-04-8, p. 11.

<sup>12</sup> USA Today. "Cable, phone companies duke it out for customers," June 22, 2005.

<sup>13</sup> U.S. Census Bureau. Median Family Income; Counties within the U.S., 2004 American Community Survey.

<sup>14</sup> Multichannel News. "SBC Sues Calif. City Over Access," December 19, 2005.

<sup>15</sup> Mark Cooper, *Time to Give Consumers Real Cable Choices*, Consumer Federation of America & Consumers Union, July 2004, p. 5.

<sup>16</sup> MM Docket No. 92-264, Comments of CFA, CU, Free Press in the Matter of The Commission's Cable Horizontal and Vertical Ownership Limits and Attributions Rules., August 8, 2005.

<sup>17</sup> GAO-04-8, p. 27.

<sup>18</sup> *Id.* at 29.

<sup>19</sup> Federal Communications Commission, Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming: Eleventh Annual Report, January 14, 2005, ¶ 150.

<sup>20</sup> *Id.* at ¶ 151.

<sup>21</sup> EchoStar Communications Corporation, Testimony of Charles Ergen, Chairman & CEO, EchoStar Communications Corporation before the Senate Committee on Commerce, Science and Transportation, January 19, 2006; Testimony of Bennett Hooks, Chief Executive Officer, Buford Media Group on behalf of the American Cable Association, before the Subcommittee on Telecommunications and the Internet, July 14, 2004.

The CHAIRMAN. Thank you. Our last witness is Gigi Sohn, President and Co-Founder of Public Knowledge here in Washington.

**STATEMENT OF GIGI SOHN, PRESIDENT/CO-FOUNDER,  
PUBLIC KNOWLEDGE**

Ms. SOHN. Thank you, Chairman Stevens, Co-Chairman Inouye and Members of the Committee. I'm president of Public Knowledge, which is a nonprofit organization that promotes fundamental Democratic principles and cultural values, openness, access and the capacity to create and compete for the digital age.

Public Knowledge believes that competition provides consumers with the widest choice of video services at the lowest prices. While the local franchising model produced many important benefits over the past 20+ years, it also created disadvantages, both for incumbent and competitive video service providers.

Today, market conditions require another approach. If consumers are to reap the benefits of competition, then Congress should create a national franchise for video service providers. We believe that, subject to certain conditions that preserve the best features of local franchises, permitting broadband video service providers to avoid negotiating thousands of individual franchise agreements will bring more competition to market faster, resulting in greater consumer choice and lower prices. If it adopts national franchise, Congress

should ensure four things: One, that localities remain empowered to control their streets and protect their citizens and that they receive reasonable compensation for granting the franchise; two, that broadband video service providers make available adequate capacity for public, educational and governmental uses; three, that universal access to broadband services is promoted; and four that broadband Internet providers make their networks available to all applications, content and services are on a nondiscriminatory basis.

I want to focus on this fourth condition. As we undertake this discussion of video franchises, I am truly heartened to hear so many Members of this Committee understand that broadband video is not just a stand-alone service, but it is also part of telephone and cable companies suite of broadband offerings. The companies are marketing their video services in this matter, as just one piece of a larger broadband pie that is entirely different from traditional cable and is based, in part, on that distinction that broadband video service providers are seeking a national franchise.

Thus, the decisions Congress makes regarding video regulation will impact the rollout of new, sophisticated broadband conduits that will carry not only one-way television-like video, but also interactive video, medical and educational services, super high-speed data and telephone services. FCC Chairman Martin recognized this impact at the Commission's meeting in Keller, Texas, last Friday when he said that fostering the spread of new video services "promotes the deployment of the broadband networks over which the video services are provided".

This country has a 20-year history of allowing localities to administer their cable franchises. Any departure from this policy should only be granted if the public interest benefits of a national franchise are clearly set forth in the law. Therefore, should Congress give broadband video service providers the extraordinary regulatory relief and cost savings provided by national broadband video franchises, it should also require net neutrality. Net neutrality will ensure that those same companies make their broadband networks available to all applications, content and service providers on a nondiscriminatory basis.

The Internet has become a powerful engine of innovation, communication, education and economic growth because of, and not in spite of, a requirement that network providers allow consumers to access any application, content or service without fear of gatekeeper control. Recent legal and policy changes will move that obligation giving broadband network operators the ability and incentive to favor content and services in which they have a financial interest to the detriment of competitors and consumers.

Public Knowledge recently issued a report, which is appended to my written statement, finding at least eight documented examples of discrimination or blocking by cable, wireless and phone companies. Furthermore, several economic studies show that broadband network operators will have increasing incentives to block traffic. A net neutrality requirement would address real harms and need not involve the burdensome revenue to a regime, and it would provide a reasonable balance, the tremendous benefits that a national franchise would give broadband video service providers.

In closing, Chairman Stevens, last week, you asked some of the witnesses at the Committee's net neutrality hearing whether Congress should completely rewrite the Communications Act, whether it should undertake a narrow bill or whether to do nothing at all. My answer is this, the public interest would best be served by a narrow bill that provides national franchise relief for broadband video services and requires net neutrality for broadband, Internet and network operators. Thank you. I look forward to your questions.

[The prepared statement of Ms. Sohn follows:]

PREPARED STATEMENT OF GIGI B. SOHN, PRESIDENT/CO-FOUNDER, PUBLIC KNOWLEDGE

Chairman Stevens, Co-Chairman Inouye and other Members of the Committee, my name is Gigi B. Sohn. I am President of Public Knowledge, a nonprofit public interest organization that addresses the public's stake in the convergence of communications policy and intellectual property law. Public Knowledge promotes fundamental democratic principles and cultural values—openness, access, and the capacity to create and compete—that must be given new embodiment in the digital age. I thank the Committee for inviting me to testify on video franchising issues.<sup>1</sup>

**Introduction and Summary**

Public Knowledge believes that competition provides consumers with the widest choice of video services at the lowest prices. While the local franchising model produced many important benefits over the past 40 years, it also created disadvantages both for incumbent and competitive video service providers.

Today, new market conditions require another approach. If consumers are to reap the benefits of competition, then Congress should create a national franchise for video service providers. We believe that, subject to certain conditions that preserve the best features of local franchises, permitting broadband video providers to avoid negotiating thousands of individual franchise agreements will bring more competition to market faster, resulting in greater consumer choice and lower prices.

A national franchise also provides huge benefits to new broadband video service providers. These benefits include enormous cost savings and greater speed bringing services to market. The one-step process of a national franchise would be a dramatic change from the way we have regulated video services for the past four decades.

As we undertake this discussion of video franchises, we must recognize that we are not only talking about a service—we are talking about a technology and transport mechanism with capabilities far beyond ordinary video programming services. The decisions Congress makes regarding video regulation will impact the rollout of new, sophisticated broadband conduits that will carry not only video, but also data and telephone services. Rather than splitting hairs, or hair-thin fiber, Congress should recognize that it is opening the way not only for video into the home, but for advanced broadband offerings.

While considering the franchise issue, we suggest Congress balance the tremendous benefits that a national franchise would give to broadband video service providers with a requirement that those companies make their networks available to all applications, content and service providers on a non-discriminatory basis. This "net neutrality" requirement will ensure, in light of recent legal and policy changes, that the broadband Internet remains the most powerful engine of economic growth, education and communication on the planet.

**A National Franchise Would Benefit Consumers**

It is no mystery that more competition leads to lower prices and greater choice in the multichannel video market. According to a recent FCC report, average cable rates for basic and expanded basic service were 15.7 percent lower than in communities with a competing wireline overbuilder compared to those communities without a wireline overbuilder.<sup>2</sup> Similarly, in communities with a competing wireline overbuilder, the number of channels on basic and expanded basic increased by 4 percent in 2003 and by 5.5 percent for the period of July 1998–2004.<sup>3</sup>

<sup>1</sup>I would like to thank Public Knowledge interns Neil Chilson and Mike Larmoyeux for their assistance in researching and drafting this testimony.

<sup>2</sup>See Report on Cable Industry Prices, 20 FCC Rcd 2718, 2721, at ¶ 12 (2005).

<sup>3</sup>*Id.* at ¶ 11.



Somewhat more surprising, however, is the severe lack of robust video competition, or at least what the FCC considers “effective” competition.<sup>4</sup> According to the most recent video competition order, only 3.7 percent of areas served by cable meet the standard for effective competition based on the Commission’s four-part test.<sup>5</sup>

A national franchise regime would quickly bring the benefits of competition to consumers, because competitive video providers would avoid thousands of individual negotiations with localities. We already see the consumer benefits, in price and choice, in the brief rollout of Verizon’s FiOS service. For example, a recent Bank of America analysis showed that in each of the three markets where Verizon has rolled out its service, incumbent cable operators have offered consumers prices far lower than their previously advertised prices. If, as discussed below, Congress maintains the best features of local franchising while implementing a national franchise regime, there is no good policy reason to keep this competitive benefit away from consumers nationwide. Nor is there any good policy reason not to prohibit incumbent video service providers from benefiting from this streamlined process after their current agreements have expired.

### **The Best Features of Local Franchising Should Be Retained**

Should Congress choose to adopt a national franchise, it should retain some of the important and best features of local franchises. First, it should ensure that localities remain empowered to protect their streets and their citizens, and that they receive compensation for the grant of the franchise. Localities should have control over their rights of way for public safety or zoning purposes, and they should retain the ability to enforce consumer protection standards. However, these powers should not be used to recreate the local franchise agreement by permitting localities to make demands of broadband video service providers that go beyond those narrow purposes.<sup>6</sup>

Second, Congress should require that broadband video service providers make adequate capacity available for public, educational and governmental uses, including institutional networks for local public safety. This capacity should, at a minimum, be no less than what the incumbent cable operator already provides.

Third, Congress should use the national franchise process to promote the goal of universal access to broadband. As discussed below, new broadband video service is interrelated to broadband Internet service. Thus, any mechanism that speeds access to broadband video service would also help speed access to broadband Internet service. This is a vital goal in a country which is ranked 16th in broadband adoption worldwide.

<sup>4</sup>“Effective competition exists where the Commission has found that a multi-channel video programming distributor (MVPD) meets one of the four tests within its franchise area: (1) fewer than 30 percent of households subscribe to service of the cable system (the “low penetration test”); (2) at least two MVPDs serve 50 percent or more of households and at least 15 percent of those households takes service other than from the largest MVPD (the “overbuild test”); (3) a municipal MVPD offers service to at least 50 percent of households (the “municipal test”); (4) a local exchange carrier or its affiliate (or any MVPD using the facilities of the LEC or its affiliate) offers video programming service other than DBS comparable to the service of an unaffiliated MVPD (the “LEC test”). *In re Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992*, 20 FCC Rcd 3485 at n.3 (2005).

<sup>5</sup>Since a cable operator must affirmatively seek certification from the FCC of the existence of effective competition, these numbers do not reflect the actual number of communities that might meet the test. However, even if the FCC’s numbers were multiplied by a factor of ten, nearly two thirds of the Nation’s areas served by cable would still lack effective competition. In any event, we would ask the Committee to rectify this lack of data by requiring that the FCC undertake a study to determine how many cable service areas are subject to effective competition. Two of the current FCC Commissioners have noted this lack of data. *Report on Cable Industry Prices*, 20 FCC Rcd at 2753–4 (Joint Statement of Commissioners Michael J. Copps and Jonathan Adelstein, concurring) (“the Commission gathers less than adequate data and conducts less analysis than it did even a few years ago.”).

<sup>6</sup>Public Knowledge believes that such local authority should mirror the narrowly tailored character of section 253 of the Communications Act. Section 253 preempts local regulation of telecommunication franchises, but provides specific exceptions including permission to “manage the public rights-of-way.” 47 U.S.C. § 253. Various local franchise authorities have interpreted these exceptions as broad grants of authority, but the courts have consistently denied such interpretations. See generally *TCG New York, Inc. v. White Plains*, 305 F.3d 67 (2d Cir. 2002) (holding that a city ordinance permitting local authorities to reject an application based on any “public interest factors” was preempted by § 253). Instead, courts have generally required all regulations to be substantially related to the management of rights-of-way. *Id.* at 81–82. Additionally, local authorities may only levy fines, penalties and other sanctions to preserve the public welfare. *Auburn v. Qwest Corp.*, 260 F.3d 1160 (9th Cir. 2001). Similarly specific and narrow local authority for video franchises will preserve the purposes of a national franchise yet enable appropriate local participation.

### **A Net Neutrality Requirement Should be Part of Any Effort to Codify National Franchising**

While this hearing is intended to be limited to the relatively narrow issue of franchising for new broadband video services, I would urge this Committee to view broadband video not as a wholly separate entity, but as just one piece of telephone and cable companies' larger broadband network offerings. AT&T's Project Lightspeed service is delivered over its broadband network, and Verizon's FiOS video service is delivered through the same pipe as its broadband Internet service (albeit via a different laser). Indeed, both companies are making no distinction between their video, voice and data services, and instead are marketing their services as broadband services that are wholly different from traditional cable. Here is how Verizon CEO Ivan Seidenberg described his company's broadband offerings to the National Association of Broadcasters last year:

We also are the first communications company to make a major commitment to taking fiber all the way to homes and businesses. This network, which we call FiOS, delivers super-fast data and Internet access at speeds of up to 30 megabits downstream and 5 megabits upstream. Our system will deliver 100 megabits downstream and up to 15 megabits upstream . . . making FiOS the fastest, most interactive network being deployed in America today. . . .

Both of these next-generation networks [FiOS and Verizon's wireless broadband network] are setting a new standard for broadband services in America. They provide a common protocol and a common infrastructure for voice, data and video services. They link to all kinds of interactive devices—anywhere, anytime. They are built for multi-tasking, and they enable a whole new generation of innovative services—from voice-over-IP to video messaging to multi-player games, shopping, interactive learning and lots of others.

Similarly, AT&T Executive Vice President Lea Ann Champion told the House Commerce Committee:

In short, we are not building a cable network, nor do we have any interest in being a cable company offering traditional cable service. Instead, we intend to offer customers a new total communications experience, one that they can customize to suit their families' needs and tastes.

Skeptics may say that we have been talking about media "convergence" for the past 20 years, but as Mr. Seidenberg's speech suggests, that convergence is happening, and it is happening now. Anyone who attended the International Consumer Electronics show saw currently available technologies, that blur the lines between broadcast, cable, and Internet video. The day when a consumer will not be able to distinguish whether her video service came from traditional cable or the Internet is fast approaching—and many would say it is already here.

Therefore, should Congress grant video providers the extraordinary regulatory relief represented by national broadband video franchises—turning nearly 40 years of local control of video services on its head—Congress must also ensure "net neutrality." Net neutrality requires the broadband Internet pipe to remain open to all applications and services, including video, on a non-discriminatory basis.<sup>7</sup> The Internet has become an extraordinarily popular engine of innovation, social networking and commerce because of, not in spite of, an enforceable obligation. That obligation required network providers to keep their networks open to all consumers, applications, content and service providers. Recent Supreme Court and FCC rulings defining broadband networks as unregulated "information services" removed that obligation. As a result, broadband network operators now have the same authority as traditional cable systems to control the content, services and equipment consumers receive or use, and to favor content and services in which they have a financial interest. And because the telephone and cable operators who own nearly all broadband networks in this country are what Consumer Federation of America Research Director Mark Cooper calls a "dynamic duopoly," they have the ability and the incentive to abuse that authority to the detriment of competitors and consumers.

Oponents of net neutrality claim that it is a "solution in search of a problem." But the search for a problem is brief when executives of two of the largest broadband network providers announce publicly that their companies intend to discriminate. AT&T CEO Ed Whitacre's statement to *Business Week* that "for Google or Yahoo! or Vonage or anybody to expect to use (AT&T's broadband) pipes for free is nuts," is now legend. Similarly, Verizon Executive Vice President John Thorne's

<sup>7</sup>Public Knowledge is not advocating "net neutrality" for video services regulated solely under Title VI of the Communications Act.

statement last week that Google’s “free lunch”, *i.e.*, free transport over broadband networks, is about to end,<sup>8</sup> demonstrates a very real intent to discriminate.

Moreover, in a white paper that Public Knowledge released last week, we document not only instances of blocking and degradation of certain applications and content by network providers, but also show that technologies are being marketed to network providers for such purposes. The white paper, entitled “Good Fences Make Bad Broadband: Preserving an Open Internet Through Net Neutrality” is appended to this testimony.

Opponents also claim that codification of “net neutrality” will lead to burdensome regulation that will stifle investment in broadband. But reserving the openness of the Internet and preventing it from become a closed system can be accomplished with a light regulatory touch. Public Knowledge believes that such a requirement should be very straightforward—preventing blocking or other degradation of content, application or services—while allowing network providers to handle legitimate legal, security and traffic issues. The FCC could enforce this requirement through a complaint process started by an aggrieved consumer, application, content or service provider.<sup>9</sup> Under Public Knowledge’s plan, the network provider would bear the burden of showing that it either did not discriminate or that it discriminated for the legitimate reasons set out above. And any application, content or service that is the subject of the complaint would remain unimpaired until the matter is resolved.

Telephone and cable companies will derive enormous benefits from a national franchise for video services. Companies will realize significant cost savings by avoiding expensive individual franchise agreement negotiations. Equally significant will be cost savings such as flat franchise fees and freedom from other financial obligations often provided for in franchise agreements. This one-step process is a radical change from the way we have regulated video services over the past forty years. Congress should balance this benefit with a requirement that these very same companies make their broadband pipes available to all applications, content and service providers without discrimination or degradation.

### Conclusion

In our increasingly broadband communications world, a national franchise for video services will expedite competition to the benefit of consumers. But a national franchise without a concurrent “net neutrality” obligation will give consumers far less than what they have come to expect in this new world. Thus, we urge this Committee and this Congress to balance any national franchise relief with a requirement that ensures that broadband networks are not subject to discriminatory gatekeepers. I thank you for inviting me to testify today, and I look forward to any questions you might have.

### ATTACHMENT

Public Knowledge, February 6, 2006

### GOOD FENCES MAKE BAD BROADBAND—PRESERVING AN OPEN INTERNET THROUGH NET NEUTRALITY

A Public Knowledge White Paper by John Windhausen, Jr.

### Executive Summary

The genius of the Internet is its promise of unlimited accessibility. With very limited exceptions, any consumer with an Internet connection and a computer can visit any web site, attach any device, post any content, and provide any service.

While the openness of the Internet is universally praised, it is no longer guaranteed, at least for broadband services. Recent Supreme Court and FCC rulings define broadband networks as unregulated “information services,” which means that the operators of broadband networks are no longer under any legal obligation to keep their networks open to all Internet content, services and equipment.

<sup>8</sup>Arshad Mohammed, “Verizon Executive Calls for End to Google’s ‘Free Lunch’”, *Washington Post*, February 7, 2005 at D1.

<sup>9</sup>“What we need instead of ‘anticipatory’ regulation is a market-driven approach. This does not mean that there is no role for government. It’s simply an updated role. Instead of attempting to anticipate how the market will develop and then write the rules governing that market, government empowers consumers to shape the market and thereby set the rules of the game. Government is not on the field calling the plays, or is it writing the rules. Instead, it fills a referee-like role, observing the field of play, responding to complaints from any of the players, and addressing cases of market failure.”

Broadband providers now have the same authority as cable providers to act as gatekeepers: the network owner can choose which services and equipment consumers may use. Network operators can adopt conflicting and proprietary standards for the attachment of consumer equipment, can steer consumers to certain web sites over others, can block whatever Internet services or applications they like, and make their preferred applications perform better than others.

This concern is not just theoretical—broadband network providers are taking advantage of their unregulated status. Cable operators have barred consumers from using their cable modems for virtual private networks and home networking and blocked streaming video applications. Telephone and wireless companies have blocked Internet telephone (VoIP—Voice over the Internet Protocol) traffic outright in order to protect their own telephone service revenues. Equipment manufacturers are marketing equipment specifically designed to “filter” out (*i.e.* block) VoIP traffic. Wireless companies often write limitations into consumers’ service agreements that have nothing to do with excessive bandwidth consumption.

The problem is likely to become worse in the near future. One telephone company executive threatened to put a stop to on-line providers that use the telephone network “for free” (even though on-line providers pay to connect to the network). Another telephone company executive openly announced that his company intends to establish a higher-priced “tier” of service reserved *exclusively* for content providers chosen by the network operator. This raises the concern that consumers and start-up application providers will be relegated to the “slow lane” on the information superhighway.

These examples of discrimination, which this paper shows are greater in number than the network operators like to acknowledge, are on the increase because network operators have economic *incentives* to discriminate. Network owners today are more than just passive providers of transmission capacity (the “conduit”); they also own and provide services, applications and equipment (the “content”). By giving their own (or their affiliated) applications and content preferential access to the network, they can extract greater profits than if they operate the network on a non-discriminatory basis.

As a result, several groups have called upon Congress to enact, or the FCC to adopt, an enforceable “Net Neutrality” rule to ensure the Internet remains open and accessible to all. Not surprisingly, the network owners object, arguing that such a policy is unnecessary and will delay their deployment of broadband technologies.

This paper analyzes the Net Neutrality debate in more detail. The paper is divided into four parts:

Part I is a reference guide on the Net Neutrality issue. It reviews the rights at stake, describes the terms used in the debate, provides a brief legal history of broadband network regulation, summarizes the positions of the parties, describes documented examples of discrimination or blocking, and includes matrices that compare the differences among parties and proposals for action.

Part II makes the case in favor of a Network Neutrality rule. It describes the enormous societal and economic benefits of keeping the broadband Internet network open to all users. Broadband networks are fast becoming the essential lifeline of our economy and society, carrying on-line commercial transactions, current events, local and national advertising, telemedicine and distance learning, music and entertainment, interactive games, and videoconferencing. Allowing the increasingly concentrated cable and telephone industries to have unchecked control over our access to these sources of information, entertainment and commerce is cause for great concern.

Net Neutrality is also important for our high-tech manufacturing industry. Billions of dollars are invested every year at the “edge” of the network by the high-tech computing industry, the on-line commerce industry, the gaming industry, the news and information industry, and the research community. A statutory Net Neutrality rule will give investors the confidence to support new, innovative applications. On the other hand, giving network operators the potential to block competing applications from getting on the network may be enough to frighten investors away from otherwise worthy new Internet applications.

In short, open broadband networks are vitally important to our society, our future economic growth, our high-tech manufacturing sector, and our First Amendment rights to information free of censorship or control. Even if an openness policy imposes some slight burden on network operators, these microeconomic concerns pale in comparison to the macroeconomic benefits to the society and economy at large of maintaining an open Internet.

Part III responds to four arguments against Net Neutrality raised by the network operators:

1) *Network operators allege that Net Neutrality is a “solution in search of a problem” because there is only one documented case of blocking.* In fact, network operators have already engaged in at least 8 known cases of blocking in the U.S. and are likely to block or interfere with more traffic in the future. Network operators have incentives to leverage their control over the network to reap additional profits in upstream markets.

2) *Network operators allege that Net Neutrality will interfere with their ability to manage their networks, for instance, to prevent spam, viruses and congestion.* In fact, there is no reason to believe that a simple non-discrimination policy should interfere with the operators’ network management responsibilities. Telephone companies have always managed their networks to protect against unlawful use even under a much more onerous common carriage regime.

3) *Network operators allege that Net Neutrality will interfere with their ability to earn a return on their broadband investment and that it will stifle their deployment of broadband networks.* In fact, Net Neutrality promotes broadband deployment because it increases the value of services and applications over the Internet, which increases consumer demand for broadband networks. The greater the demand, the more network operators will invest in broadband to meet it. Furthermore, there remain many opportunities for network operators to profit from their broadband investment that do not involve blocking or discrimination. For instance, network operators can continue to develop their own content and/or enter joint marketing arrangements or other promotional arrangements with other content providers.

4) *Network operators maintain that Net Neutrality will prevent them from creating “tiers” of service, or a “private Internet.”* In fact, Net Neutrality does not necessarily prevent network operators from offering levels of access, at higher rates, as long as the tier is offered on a nondiscriminatory basis to every provider and as long as all broadband customers are offered a minimum level of broadband service. A Net Neutrality principle does, however, prohibit the creation of a “private Internet” that grants *exclusive* access to the higher bandwidth levels to certain providers selected by the network operator.

Part IV provides an outline of a possible Net Neutrality rule or statute. Net Neutrality does not require detailed rules that require network operators to obtain government pre-approval to manage their networks. Network Neutrality can be enforced through a simple complaint process, as long as the network operator bears the burden of demonstrating that any interference with traffic is necessary.

For the full text of Good Fences Make Bad Broadband: Preserving an Open Internet through Net Neutrality,\* please visit: <http://static.publicknowledge.org/pdf/pk-net-neutrality-whitep-20060206.pdf>

The CHAIRMAN. Thank you very much. Thank you all. I regret that the decision to have you all be at the same table has meant the first four had to stay around till this time to have questions asked of them, but I do hope that you’ll give us the courtesy of trying to keep your answers short, and we’ll at least try to keep our time short so that you can be sure that we won’t go too far into the afternoon. Let’s put it that way.

Let me start off by asking Mr. Seidenberg, how long has it taken you so far on average to get a franchise?

Mr. SEIDENBERG. Well, they vary, Senator, but it’s at least a year up to 14–15 months in some cases.

The CHAIRMAN. For each one?

Mr. SEIDENBERG. Some we’re not even encouraged to file because the municipalities see that there’s going to be controversy or there are going to be issues, so they tell us not to file. So, we have a lot in queue that we haven’t even filed yet. If I added that to the time period, I can tell you that the process is 18 to 24 months usually.

\*The information referred to has also been retained in Committee files.

The CHAIRMAN. Mr. Whitacre, does the time frame affect your decisions as to whether you should enter a particular market in terms of this transition?

Mr. WHITACRE. Yes, it does. As you know, we're doing IPTV, which is a little different than how Mr. Seidenberg's company is doing it. Technology is just now getting there, but of course, and we plan to cover like 1.8 or 3 million households by the end of the year. But certainly, it impacts that and, you know, we're reluctant, and you have to slow down when this franchise thing is hanging over you, so we're just getting started. We hope it gets resolved so that we don't really face that in other states.

The CHAIRMAN. Mr. Rutledge, I listened carefully to your statement. My memory is is when cable television entered the telephone business as a competitive local exchange carrier, Congress gave you the right with special rules, a no-buildout requirement and little regulation. Now, why shouldn't that same thing apply to the telephone companies as they come out into your market?

Mr. RUTLEDGE. Well, I think that the difference between the CLEC situation and the cable situation is that you have an existing network operator, a very large—both, you know, both of these companies are bigger than the entire cable industry, very large franchised or regulated public utility companies that have existing rights-of-way and existing networks. They're talking about upgrading their networks. The CLECs that were created around the country were new industries, new businesses, that had no existing infrastructure. So, it's a completely different situation.

With regard to voice over IP, though, the rules are the same for both industries today. The phone industry can provide voice over IP under the same conditions that cable operators can. Our company actually is a CLEC operator. We created a CLEC in the mid 1990's, and we filed tariffs with the states that we operate and created a business that primarily served businesses, not residential consumers.

The CHAIRMAN. You're telling me that fair is not fair.

Mr. RUTLEDGE. Pardon me?

The CHAIRMAN. You're telling me that fair is not fair, that the same privileges should not be given to the telephone companies to enter your business as you entered into theirs.

Mr. RUTLEDGE. Well, I don't think it is fair. I think that to allow the phone companies to cherry pick where they're going to put video, which I think is the real issue here, they want to serve only limited parts of communities. That's a very unfair thing for an existing entrenched operator to have that opportunity whereas we have just gone through a \$100 billion upgrade process and built out our entire network to all parts of the community.

The CHAIRMAN. OK. I want to live within my own time frame if you don't mind, OK? Ms. Panzino-Tillery, I understand what you're saying, but do you really think a local community should be able to say a communications company should upgrade traffic signals or put flowers along the highway, or shouldn't there be some limits to what a community can ask for as a secondary benefit after they get their fee for issuing a franchise?

Ms. PANZINO-TILLERY. There are limits, Mr. Chairman.

The CHAIRMAN. What are the limits?

Ms. PANZINO-TILLERY. Well, Title VI claims that only those replacements should have a direct connection to the provision of the cable service.

The CHAIRMAN. Say we need a traffic cop.

Ms. PANZINO-TILLERY. Well, upgrading of streetlights——

The CHAIRMAN. You heard Mr. Seidenberg, what they've asked for. Do you think that's fair?

Ms. PANZINO-TILLERY. I don't necessarily agree with his comments, Mr. Chairman.

The CHAIRMAN. You don't agree that he's been asked for all these subsidiary things that have nothing to do with communications in order to get a franchise?

Ms. PANZINO-TILLERY. Not necessarily.

The CHAIRMAN. All right. Thank you. My last question, Mr. Riddle, Public, Education, Government, PEG channels, I do appreciate your statement, and we've known each other a long time. Why should a community be able to ask for as many as 14–15 PEG channels when New York only has four?

Mr. RIDDLE. Well, it's ironic. I used to work in New York, and actually, having only four channels in New York City was wholly inadequate. In addition, those four channels represented only the public access channels.

The CHAIRMAN. Shouldn't there be some limit? That section didn't mean you could keep going and ask more and more and more and more from one provider, did it?

Mr. RIDDLE. No, generally there are limits that are agreed to, but I would like to point out——

The CHAIRMAN. Would you mind if we put limits on?

Mr. RIDDLE. Well, no, I don't think that that would be a problem as long as we recognize that systems change and that the percentage of public bandwidth should remain proportionally the same as the systems change so that the public wouldn't be cut out of technological change and system growth.

The CHAIRMAN. I'm going to yield to Senator Inouye. I do hope—each of us has one or two specific questions. If you don't mind, could we submit them to you and have you respond to us so we can stay within the time limit, and we could all end up by going to lunch sometime today? Senator Inouye?

Senator INOUE. Thank you very much. I'd like to submit my questions also, but I have just one. I heard witnesses testify that 10 years ago, we were number 4 in broadband, now we're number 17, and somehow the tone of some of the testimony presented today would suggest that the Telecommunications Act of 1996 served as some disincentive or obstacle to advancements in the size of communications. Anyone claiming that this law served to hold you back? Mr. Whitacre?

Mr. WHITACRE. Yes, I'll try that, Senator Inouye. You know, I don't like all provisions of the 1996 Act. Has it all worked? No, it has not, but I'll give you some statistics—90 of the households we serve are covered with broadband. They have access to broadband. So, 90 percent's a pretty good number. It's in places like downtown Detroit. We have 7 million customers. We sell it for \$12.99 to over 90 percent of the households. I'd say, from a broadband perspective, we've done a pretty good job.

Mr. RUTLEDGE. Senator, you know, I would just indicate that in dropping, it's important to look at the statistics to see what it's saying. It's we have fewer consumers in this country selecting broadband than in many other countries. Part of it is the lack of deployment, but part of it is the high cost. And we have not had enough competition, and part of what was expected in the 1996 Act was a lot more competition than existed. We dropped regulations, and the prices stayed very high. So, we're way behind because a lot of consumers can't afford it. So, I think focusing on both deployment and affordability is critical.

The CHAIRMAN. Anyone else?

Mr. SEIDENBERG. Senator, in your question to me, this isn't a repudiation of the 1996 Act. I think the 1996 Act had a lot of benefits. I think the video franchise provisions unintentionally, perhaps, are serving as an entry barrier to capital investment to create the networks that we think will compete with the incumbent. And so, I think this provision, we have found the technology and the capital markets have lacked the particular usefulness of these laws, and that's the reason we're asking you to consider it. So, it would be an adjunct, or I think it would be an enhancement to all the things going on today anyway.

The CHAIRMAN. Senator Burns?

Senator BURNS. I thought so. I have just a couple of questions because we'll be debating this forever, and I guess I'm in a position where I don't care which direction this goes. It's just that it's got to be operating out of the same rule book because both are offering similar or like services, then we all got to operate out of the same book. Right now, we're operating out of two different books. And whichever direction we go, it's got to be fair to everybody. I came out of local government, so you know where I'm coming from. I think, you know, local government has to have some say into what goes on in their neighborhood, and I think they react faster. I think government closer to the people is sometimes a lot better. Now, they're also swayed by that. So, in the franchising, maybe we just take off all the franchising, and just see where it goes.

Now, when I argued that on the floor, I was the first guy that ever offered the amendment on video dial tone. Remember that, Mr. Kimmelman? And my gosh, I tell you, it created such an uproar, but it was the genesis of the 1996 Act if you really go back to where we got started about the 1996 Act. And I will tell you there's enough blame to go around on why it didn't evolve and start working right away because some companies, while we support this, will sign off on it, but then went to court, and you know who they are. And so, we didn't try to make it work. We tried to go against it a little bit. But, I have a question. Are local governments asking more of you than they have asked from everybody else, obtaining a franchise to provide your services? I'll ask that to Mr. Whitacre, and is that your experience to this point? Or Mr. Seidenberg?

Mr. SEIDENBERG. Well, I know it's hard to believe, but we can give you all of the communities, but I'll just give you one. We had four communities in Pennsylvania that asked us to share 5 percent of not just the revenues that come from the video services, but 5 percent of all voice and data that will be carried over our fiber net-



works. And so, I think sir, the answer is that some municipalities, not all of them, but many of them are overreaching, and that was a problem. That's a valid entry.

Senator BURNS. If we put somewhere in the law that says whatever franchise you have, then your competitor is automatically subject to the same franchise, they can't change from it, what happens in that respect?

Mr. WHITACRE. I think both Mr. Seidenberg and I and our companies have agreed we'll pay the same thing so the cities suffer no revenue loss. We've already agreed to that.

Senator BURNS. OK, Mr. Rutledge? Would you like to react to that?

Mr. RUTLEDGE. Thank you. Well, I would say a couple of things about the franchise process. You know, in the last 3 years, we, a company with 409 franchises, have renewed and renegotiated about 100 franchises. In the same time, if you're building one of these networks, you actually have to plan ahead. You have to plan where you're going to put your facilities, your wires, you have to get permits, open the streets, cross interstate highways, cross intercoastal waterways, you've got a lot of planning before you can build one of these networks.

Verizon has been building these networks and planning them for over 3 years, and yet, didn't ask for the franchises. Now, they have 3 million passes built and didn't get—hardly got any franchises in that period of time. In the same period of time, we, a much smaller company, were able to get a hundred of them. So, I think the problem is that you have people who are not participating in the franchise process. And it is true that communities ask for things, sometimes, that you wouldn't agree to, but you just say no. Most communities want competition. They're glad to get another competitor in. It's not hard to get a franchise if you're a competitor. What's hard to do is to go in and ask for a special deal. If you go in and ask for a new deal that says I can only build the affluent areas, I'm only going to build the areas that have aerial plants, I'm not going to build the underground, I'm not going to build the housing projects, then you have a hard time.

Senator BURNS. Mr. Evans, do you have any areas where you do business that still do not have DSL?

Mr. EVANS. Cavalier, in our market areas, can serve DSL to approximately 60 percent of the homes within our market areas. We are limited in that we use Verizon's copper, and there is a distance limitation. So, our sweet point is, people that are within the two miles of Verizon's central office where we can reach them, and that is where we can offer the most economical service. If we were forced to build to every home and rebuild the whole network, it would not be economically feasible. It'd be the third time that a person's yard would be torn up so that we could lay another cable in, and I don't think that is beneficial to all consumers.

Senator BURNS. Mr. Seidenberg, any areas where you still do not offer DSL?

Mr. SEIDENBERG. Very few, but the answer, Senator, is that as the technology improves, as we can deploy better terminals and gain scale, we do it. We've been doing it for 120 years. So, the an-

swer is that there could be some areas today that we keep improving upon our coverage every year.

Senator BURNS. Mr. Whitacre, are there any rural areas?

Mr. WHITACRE. I said earlier, Senator, we're up to about 90 percent of the households passed. In Texas, we've agreed to put DSL capability in every central office, and we'll be doing that. And as Mr. Seidenberg says, the technology gets a little better, but we're at 90 percent and moving.

Senator BURNS. Tell me, in those rural areas, give me an idea—give me a town of 2,000 people in West Texas.

Mr. WHITACRE. It'll be there. DSL will be there. It may not be there today. It's going to be there very shortly.

Senator BURNS. How long?

Mr. WHITACRE. I don't know, the next 6 months—8 months.

Senator BURNS. Give me an idea of the investment you'll have to make.

Mr. WHITACRE. In total, in Texas is the only one I can give you. It's in the neighborhood of \$800 million to get everybody, but we're going to do that.

Senator BURNS. Thank you.

The CHAIRMAN. Senator Rockefeller?

Senator ROCKEFELLER. Mr. Chairman, I'm going to put my questions in the record because I can't just ask one. I will, however, say that I would pay a dollar to whichever panelist it was that said that the city council wanted broadband to each of their homes. That was their price? Don't answer.

Mr. Kimmelman, maybe I could just ask you and Mr. Seidenberg to explain why—I mean, I've spent the last 10 years going crazy doing tax credits on broadband. They do nothing. They sound good. Nothing ever happens. Along comes a way where there's a system of folks that use tiny, little wires—I mean little fiberglass that are already there for the most part, and that brings it all, all at once. And I—part of me says that's too good to be true, and I want you to tell me that it's not too good to be true.

Mr. KIMMELMAN. Well, Senator Rockefeller, I don't think it's too good to be true, but it's often too expensive to get very quickly, and that's been our problem. And companies that are profit maximizers do wonderful things, but they don't always have an incentive to expend that extra resource to reach people who don't spend a lot of money to use that little wire. And so, all I would—

Senator ROCKEFELLER. Under current law?

Mr. KIMMELMAN. Under current law, and I would just urge you to—everyone's got a story about what they can do and can't do now, and it's one thing if you have a cable franchise to go back for a renewal because in the law, you almost granted them an automatic renewal. When that happens, it's very difficult to be a new entrant. There are many different circumstances in the transition. I urge you to look at the endpoint you want to get to. And again, I urge you to think about how you will get that, that broadband or wireless service, from as many people to as many people and how the resources should flow. And again, I suggest, and let's not worry too much about exactly what a city gets, but let's worry about how people get the service and get the policy and resources focused on delivering that service to them.

Senator ROCKEFELLER. Thank you. And Mr. Seidenberg, you serve policy statement on the importance of broadband—

Mr. SEIDENBERG. Yes.

Senator ROCKEFELLER.—to the Nation's future.

Mr. SEIDENBERG. Yeah, I don't want to be quoted it's too good to be true, but let me say this. There are two things that have occurred in the last several years that have spurred this on. The first is, as you said, tremendous technological advancements.

And second, regulatory policy has now made it a lot more favorable to invest the capital. So, what we'll see today is—we're happy to say that private investment will absolutely fund the growth of the broadband networks. And we'll start small, we'll get bigger, we'll gain scale, and we'll continue to deploy in all communities. So, I really do believe that it's the technological advancements coupled with the regulatory changes at the FCC and at the state level that have prompted all this. The perfect example of all of this is wireless. No one has ever predicted the growth of wireless. We didn't. Policymakers haven't, but the technological advances in wireless have created an extraordinary technological service opportunity. I think the same thing's going to happen here if we can take down the entry barriers that are causing private investment, not to put the money where it needs to be put.

Senator ROCKEFELLER. Which I think our bill would do. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Sununu?

**STATEMENT OF HON. JOHN E. SUNUNU,  
U.S. SENATOR FROM NEW HAMPSHIRE**

Senator SUNUNU. Thank you. Mr. Seidenberg and Mr. Whitacre, a question about consumer protection. If we were to have either a new entrant model for franchising, or if we were to significantly modify the existing Title VI, what assurance would there be? What would the mechanism be for ensuring consumer protection in a national franchising environment? I always feel like it's a reasonably good question when you point to each other.

Mr. SEIDENBERG. I was being polite, and he was giving me the ball, you know, it's the first time he's ever given me the mike, in his life, you know that, Okay. Look, I don't think that we're asking to change any of the current rework of rules that apply to right-of-way, consumer protections. We still have franchises. We're responsible with the state commissions. There are redlining rules in the legislation.

So, I think, Senator, when I ask you to change any of the authority that goes with that, what we're looking for are the principles to take away all of what we consider to be the conflicts in trying to negotiate these franchise agreements and get into the market a lot quicker.

Mr. WHITACRE. It was a good answer.

Senator SUNUNU. Harmony reigns. Mr. Rutledge and Mr. Kimmelman, a question about PEG. The Chairman raised the issue of PEG and, I think, asked a very good question. What kind of a limit is appropriate? And I'd like you to try to answer that just as specifically as you can. If we were to, you know, fix into statute something describing the limit on the number of PEG channels,

what should that be? I'm sorry. Yes, both Mr. Rutledge and Mr. Kimmelman.

Mr. RUTLEDGE. I'll start. One of the things that was embodied in the more recent Cable Act is a scheme where the cities are limited in what they can ask from a cable operator, so 5 percent is the maximum franchise fee. When it comes to public access, the city has to do a needs assessment, but if you have to invest new capital as an operator, you have the ability to pass that through to the consumer or if you have operating costs and put it on the bill. And so, there's a self-limiting political reality, which is no municipality wants to have a big tax that exceeds the value of the service it's getting. So, there is a built-in structure in the law to limit it. And since the most recent law, has been passed, the scale of public access has not generally gotten better. The bandwidth required to provide it has not been increasing. Gene?

Mr. KIMMELMAN. Yes, I would say let's look at what we were trying to do with PEG access. We were trying to get local governmental and educational content out to the community. We may be entering an era where channels will no longer be what they used to be. And so, are we really talking about channels? I think we ought to be focusing on local content, and what was always lacking was the support of the local content. PEG programming hasn't always had the quality that it could have had. It wasn't invested in as it should have been. And what you also recall is that you authorized cities to ask for these in negotiation. You didn't require them to do it. And so, some cities have a lot of PEG channels. Some have a few. A lot have none.

And so, I think it's worthwhile going back and coming up with a formula that's based on the size of the community, or something like that, just some logical formula, and say this is an appropriate local concern and there should be minimum PEG requirements for all communities. We tried to do it with leased channels as well, and those have flopped completely. It didn't work at all. So, the variety of tools that were put in the original Cable Act, I think are worth revisiting and then making them uniform across all providers, including new entrants.

Senator SUNUNU. It seems to me that a lot of the conflicts that we're discussing today, looking at the 1996 Act, are created where we have effectively put in place dual regulatory systems. We've got different sets of regulations for different players, and they are providing more and more similar products to consumers. As a result, I'm very concerned with a poor new entrant regulatory structure, as some people have suggested, that would exist without looking at the existing regulatory structure, Title VI in particular, for cable operators. And it would seem to me to make the most sense to take a look at Title VI, to take a look at what people are suggesting for new entrants, and see if we can, in a reasonable way, modify Title VI, which was written at a different time, different place, different era, back when the channel was maybe more of a channel, as Mr. Kimmelman says, than it is today.

If we were to take that kind of an approach, I have a question for Ms. Sohn. In particular, you laid out four principles. You didn't talk very specifically about what you might eliminate from the current Title VI or what elements of Title VI might not be necessary

to maintain those four principles. Are there any areas of current regulation whose time you think may have passed?

Ms. SOHN. Well, I certainly think that if a national franchise model's adopted, it should apply to incumbents as well as new entrants, absolutely. I know I'm going to upset some people on the panel if I talk about some things in Title VI whose time has passed, I think must-carry and retransmission consent is certainly one of those things. And I couldn't agree with you more that we really need to look at regulatory parity in a very, very serious way, and that includes for broadcasters.

You know, content is content in my mind, and that's why I think it's important for this Committee to understand we're talking about broadband pipes of different kinds, and they really should be treated similarly. So, I could give you a longer answer and go through Title VI, specifically, to look at, if you want it in written form, exactly what I think should be taken apart, but that's just a couple of examples.

But I do think that it's sort of a layered idea of regulating, that you regulate the infrastructure one way, the logical way or another way and the content way or another way. It makes a whole lot of sense. And the silo system we have now doesn't make so much sense.

Senator SUNUNU. Thank you. A final comment, Mr. Chairman, and that is I've suggested before, and I think listening today to the panel, I feel it all the more strongly. The nature of this product, the product that we're talking about today, channels of video in a consumer's home has changed radically in the last 10–12–15 years, but certainly since the 1940s, 1950s and 1960s when a lot of these fundamental approaches to regulation were crafted. And it is one thing to say there is a compelling public interest and a strong regulation of this medium when we have three broadcasters and nothing but over-the-air broadcasting. But it's very different to continue to try to argue deep, compelling public interest in some of these regulations when we have 500 cable channels, when we have a website, a good website, identified with just about every public and civic group and institution, and that's a great thing that you can go and find out what's happening in your community by going onto the law enforcement website or the library website or the selectman website or the mayor's website or the city hall website. And there's a very different public interest at stake that is, quite frankly, not as compelling. It's still there, but it's not as compelling as it once was. And these regulations are our barrier to entry. And if I was a local incumbent, I would be very supportive of the existing regulatory framework, but they are barrier to entry, there are thousands of authorities, they have a cost, and those costs are passed on to consumers. We should all recognize that. We pay for it. We pay for our access, we're paying the cost of these regulations. And if we can do a better job reducing the costs of the regulations, then we will absolutely be reducing prices for consumers. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Cantwell?

**STATEMENT OF HON. MARIA CANTWELL,  
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Thank you, Mr. Chairman, and thank you for this important hearing. I had a couple of questions for various witnesses. And Mr. Evans, I wanted to ask you specifically. I listened to your discussion of your deployment of IPTV and your successes so far. Could you explain to me why time isn't on your side in the sense of—Mr. Kimmelman talked about 10 years from now when the principles of having a level playing field, and Ms. Sohn is talking about how we continue to guarantee access whatever the platforms are. And while we're talking now, but maybe there are two platforms, but we don't know. There's lots to play out. So, why isn't time on your side?

Mr. EVANS. Cavalier has been successful over the last 6 years because we launched innovations quicker than the big guys, such as AT&T and Verizon did. We give the services to the people quicker. We find ways to save them money and having that speed advantage in beating the other guys to the market. Being there with new channels, a hundred channels of video-on-demand, new leading-edge things that the consumers want, help us survive and compete against the big guys that have other advantages. And so, that's why we are the first ones to deploy and invest in the new MPEG-4 IPTV technology.

Senator CANTWELL. Correct, and what I'm saying is, as my colleagues have all talked about, the concern about how cable pricing has risen or the future of a-la-carte options, as cable as an expensive option, and you've provided the service, why isn't time just on your side to go ahead and continue to make in-roads as a cheaper product?

Mr. EVANS. Time is "of essence" in a competitive environment. The cable companies have recently launched telephone services. They've only launched them in the residential communities where they've built into. They're not launching them to every commercial building. So, they have an advantage that they're going to focus on the residential. Because we cannot offer the video, they're going to go in and offer the bundle, and that's why we've worked very closely in Virginia to work with the municipalities to come to an agreement, which we have in Virginia, to have a statewide franchising bill. We need to get that out there in days and weeks, not in years, or we're going to be put out of business. If you go into battle, and you don't have all the ammunition in your pocket, you're going to be blown out of the battle. And with our video, they will price down telephone. We need to have all three so that we can compete effectively.

Senator CANTWELL. What—you do have all three now? I mean you do—

Mr. EVANS. I have all three, but I can't offer it until I get the franchise. That is my dilemma.

Senator CANTWELL. Are you concerned that they're going to have cheaper telephone service and cheaper—

Mr. EVANS. They're going to price—

Senator CANTWELL. Just in a sense of a—just in competitive product, do you think, in 5 years, let's say, this subject was just put on hold for a while, and you've—we resolved it, but you still

had product in the marketplace, do you think you're going to have a cheaper product, or do you think you're going to have a more expensive product?

Mr. EVANS. Our pricing right now is \$50 per month below what a competing offer from the cable TV and the telephone company for phone, video and broadband.

Senator CANTWELL. So, you have—

Mr. EVANS. Fifty dollars per month per person.

Senator CANTWELL. OK, which I think is an interesting analysis of where you are in the marketplace. And so, I would say well, why isn't time on your side because you keep having the ability to offer those services.

Now, we didn't get into how do we maintain a level playing field, which I want to come to, Mr. Kimmelman. You talked about principles that you think that we should adhere to, and I don't think I heard you say specifically if you thought that Inouye-Burns principles were enough, or if you think that the current framework can work with a few tweaks to the process, that is, you know, maybe some issues about speeding up the franchise process.

Mr. KIMMELMAN. I think they can be enhanced. I think we need to really look at what it takes to speed it up and to streamline new entry and I think get to an endpoint where everyone is treated the same because I think they will need to be treated the same. And I think you need to worry about whether there are only two providers and whether those providers are offering a bundle of three or four services, which can make it difficult for any other new entrant to come in and compete on a single service like broadband or video. They might have one of the services, but they can be underpriced and driven out of the market. I think what is also critical is to get away from just worrying about going back to the old provisions of the Act, as Senator Sununu indicated, of what is representative of the local community and look at what the local community really needs. It really needs the resources to support local programming. It needs the resources to build out broadband to underserved communities, ethnic communities, low-income communities. You can try to force the new entrant to do that. Even if you did that, they'll resist, so you'd have to provide for a transition period during which time the community offers stop-gap broadband service to those households the new entrant doesn't serve, such as what Philadelphia has done, in using a community wireless approach to get broadband in the inner city. So, there are a variety of tools you could use to achieve an affordable broadband for all as you streamline entry of a new player and offer cable streamlining as well with ultimately the same rules as the telephone company.

Senator CANTWELL. I see my time has expired, Mr. Chairman, but I personally believe that there are going to be many, many models for IPTV. I certainly hope there's many, many models for IPTV and that there's just not one platform, but that we certainly have competition, but we should be looking at this environment not just what is today or what's in 5 years, but in 10 years' time. And the fact that Mr. Riddle talked about some of those programming services that are available today, and Ms. Sohn talked about how we keep content neutrality, that we give people access is very, very important, but I hope that all of these people will have serious

competition from some local ISP or someone who wants to provide a certain reality TV programming or whatever it is and that we should think of this as many, many models in the future and how do we do that as opposed to making short-term decisions for just the next couple years. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much to all of you for coming. I still feel compelled to tell you where I'm coming from. You know I'm from Alaska, a place that's roughly the size of Italy, Germany, France and Spain. We have now, after 10 years of the 1996 Act through tele-education and the availability of some Universal Service funds, got computer capability at 90 percent for the whole state, but we have a hundred villages that don't have Internet at all. And when we go to make a reservation for a U.S. hotel, we're probably going to talk to someone in India. Why? Because they have high-speed broadband connections, and they have satellite connections, but they have a work force there that's enjoying a quality of life that our people don't get, and they don't get it because they don't have access to the systems we're talking about now.

I see no reason why those small villages in Alaska couldn't be performing some of these functions for American companies if they had access to these systems. So, while I'm here, and my friend from Hawaii has similar problems—his state has even a larger area than mine—we want to help every one of you in what you're talking about in building out the cities in the areas of what we call the South 48, but I hope you won't forget the problems we have in Alaska and Hawaii. We'll be in touch with you about those. Thank you all very much.

[Whereupon, at 12:10 p.m., the hearing was adjourned.]



## A P P E N D I X

PREPARED STATEMENT OF HON. OLYMPIA J. SNOWE, U.S. SENATOR FROM MAINE

Thank you, Mr. Chairman, for holding this hearing on video franchising this morning. I also want to thank Senators Smith, Rockefeller, and Ensign for working to bring this issue to the forefront. The issue before us today is a perfect example of how technological change is driving the need for Congress to update the outdated telecommunications laws that were passed only 10 short years ago.

No one in this room today is going to argue that competition is a bad thing. Competition brings better products and services to consumers—and multi-channel video services should be no different. The example of Keller, Texas—where the local cable company dropped the price of their bundle by nearly 50 percent the day that a phone company competitor entered the market—illustrates one of the many consumer benefits that competition brings. We must examine the best way to encourage nationwide competition in this market and take steps to ease the legal barriers to entry.

Although change in our statutory framework is needed, Congress should be careful not to forget the original goals that the Cable Act was written to meet, especially the goal that assures community needs and interests are met.

In the same way that broadcasters must obtain a license to utilize the public spectrum, video service providers must obtain rights of way from the local government in order to have access to streets and sidewalks to lay their cable or fiber. Similarly, as broadcasters have public interest obligations in exchange for use of the public's spectrum, video service providers should give something in return to the community in exchange for public rights of way. Today, as part of many franchise agreements, cable companies commonly pay a fee and provide in-kind equipment and facility donations to support public, education and government access channels, public safety and other local needs. These local community needs and interests *must* be preserved as we move forward with franchise reform.

I look forward to hearing from the panel today about how to best move forward with franchise reform. What are the different proposals stakeholders have? How can local needs and interests be preserved? What are video service providers willing to pay for access to public rights of way? How can reform be fair to existing franchise holders? What policy is best for consumers?

The bottom line is that the law needs to change for consumers to have meaningful choice in the video service market. Complex, drawn-out negotiations are inhibiting the deployment of these services. The process must be simplified. During this simplification, however, we must not push aside the public needs and interests that have been served by franchise agreements successfully for so many years. Local government proceedings must continue to be shown on a video service provider's network. Educators should continue to be able to utilize the advanced services enabled by the network. And, public safety should have access to essential industrial services. I urge my colleagues not to forget these local interests as this Committee moves forward with legislation.

Thank you, Mr. Chairman.

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PREPARED STATEMENT OF BOB FREUDENTHAL, PRESIDENT, AMERICAN PUBLIC WORKS ASSOCIATION

Mr. Chairman and Members of the Committee, thank you for the opportunity to submit this testimony for the hearing on video franchising. My name is Bob Freudenthal, President of the American Public Works Association (APWA), and Deputy General Manager of the Hendersonville Utility District in Hendersonville, Tennessee. I submit this statement today on behalf of the 27,000 public works officials who are members of APWA, including our nearly 2,000 public agency members.

APWA is an organization dedicated to providing public works infrastructure and services to millions of people in rural and urban communities, both small and large.

Working in the public interest, APWA members design, build, operate and maintain transportation and rights-of-way; natural gas, electricity and steam distribution facilities; water supply, sewage, and refuse disposal systems; public buildings and other structures and facilities essential to our Nation's economy and way of life.

I appreciate the opportunity to address the important role local governments and public works departments play in managing local public rights-of-way and how local franchising supports that role. APWA has been and will continue to be an advocate for the development of policies which ensure the safe and efficient management of public rights-of-way. As Congress considers rewriting sections of the Nation's communications laws and policies, we urge you to consider several important principles relating to local governments and rights-of-way management.

The first is that local government officials have a fiduciary responsibility on behalf of the citizens we serve to manage public property, including the public rights-of-way, a public asset with an estimated value of more than \$7 trillion. Respect for local control and local governments' long-standing authority to manage rights-of-way is necessary to ensure their safe and efficient operation. As Congress considers updating national communications policy, it is vital that local governments and other public agencies retain their authority to fulfill their statutory obligations and duties related to managing public rights-of-way.

This authority includes the ability to establish permit, location, inspection and pavement restoration controls and rights-of-way restoration; to encourage cooperation among and develop scheduling and coordination mechanisms for all rights-of-way users; to obtain and maintain accurate information for locating existing and new facilities in the public rights-of-way; to hold responsible parties accountable for the restoration of the public rights-of-way; and to charge and receive compensation for the use of the public rights-of-way.

The second principle is that local governments support competition in communications services and technology. We embrace innovations that make possible competition in video, telephone and broadband services. Moreover, we support deployment of these technologies as rapidly as possible. However, as new communications technologies and services enter the marketplace, local governments must be kept whole and our authority to manage public rights-of-way preserved.

Preserving full local franchising authority is critically important to rights-of-way management. Franchises do not just provide permission to offer video services; they are the core tool local governments use to manage streets and sidewalks, provide for public safety and emergency response capability, enhance competition and collect compensation for private use of public land. Eliminating franchises will cause chaos, undermine safety and deprive local government of the power to perform its basic functions.

Public agencies have the responsibility to keep public rights-of-way in a state of good repair and free of unnecessary encumbrances. The public expects local governments to ensure that the deployment of new services does not result in potholes, traffic backups and congestion, damaged sidewalks, ruptured water or gas lines, disrupted electrical power or diminished community aesthetics, particularly with respect to managing above ground versus below ground installations.

The right to obtain and use land for public benefit is a long-standing tradition and is provided for by law. For more than a century, the concept of accommodating both public and privately owned utilities in the public rights-of-way has been recognized to be in the public interest. Public rights-of-way are normally acquired and developed by public agencies for transportation routes, water supply, waste disposal, power distribution, means of communications and similar services. Such services are provided for the common good of the public, and are generally authorized and directed by public agencies, which have an obligation to regulate and manage the use of public rights-of-way in the interest of the convenience, health, safety and welfare of the public.

It is our duty and responsibility as public agencies and that of elected officials to be good stewards of the public rights-of-way and to adopt reasonable ordinances that allow public officials to: manage the public rights-of-way on behalf of their citizens to ensure public health, safety and convenience; manage the surface of the public rights-of-way to ensure structural integrity, availability, safety and a smooth street surface for the traveling public; manage the space below the surface of the public rights-of-way to ensure safe and economical access for all current and future users of the rights-of-way; and manage the space above the surface of the public rights-of-way, including the placement of overhead utility facilities, to ensure efficient use of space and to minimize safety hazards and impact on community aesthetics.

As the pace of implementing new communications technologies accelerates, the number of damages incurred by owners of both private and public utilities is sure

to grow, if local governments are not allowed to manage their rights-of-way. Managing public rights-of-way is complex, and decisions regarding management and control of local public rights-of-way belong to local governments. Each utility provider installs a separate system in its own unique location within the public rights-of-way. The systems are often installed on existing pole lines, in narrow trenches or in conduits that are bored into place. There is a correlation between the number of excavations and corresponding damage, and repeatedly cutting and repairing streets can permanently damage street pavement structures. Moreover, in the absence of compensation from utilities, taxpayers bear the burden of significantly increased street maintenance costs.

APWA has a Utility and Public Rights-of-Way Technical Committee whose members provide education and information to raise awareness and promote the best use of the public rights-of-way for the public good. Our committee provides a forum where stakeholders can come together to discuss common issues and best management practices that will promote the effective integration of all users and stakeholders within the public rights-of-way.

In conclusion, APWA supports competition and the rapid deployment of communications technologies and services in the communities we serve. We support a balanced approach that encourages innovation and preserves local governments' long-standing authority to manage public rights-of-way and to receive fair and reasonable compensation for their use. Franchising authority is a core tool local governments use to manage rights-of-way in the public interest in order to protect public safety and public infrastructure.

Mr. Chairman, we are especially grateful to you and Committee Members for the opportunity to submit this statement. APWA and our members stand ready to assist you and the Committee in any way we can.

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PREPARED STATEMENT OF JERRY BRITO, J.D., LEGAL FELLOW, AND JERRY ELLIG, PH.D., SENIOR RESEARCH FELLOW, MERCATUS CENTER AT GEORGE MASON UNIVERSITY

Mr. Chairman and Members of the Committee:

We appreciate the opportunity to enter written testimony into the record of the Committee's hearing on video franchising. We are research fellows with the Regulatory Studies Program of the Mercatus Center, a 501(c)(3) research, educational, and outreach organization affiliated with George Mason University.<sup>1</sup>

As part of the Mercatus Center's ongoing program to assess the costs and outcomes associated with regulation, we have recently completed an analysis of the effects on consumers of video franchising. Our study is attached as an appendix to this testimony. We also submitted this analysis in the Federal Communications Commission's proceeding on video franchising. Principal findings include:

- Cable franchising costs consumers approximately \$10.1 billion annually in higher prices and forgone benefits.
- Higher cable prices account for \$8.4 billion of this cost:
  - \$5.9 billion in higher rates for basic, expanded basic, and equipment rental.
  - \$113 million in higher rates for digital cable.
  - \$2.4 billion in franchise fees.
- The remaining \$1.7 billion is what economists call “deadweight loss”—value that consumers forego because the higher prices induce some consumers to go without cable television.
- Excluding the effects of franchise fees, franchise regulation costs consumers approximately \$6 billion in higher prices and \$1 billion in forgone benefits (deadweight loss).
- The “natural monopoly” rationale for preventing competition is unconvincing. Contrary to natural monopoly theory, two decades of research by Federal agencies and independent scholars consistently finds that cable rates are lower in markets with wireline video competition. The most recent Government Accountability Office study finds that cable rates in markets with wireline video competition are 16.9 percent lower than they would be without this competition.
- The argument that entry regulation lowers rates by reducing the cable operators' risks and costs is also unconvincing. Even when cable was first deployed

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<sup>1</sup>This testimony reflects only the views of its authors and does not represent an official position of George Mason University.

in urban and suburban areas, jurisdictions with open entry policies or competing cable companies had rates equal to or lower than rates in monopoly jurisdictions.

- Local governments' need to manage public rights-of-way may justify some regulation of construction and a cost-based fee to prevent congestion and reimburse the public for inconvenience when video providers use the public rights-of-way. Legitimate rights-of-way management, however, does not justify monopolization, and there is no evidence that a 5 percent franchise fee reflects costs actually imposed on the public when video providers use the rights-of-way.

The Federal Communications Commission has significant authority to preempt unreasonable franchising practices by local franchise authorities. We urged the FCC to take the following steps to promote competition:

- Declare unreasonable any refusal to grant a franchise justified on the grounds of natural monopoly, reduced investment risk, or rights-of-way management unless the local franchising authority presents overwhelming empirical evidence that the alleged problem exists and cannot be solved in any way other than barring new entry.
- Require local franchise authorities to explain in writing any refusal to grant a franchise.
- Preempt aspects of state level playing field laws that force entrants to make the same capital expenditures or cover the same service area as the incumbents.
- Declare unreasonable any state or local requirement that would force a new entrant to build out its network faster than the incumbent actually and originally built out its network.
- Declare unreasonable any delay in granting a franchise that exceeds some specified deadline, such as 120 days. Establish simple default conditions under which a new entrant would automatically receive a franchise if the local franchising authority has not acted by the deadline.
- Declare unreasonable any "nonprice concessions" in franchise agreements that are not directly related to setup or operation of a cable system.

These steps could significantly reduce the anticompetitive effects of franchise regulation. However, it is not clear at this time whether the FCC will choose to take all of these steps. In addition, some anticompetitive franchising practices might be dealt with more comprehensively in Federal legislation. Clearly, the stakes for consumers are significant. Congress could address anticompetitive franchising practices in the following ways:

- Remove barriers to open entry by amending Title VI of the Communications Act to no longer require a franchise before a provider may offer video service.
- Promote certainty and regulatory uniformity by adopting clear rules for anyone offering video service, including:
  - An obligation to carry no more than a fixed number of Public, Education, and Government (PEG) channels. For example, Texas's statewide franchise statute has set this number at three channels for a municipality with a population of at least 50,000, and two channels for a municipality with a population of less than 50,000.
  - In place of franchise fees, obligate video providers to pay only a *reasonable* fee to the municipality in which it operates to cover the costs imposed on the municipality by its use of the public rights-of-way. However, this fee should be capped, just as franchise fees are now capped. If a video provider is already making payments for use of the public rights of way, these payments should be taken into account.
- Allow municipalities to manage the public rights-of-way only through non-discriminatory rules that apply generally to all users of the rights-of-way.
- Allow providers to offer video service in only part of a municipality, and prohibit any authority from requiring a provider to build out its video service in any particular manner.
- The above framework should be made applicable not just to new entrants, but incumbents as well. Existing franchises should be preempted to the extent they are inconsistent with the new system.

The evidence is overwhelming that where video competition is permitted, it has served consumers well. We hope our findings are useful to the Committee as it weighs various options for reform of video franchising policy.

*MB Docket No. 05-311; FCC 05-189, attached to this prepared statement, has been retained in Committee files.*

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FREEDOMWORKS  
Washington DC, February 14, 2006

Hon. JIM DEMINT,  
Senate Committee on Commerce, Science, and Transportation,  
Washington, DC.

Dear Senator DeMint:

As the Senate moves forward with its evaluation of the telecommunications market, I want to thank you for your efforts to promote true competition in the telecommunications sector. FreedomWorks is a grassroots organization with more than 800,000 members nationwide that promotes market-based solutions to public policy problems. An integral component of our efforts has been to educate consumers on the important benefits of open competition and the need for regulatory reform in telecommunications. This dynamic and evolving sector of our economy has the potential to provide consumers with an exciting new array of products and services. Unfortunately, the Nation's telecommunications laws—last updated a decade ago—impede deployment of new technologies and unnecessarily limit consumer choice.

Today's telecommunications markets are in flux as once distinct products and services converge and cross platform competition fundamentally re-defines this sector of the economy. Cable companies and others have already entered the voice market, telephone companies are poised to enter the video programming market, and wireless providers are emerging as a considerable rival to both cable and traditional wireline telephone companies. Content providers, applications providers, and Internet Service Providers are also proving to be critical actors in this market as well.

Just as the industry is re-inventing itself, Congress must re-examine the regulatory framework to eliminate excessive government mandates and promote competition in an open marketplace. It no longer makes sense to view this market in terms of monopoly providers offering unique services at regulated prices. This view underlies much of telecommunications law, yet it is ill-suited for today's technology sector. Excessive regulation ignores the realities of the current marketplace and makes it difficult to provide consumers with latest technologies. Regulations also impede the deployment of new high-speed broadband networks, something the administration has made a priority.

The Digital Age Communications Act that you introduced recognizes the changes underway in telecommunications and seeks to replace outdated regulations with a new competitive model of the marketplace. Under today's laws similar services and products are regulated completely differently simply by virtue of their regulatory history. The Digital Age Communications Act eliminates such artificial distinctions while promoting competition in all forms—across platforms, across technologies, and across applications. This approach is much more apt for today's marketplace and assures consumers will have access to the latest technologies at the lowest prices.

FreedomWorks believes that a competitive telecommunications marketplace holds great promise for consumers and the Digital Age Communications Act would be an important step toward achieving that goal. When producers are forced to compete in the marketplace, consumers have enjoyed falling prices, innovative products, and greater choice. Once again, thank you for pursuing this important issue. Attached please find comments prepared by FreedomWorks that highlights the importance of moving toward a more competitive model as well as some of the barriers that prevent competition in today's market. As a consumer group that promotes the benefits of competition in an open market, FreedomWorks sees great potential for consumer gain as the next technological revolution unfolds. Should you have any questions, please do not hesitate to contact me.

Sincerely yours,

DICK ARMEY,  
Co-Chairman.

*MB Docket No. 05-311, 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—submitted for the record by Wayne T. Brough, Vice President for Research/Chief Economist, FreedomWorks—has been retained in Committee files.*

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO  
IVAN G. SEIDENBERG

*Question 1.* As you know, I have long championed choice for consumers, in particular the ability for consumers to pay for only the channels they wish to view. Studies show that consumers generally only watch about 16 channels. AT&T, Cablevision and Echostar have stated that they would provide channels on an “a la carte” basis to their subscribers if their contracts with cable programmers allowed for such an offering. Would Verizon be willing to offer an “a la carte” option to its subscribers?

*Answer.* The best way to achieve consumer choice is to remove barriers to competitive entry into the video market. Where we have gained permission to enter the video market, consumers have benefited from the additional choices that competition brings. For example, in communities where Verizon’s FiOS TV is available, incumbent cable operators have offered price cuts of 28–42 percent, although these incumbents generally have “not actively advertised” these discounts or made them available to other areas. In Keller, Texas—the first community with FiOS TV—over 20 percent of eligible households subscribed to FiOS TV in the first three months that it was available.

In addition to the benefits of lower prices and improved customer service, the residents of communities in which Verizon offers FiOS TV have available to them a wide range of diverse programming options, including a variety of innovative programming packages. For example, Verizon offers a Spanish-English package called La Conexion, for only \$32.95/month, that includes more than 20 of the hottest Spanish-language channels as well as more than 30 of the most popular English channels. We also offer a variety of international or other premium channels on an individually-priced basis, including channels in Vietnamese, Chinese, Mandarin Chinese, Japanese, Korean, Arabic, Italian, French, Polish, Farsi, and Russian.

While we have endeavored to offer programming to our customers in innovative ways, there are limits on what we, as new entrants, can do. We must obtain programming from content providers who bundle their most popular channels along with new and developing channels. As a new provider, Verizon lacks any ability to persuade content providers to sell their programming in any other way—particularly if we are to obtain the programming on reasonable and competitive terms. And the terms on which we have been able to obtain content from programmers—which often extend for a number of years—often preclude us from offering their content on an a la carte basis.

Ultimately, the best way to benefit consumers and get them the programming they want in the manner they desire is to facilitate competitive entry into the video market. As competition for video services increases, programming providers will respond to consumer demand and provide their subscribers with the products that they desire in the manner that they want them.

*Question 2.* Verizon lodged an aggressive campaign to prevent the city of Philadelphia from building its own municipal broadband network. The Community Broadband Act introduced this past June would ensure that any municipality that sought to build such a network could do so as long as the municipality complied with any existing state or Federal laws. Now that the network is launched in Philadelphia, can you comment on the impact it has had on Verizon and your thoughts on municipal networks.

*Answer.* To set the record straight, Verizon did NOT lodge any campaign to prevent the City of Philadelphia from building its own municipal broadband network. In fact, Verizon worked with the City of Philadelphia and policymakers in Pennsylvania to exempt Philadelphia from limitations on municipal ownership of broadband networks being adopted by the Commonwealth of Pennsylvania as a provision of legislation mandating that telecom carriers in the state deploy broadband services to all citizens. Philadelphia has not yet deployed its proposed City-wide network—so far it is trialing the service in a few limited test sites—so it has had no impact on Verizon.

Verizon has not actively engaged in efforts to ban municipal broadband networks in Philadelphia or elsewhere and does not oppose municipal network legislation introduced by Members of this Committee. We also believe the record clearly demonstrates that in many cases municipal investment in broadband networks is an unwise use of public money and that broadband deployment is generally best left to private investment and to the marketplace. Having said that, there are instances where the involvement of local government may be a positive force in delivering broadband services to rural communities, and we are partnering with several communities in trials of new technology that deliver broadband capability to residents of those rural areas.

We also believe that robust broadband investment by the private sector will continue to promote community economic development opportunities and associated social benefits including telemedicine, distance learning and services for the disabled. Private companies have responded and continue to respond to the huge demand for broadband by investing heavily and deploying broadband services wherever it is economically and technically feasible to do so. In the vast majority of cities and urban/suburban areas, for example, broadband already is widely available from multiple providers. For example, in Philadelphia, more than 95 percent of Verizon's lines are DSL-capable, and Verizon offers a broadband DSL service for \$14.95 per month.

*Question 3.* In your written testimony, you state that competitive video providers should be given a national franchise in order to ease their entry into the market, while Mr. Rutledge and Ms. Panzino-Tillery in their written testimony advocate that the current system of local franchises is best. What are your thoughts on the merits of a statewide franchise as recently enacted in the state of Texas?

Answer. When cable first developed and was subjected to local franchise requirements, these systems generally were limited to local facilities that served as community antenna television systems—literally an antenna on a hillside that picked up and transmitted broadcast TV signals to households in the local community. In contrast, Verizon's FiOS TV network and service are part of an advanced national broadband network that is being rolled out in areas across the country. And a national franchise system is most appropriate for this advanced national broadband network and services.

Moreover, Verizon strongly believes that a streamlined, national franchise process is the fastest and fairest route to bringing much-needed choice and competition to the video market. One process is better than 51—especially when there is no guarantee when or how other states will follow Texas's lead. Verizon believes that the residents of every state should enjoy the benefits of video competition.

That being said, Verizon is trying to enter a new business and will explore all avenues to remove barriers to entry. As such, we have supported state legislation that would streamline the video franchising process. Texas, of course, is the pioneer in this area, and its citizens are now enjoying the fruits of their "first mover" legislation.

*Question 4.* Should Federal legislation address access to programming? Is sports programming a unique problem?

Answer. Although the 1992 Cable Act prohibits vertically integrated cable companies from discriminating against competitors in the distribution of satellite-delivered programming, so far this provision has not been applied in the context of terrestrially delivered programming.

Some cable operators have exploited this loophole in an effort to deny competitors certain popular programming, like regional sports programming. Without access to that unique and desirable programming, it is much more difficult for competitive providers to compete effectively in the marketplace. Congress should close this loophole.

Attached for the record is an excerpt of Verizon's recent filing at the FCC in its current proceeding addressing certain aspects of the local franchising process.\* Paragraphs 64–74 describe the difficulties that Verizon has experienced obtaining programming from Cablevision, a vertically integrated cable operator. (See Attachment A, Declaration Marilyn O'Connell, Sr. Vice President—Video Solutions, Verizon, 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).

*Question 5.* Gene Kimmelman comments in his written testimony about current legislative proposals, "Notably absent . . . is any requirement that new entrants provide their services to the entire franchise area, opening a wide door to economic and ethnic discrimination (redlining) and closing the door to rate relief for those families who most need it and who have largely been left on the wrong side of the digital divide." How do you respond to Mr. Kimmelman's criticism?

Answer. Verizon does not engage in redlining, and we agree that new entrants should be subject to the same Federal prohibition on economic redlining that applies to the cable incumbents. We have an excellent record of providing service to customers of all demographics. We will continue doing so with our fiber network and services, including FiOS TV.

In fact, the very nature of Verizon's deployment belies any suggestion of discrimination. Verizon deploys its FTTP on a wire center-by-wire center basis, generally upgrading to FTTP throughout the wire center, not picking and choosing particular

\*The information referred to has been retained in Committee files.

neighborhoods. Even in the early stages of Verizon's FTTP rollout, it is clear that Verizon seeks to offer FiOS to a diverse range of subscribers throughout its service area. For example, communities like Lynn, Massachusetts, Fort Wayne, Indiana, and Passaic, New Jersey are now receiving the benefits of FTTP, even though the average income in those communities is lower than the average in their respective states. As Verizon undertakes the massive investment required to deploy FTTP, its goal is to include, not exclude, any group of potential customers.

Moreover, redlining would be a bad business strategy. Studies repeatedly show that low-income households are significant subscribers to video services. As such, new entrants in the video market have every incentive to make their services widely available, and not just to the wealthy. In rolling out FTTP, Verizon's primary goals include marketing additional services such as video to customers it already serves, while reducing day-to-day cost of operation by deploying an all-fiber network. Therefore, redlining would not square with what Verizon seeks to accomplish in competition with cable and would be inconsistent with its core belief in diversity.

Verizon's programming proves that redlining is not our intent. We are offering one of the most diverse programming line ups in the history of the business. We have more than 50 ethnic channels that are available to all of our subscribers across our footprint—not just in selected areas. Verizon is offering subscribers a basic service package at \$12.95/month, an expanded basic package at \$34.95/month, or a Spanish-English package called La Conexion at \$32.95/month. La Conexion includes more than 20 of the hottest Spanish-language channels, more than 30 of the most popular English channels, local channels such as Telemundo, Univision, and Telefutera. Verizon offers an additional all Spanish-language package with more than 20 channels of news, sports, movies, telenovelas, and more for an additional \$11.95/month. Our subscribers may also select other individually-priced international channels in Vietnamese, Chinese, Mandarin Chinese, Japanese, Korean, Arabic, Italian, French, Polish, Farsi, and Russian.

While we agree that a new entrant should be subject to the same Federal prohibition on economic redlining that applies to incumbents, a new entrant should not be required to build-out and provide video service to all of the same households as the incumbent. Imposing build-out requirements on competitive providers increases dramatically the costs of entering the market, and can create an insurmountable barrier to competitive entry. This is because there are dramatic differences between a competitive provider—who will face ubiquitous competition from an entrenched competitor and who will receive a smaller market share and smaller profit margins than the incumbent did when it built out—and an incumbent provider who agreed to build-out in exchange for a decades-long monopoly position in the market.

Moreover, build-out requirements are particularly problematic because of differences in the network architecture of new entrants into the video business such as Verizon, including differences in the areas where we and other new entrants provide non-cable services. For example, as noted above, Verizon upgrades to FTTP on a wire center basis. When we upgrade, we generally extend fiber throughout the area served by a particular wire center, regardless of community or neighborhood boundaries. A particular wire center may not serve the entirety of a community (or the incumbent's franchise area), or it may serve parts of several communities. In either case, forcing Verizon to offer service to households outside of the wire center that is being upgraded to FTTP could make deployment in the area uneconomic, thus potentially denying all customers in the area the benefits of the competitive services we offer over FTTP. That, of course, is cable's objective. And these anti-competitive effects would be magnified if we were required to build out and offer services completely outside of our telephone service area where we have no facilities at all—as some cable incumbents and franchising authorities have suggested.

Finally, the cable incumbents' calls for a broad build-out requirement should ring hollow because those same providers were never required to build-out as a condition of providing competitive telephone service, and they argued vociferously at the time that build-out requirements imposed on them would prevent them from offering competitive voice services. The same is true here.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO  
THOMAS M. RUTLEDGE

*Question 1.* Title VI of the Communications Act allows localities to ask for “in kind” payments in return for a franchise. What is the most outrageous request that has been made of Cablevision?

Answer. Generally, we enter into franchises that impose reasonable terms that are related to the community's cable-related needs as the Federal statute provides.



There are times when a community may ask for an terms that we believe are not reasonable, but because Title VI constrains what a franchise authority may seek, we are able to reject those requests.

*Question 2.* In your testimony, you state that “local franchising works.” However would you concede that a statewide or national franchise could provide Cablevision with cost savings that could be passed on to consumers?

Answer. While there is some cost associated with local franchising, there are important countervailing considerations that support the continued role of local government in video programming. These include the ability of a local community to address individual priorities of community and what parts of the community will get service and when, local programming, safety and aesthetic considerations. These considerations cannot be as effectively met at the Federal or state level, and any assessment of the current franchise process must take into account the considerable history and value of local interests. Furthermore, to the extent that a new entrant is not required to meet comparable requirements, the playing field will not be level.

*Question 3.* The *New York Times* reported on September 15, 2005 that ESPN signed an eight-year, \$2.4 billion contract extension with Major League Baseball, which is a 51 percent increase over the parties’ current contract. Inevitably, this increase will be passed on to consumers. What can Congress do to stem the flow of expensive sports contracts? Or should Congress be involved?

Answer. We believe that cable operators could benefit from unbundled availability of programming, especially high-cost programming such as sports. It is worth noting that Cablevision fought a public battle for more than a year for the right to buy and sell the YES Network in tiers and individually. Ultimately we were forced to add this expensive programming service to our expanded basic line-up. Today, program suppliers resist offering operators, like Cablevision, such a choice. This is not an operator or franchise issue. Rather, it is a programming supplier issue affecting all distributors, including satellite and phone companies. Congress could articulate a policy to force programmers to change the way they sell programming to the multichannel distribution industry.

*Question 4.* In their written testimony, Mr. Seidenberg and Mr. Whitacre state that competitive video providers should be given a national franchise in order to ease their entry into the market, while Mr. Rutledge and Ms. Panzino-Tillery in their written testimony advocate that the current system of local franchises is best. What are your thoughts on the merits of a statewide franchise as recently enacted in the state of Texas?

Answer. Some states determine that they should have the primary role in franchising; some decide it should be mixed; some decide they should have no role. Cablevision supports the ability of states to decide for themselves the appropriate allocation of franchise authority. We have endorsed efforts by the states (such as New York) that impose some time limitations and level playing field requirements (the “shot clock” and the ability to “opt in”) that are consistent with local prerogatives. We similarly endorse the principles articulated by Senators Burns and Inouye on these points.

However, even in States with broader franchising authority, the role of local government is critical. The local government is best positioned to address the individual priorities of a community, including serving all residents in a community, local programming, safety and aesthetics.

*Question 5.* Should Federal legislation address access to programming? Is sports programming a unique problem?

Answer. See response to Rutledge Question 3 above.

*Question 6.* Gene Kimmelman comments in his written testimony about current legislative proposals, “Notably absent . . . is any requirement that new entrants provide their services to the entire franchise area, opening a wide door to economic and ethnic discrimination (redlining) and closing the door to rate relief for those families who most need it and who have largely been left on the wrong side of the digital divide.” How do you respond to Mr. Kimmelman’s criticism?

Answer. Mr. Kimmelman makes a valid point. Allowing new entrants to serve only affluent or low-cost areas is inherently unfair and will serve to divide communities and deny new technologies to a significant number of Americans. The cable industry has invested in state-of-the-art networks that serve all residents within a franchise area, not only the neighborhoods that are potentially the most lucrative or least costly to reach. Communities, in their local franchise agreements, typically have had the ability to accommodate both entry and broad service needs by setting requirements to serve all residents to avoid this kind of disparity. Congress should not remove that local prerogative.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO  
GIGI SOHN

*Question 1.* In their written testimony, Mr. Seidenberg and Mr. Whitacre state that competitive video providers should be given a franchise in order to ease their entry into the market, while Mr. Rutledge and Ms. Panzino-Tillery in their written testimony advocate that the current system of franchises is best. What are your thoughts on the merits of a franchise as recently enacted in the state of Texas?

Answer. Public Knowledge supports a national video franchise because it would lead to the fastest possible rollout of video competition, which will benefit consumers with greater choices and lower prices. A statewide franchise would certainly be an improvement over the current local franchising structure, but would not be optimal. Also, to the extent that the rationale for local franchises is that local authorities act as proxies for their citizenry, a statewide franchise would not necessarily accomplish those goals. Indeed, a state franchising process might provide other obstacles to video competition, such as giving incumbent providers an opportunity to oppose or delay new entrants.

*Question 2.* Should Federal legislation address access to programming? Is sports programming a unique problem?

Answer. To the extent that video providers also have ownership interests in the programming on their systems, it is important that they be required to make that programming available to other competitive video providers. Otherwise, vertically integrated video providers might either withhold programming from competitors, or make that programming prohibitively expensive, which will harm video competition to the detriment of consumers. Our understanding is that competitors have particular difficulties obtaining local and regional sports programming from video service providers with financial interests in that programming.

To the extent that the Communications Act already requires program access (47 USC §548), the law should be clarified to ensure that vertically integrated video providers do not impose conditions on access to their programming that appear to be “nondiscriminatory,” but in fact are impossible for competitors to meet because of technological, delivery or capacity differences.

*Question 3.* Gene Kimmelman comments in his written testimony about current legislative proposals, “Notably absent . . . is any requirement that new entrants provide their services to the entire franchise area, opening a wide door to economic and ethnic discrimination (redlining) and closing the door to rate relief for those families who most need it and who have largely been left on the wrong side of the digital divide.” How do you respond to Mr. Kimmelman’s criticism?

Answer. At a minimum, any national franchise legislation must prohibit redlining, and must ensure that the prohibition is enforceable. S. 1349, the Video Choice Act of 2005, includes a provision that says that a competitive video services provider may “not deny services to any group of potential residential subscribers because of the income of the residents of the local area in which such group resides.” That prohibition could be expanded to also forbid discrimination based on ethnicity or race. Another possible solution to the problem of redlining would be a negotiated build out requirement such as that found in the recently passed Virginia video franchise bill.