

**S. 2686, THE COMMUNICATIONS, CONSUMER'S  
CHOICE, AND BROADBAND DEPLOYMENT ACT  
OF 2006 (PART I)**

---

---

**HEARING**

BEFORE THE

**COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION  
UNITED STATES SENATE**

**ONE HUNDRED NINTH CONGRESS**

SECOND SESSION

—————  
MAY 18, 2006  
—————

Printed for the use of the Committee on Commerce, Science, and Transportation



U.S. GOVERNMENT PRINTING OFFICE

65-418 PDF

WASHINGTON : 2011

---

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Internet: [bookstore.gpo.gov](http://bookstore.gpo.gov) Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

TED STEVENS, Alaska, *Chairman*

JOHN McCAIN, Arizona	DANIEL K. INOUE, Hawaii, <i>Co-Chairman</i>
CONRAD BURNS, Montana	JOHN D. ROCKEFELLER IV, West Virginia
TRENT LOTT, Mississippi	JOHN F. KERRY, Massachusetts
KAY BAILEY HUTCHISON, Texas	BYRON L. DORGAN, North Dakota
OLYMPIA J. SNOWE, Maine	BARBARA BOXER, California
GORDON H. SMITH, Oregon	BILL NELSON, Florida
JOHN ENSIGN, Nevada	MARIA CANTWELL, Washington
GEORGE ALLEN, Virginia	FRANK R. LAUTENBERG, New Jersey
JOHN E. SUNUNU, New Hampshire	E. BENJAMIN NELSON, Nebraska
JIM DEMINT, South Carolina	MARK PRYOR, Arkansas
DAVID VITTER, Louisiana	

LISA J. SUTHERLAND, *Republican Staff Director*

CHRISTINE DRAGER KURTH, *Republican Deputy Staff Director*

KENNETH R. NAHIGIAN, *Republican Chief Counsel*

MARGARET L. CUMMISKY, *Democratic Staff Director and Chief Counsel*

SAMUEL E. WHITEHORN, *Democratic Deputy Staff Director and General Counsel*

LILA HARPER HELMS, *Democratic Policy Director*

## CONTENTS

---

	Page
Hearing held on May 18, 2006 .....	1
Statement of Senator Boxer .....	13
Prepared statement .....	13
Statement of Senator Burns .....	5
Statement of Senator DeMint .....	6
Statement of Senator Dorgan .....	11
Statement of Senator Ensign .....	7
Statement of Senator Inouye .....	4
Statement of Senator Lautenberg .....	10
Statement of Senator Bill Nelson .....	9
Statement of Senator E. Benjamin Nelson .....	9
Statement of Senator Pryor .....	6
Statement of Senator Smith .....	63
Prepared statement .....	63
Statement of Senator Stevens .....	1
Statement of Senator Sununu .....	15

### WITNESSES

Bloomfield, Shirley A., Vice President, Government Affairs and Association Services, National Telecommunications Cooperative Association .....	67
Prepared statement .....	69
Guido, Hon. Michael A., Mayor, Dearborn Michigan; Vice President, U.S. Conference of Mayors (USCM) .....	31
Prepared statement .....	32
Johnson, Julia L., Chairperson, Video Access Alliance .....	38
Prepared statement .....	40
Kimmelman, Gene, Vice President, Federal and International Affairs, Consumers Union .....	42
Prepared statement .....	44
Largent, Hon. Steve, President/Chief Executive Officer, CTIA—The Wireless Association® .....	80
Prepared statement .....	82
McClelland, Philip, Senior Assistant Consumer Advocate, Office of Consumer Advocate; on behalf of the National Association of State Utility Consumer Advocates (NASUCA) .....	91
Prepared statement .....	92
McCormick, Jr., Walter B., President/CEO, United States Telecom Association (USTelecom) .....	27
Prepared statement .....	29
McSllarrow, Kyle, President/CEO, National Cable & Telecommunications Association (NCTA) .....	16
Prepared statement .....	17
Read, Joslyn, Chairman of the Board, Satellite Industry Association (SIA) .....	85
Prepared statement .....	87

### APPENDIX

López, Keali 'i S., President/CEO, 'Ōlelo Community Television, letter, dated May 18, 2006, to Hon. Daniel K. Inouye .....	103
Pringle, Hon. Curt, Mayor, City of Anaheim, prepared statement .....	107
St. John-Crane, Suzanne, Executive Director, Community Media Access Partnership (CMAP); on Behalf of The Alliance for Community Media, prepared statement .....	103



**S. 2686, THE COMMUNICATIONS, CONSUMER'S  
CHOICE, AND BROADBAND DEPLOYMENT  
ACT OF 2006 (PART I)**

---

**THURSDAY, MAY 18, 2006**

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

The Committee met, pursuant to notice, at 10:15 a.m. in room SD-106, 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. Since we do have two panels today, I would like to make—I have sort of a long opening statement, I think my colleague does, too, on this bill.

This marks the first of two hearings on S. 2686, the Communications Act Reform Bill that Senator Inouye and I introduced a little more than 2 weeks ago. The first title is the Call Home Act, providing assistance to our troops deployed overseas. And it's now approaching 50 co-sponsors, with more than half of our Committee co-sponsoring this bill.

The second title is the Interoperability Title, largely an effort that Dan and I began last fall in the reconciliation bill in which our committee voted to dedicate \$1 billion for interoperable communications equipment for first responders. And this comes from the spectrum proceeds of future auctions. Because of the Byrd Rule, the authorization language in how the money was to be spent was deleted from the final package, and Title II of this bill provides how it is to be expended.

Senator McCain was instrumental in developing that proposal, along with Senator Inouye, who proposed the idea of a strategic technology reserve for every State. His concept has been hailed by Governors nationwide. Senators Lott, Vitter, and Bill Nelson also provided valuable input after their firsthand experience at and during the response arising from Hurricane Katrina.

Senator Kerry has had some additional refinements. He will propose dealing with redundant networks. And we are committed to working with him on that effort.

The USF title is largely patterned after three bills or amendments sponsored by Senators Inouye, Burns, Rockefeller, Smith, Dorgan, and Snowe, which many of this committee have cosponsored, as well as provisions introduced in the House.

We're particularly grateful to the bipartisan members of the so-called Farm Team, including Senators Lott, Nelson, and Pryor, whose staffs spent hours discussing the concepts before the pen was ever put to paper on the universal service portion.

Senators Ensign, Rockefeller, and Smith are credited with first bringing the franchising reform proposal to our Committee, while the House adopted a national franchising proposal. The Inouye-Burns principles called for local franchises. In an attempt to be consistent with their principles, the proposals we drafted maintained local involvement in issues from rights-of-way management to PEG channels. There are a number of elements in that title that still cause Senator Inouye and others some concern, which we will attempt to address as we mark up the bill.

The White Spaces title allowing unlicensed use of vacant TV channels for broadband is largely the product of Senators Allen, Sununu, and Kerry. Senator McCain and Lautenberg are the principal authors of the Municipal Broadband title, which we fused with the ideas of Senator Ensign's bill.

Senator Boxer first initiated the idea of addressing child pornography in the bill, and we welcome any additional suggestions that members have to that portion.

It is our hope that we will include a proposal from Senator Kerry that has been referred to the Judiciary Committee. I have asked to meet with Senator Specter this week to discuss moving the Kerry proposal. We're also waiting for additional input from the FBI and the Justice Department, and we will talk to Senator Specter about those, also.

The Broadcast Flag proposal was developed by Senators Smith and Boxer, and has been endorsed by both the NAB and Motion Picture Association. This is an element that is also very important to the majority leader.

And I'll take the credit or blame for the Net neutrality section that's in our bill. It'll be the subject of our hearing next week. Senator Inouye will chair that hearing, as I must be absent that morning. I take credit or blame for that, as I said.

As we laced together proposals made by members of the Committee from both sides of the aisle, Senator Inouye and I did not agree upon every provision, including my Net neutrality language. However, he did join me in cosponsoring the bill to begin this dialogue, and I'm grateful to him for that. So that everyone knows, we will continue to work in a bipartisan basis on this bill.

Our initial draft, introduced more than 2½ weeks ago, was intended to offer a starting point to stimulate specific legislative proposals for improvement from both the members of our committee and from industry, cities, and consumers who will be affected. It certainly has stimulated discussion, that's for sure.

Overall, the reaction has been very favorable. From my point of view, dozens of groups, from the National Association of Broadcasters to the U.S. Telecommunications Association, and from the rural telephone companies to the Motion Picture Association of America, have issued statements supporting titles of the bill. First-responders, veterans groups, and military support organizations have hailed this bill. Even the National Cable Telecommunications Association has made a favorable comment about the legislation. At

the same time, each has offered constructive suggestions for improvement, which we intend to review.

Senator Inouye and I have initiated a dialogue with Members of our Committee. At our request, our committee staffs met together jointly this week, and last week with every Senator's office, Republican and Democrat, alike, on a bipartisan basis. They have gone through the bill title by title, seeking comments, proposed changes, and constructive criticism.

Senator Inouye's staff wisely pointed out that some members' offices may be reluctant to raise specific concerns in front of a large group. Others, like Senator Lott and Sununu, have unique concerns on how the USF program would work in a rural State served largely by national nonrural companies. Still others have concerns about how the Universal Service Program would work for farmers in States like Nebraska.

The DTV title includes specific language on border States and possible interference from Canada and Mexico. Senators McCain and Hutchison and Boxer are on the southern border, and Senators Burns, Dorgan, Snowe, and Cantwell are on the northern border, which may have unique issues that need to be addressed.

Senator Inouye and I have included some specific provisions to address issues unique to Alaska and Hawaii because of our global position relative to satellite coverage. We will also welcome ideas from members on this subject so that programs to this bill from Universal Service to franchising work just as effectively. They will work effectively on the farm, the ranch, the fishing village, or a city, or even in a remote Eskimo village or a native Hawaiian island.

Today, I'm asking our Committee staff to continue to meet one on one with the members' offices to discuss the specific proposals and how we can craft the bill in a manner that will work throughout the Nation. As we continue that dialogue, Senator Inouye and I invite each of our colleagues to submit written comments on the bill to us. Senator Inouye is preparing comments on the measure, which I will review this weekend. We've blocked time to discuss his comments in detail at the beginning of next week. And we invite our colleagues to do the same thing, so we can be able to address each unique concern before we get to the markup period.

Some members have suggested that the draft that was circulated was too hard on the cities. And that's probably a fair criticism. Our Committee staffs have met with the cities who have outlined their concerns in detail. And Senator Inouye and I will discuss those issues that they have raised when we meet next week, and will attempt to find a middle ground in that process as these hearings unfold. And we look forward to each of your suggestions today.

I want to point out, we submitted the bill that's before us now as a draft. It is not the final legislation. And we look forward to the comments you will make here today.

Senator Inouye?

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

Senator INOUE. Thank you very much.

Historically, communications issues have not been partisan. Positions on various issues have tended to reflect the needs of members' state and communities they're in. However, whenever we consider a bill as complicated and as closely monitored as the one before us, partisanship often begins to seep into the process, and I believe that we must all commit ourselves to avoid such a counter-productive course.

After more than 40 years in the Senate, the Chairman and I are well aware that bipartisanship is the only way to get the most difficult legislative tasks accomplished. And the task before us is as difficult as they come.

The key elements of reform in S. 2686 will require substantial revision if we are to pass legislation this year.

On video franchising, the measure must provide a reasonable balance that would reaffirm the legitimate interests of local governments and support speedy entry on fair terms for new video providers. The measure should also affirm the principle Senator Burns and I articulated earlier this year. The words embedded in the bill do not appear to support that conclusion.

The draft bill reduces the role of franchise authority to filling out four blanks in a form agreement and precludes local governments from ensuring the new video operators upgrade their systems in a uniform manner that all citizens, not just those living on the "right" side of the street, can enjoy the benefits of competition.

Finally, while the provisions involving franchising are problematic enough, this measure also includes other unrelated changes to our communications laws that would eliminate key consumer protections regardless of whether new competition emerges or not.

Given these complexities, I am pleased that we have the opportunity to discuss these matters with our witnesses this morning. I believe we can enact legislation this year if we narrow our focus and get serious about what is reasonable and what can be accomplished.

Within the next few days, I hope to share with my colleagues some of my ideas as to how we might reach our goals in strengthening universal service, preserving network neutrality, and promoting greater competition in all communication markets.

The Chairman recognizes both the need for bipartisanship and the need for further improvements to the bill. He has made very clear his intention to produce a measure that reflects the broad consensus of this committee, and I look forward to working with him to accomplish this goal.

And I thank you very much, Mr. Chairman.

The CHAIRMAN. Senator Sununu was first.

Senator SUNUNU. I have no formal opening statement. I'm happy to let others go ahead and hear from the panel.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Burns?



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

Senator BURNS. Mr. Chairman, thank you very much for holding this hearing as we get this process underway formally to rewrite the—or change some things that we did in 1996.

I noted your statement there, that the comments and the conversations have picked up in the last 2 weeks prior to this hearing. And then, I first thought, when we started putting this thing together, that this committee should adopt a new model. We're not happy until you're not happy. And as we move down this—but I noted, and I want to thank you for much for—I had a lot of interest in universal service. We—I think we have got a—NetUSA is in this bill, and we're very happy about that.

Rural areas face a little bit—a different challenge than we do in more areas, and there are some things that's going on in the universal service that I think we should take note of because of the changing landscape of the industry.

The Universal Service Fund remains crucial to rural America. The day has not arrived when technology and the free market can make affordable communications service available everywhere. As Chairman Stevens has so aptly noted in the past, the fund is crucial to keeping America on the information—rural America, especially—on the information highway, and not on the exit ramp.

Recently, radical changes have taken place in the telecommunications industry requiring Congress to take a look at revising the Universal Fund to ensure that the law keeps pace with its changing landscape. The chairman deserves a lot of credit for introducing such a thoughtful and far-reaching telecommunications bill. I'm very pleased that most of the principles that I set forth earlier this year are addressed in—hereto in this piece of legislation, especially in regards to video franchising.

I appreciate my good friend from Hawaii, as we've worked on this issue, and what he—and his recommendations and our visits have been most fruitful, and, I think, probably will find its way to solving that very thorny issue that it's become.

The goal is to promote competition wherever possible. And I am well aware of how competition for video services has grown over the past decade. Even in rural Montana, satellite competitors, such as DIRECTV and EchoStar. They've had a significant impact on the marketplace. Most of—and most of our constituents can now choose among three service providers for their video programming. Technology has enabled cable companies to compete for telephone customers, and telephone companies are beginning to compete for cable and satellite television customers. You know, in 1996, we tried to get there in that 1996 bill, and—but then, the industry took a sharp little turn there, and we didn't get it done. But I think we can get it done this time.

A study by the GAO put out in March of last year shows that cable TV rates are substantially lower, by 15 percent, in markets where competition exists. With this in mind, we have the opportunity to bring even more competition to the marketplace, while, at the same time, ensuring our colleagues in local government are able to protect their interests for their communities.

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. By taking franchising rights away from local government, it would eliminate them from requiring buildout requirements, offering consumer protections, and preventing economic redlining, offering their community public, educational, and governmental programming.

But the franchising process must not be permitted to become a barrier to entry. Our telecommunications laws are, right now—after only 10 years, are outdated, and they're hurting some consumers in both large and small markets.

So, I look forward to these hearings, and I look forward to working with the rest of my colleagues on this committee as we fashion this piece of legislation. And it is a very important piece of legislation for the telecommunications industry in this country.

And I thank the Chairman.

The CHAIRMAN. Senator Pryor?

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

Senator PRYOR. Thank you, Mr. Chairman.

I really just wanted to say thank you to the Chairman and Co-Chairman for all your hard work in this legislation. I know that you two have spent hours and hours of time, as well as your staffs, countless hours of time in pulling this together. I think it's a very good start. Obviously, we need to look at it, and I'm sure we'll have some amendments or some suggestions as we go through it. But I look forward to working with both of you and trying to get this done.

Thank you.

The CHAIRMAN. Thank you very much.

Senator DeMint?

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

Senator DEMINT. Thank you, Mr. Chairman and Co-Chairman.

And, Mr. Chairman, as I have expressed to you before, I'm very grateful to you and your staff for the leadership that you've demonstrated by getting the Communications, Consumer Choice, and Broadband Deployment Act put forward.

I'm very pleased that Senate Bill 2686 streamlines the video franchising process. Video franchising laws, while important in the early stages of cable TV development, are now a troubling monopoly legacy. They allow for excessive State and local regulations that are fracturing markets and delaying the deployment of new technologies.

Earlier this week, the South Carolina legislature came one step closer to joining the ranks of Texas, Kansas, Indiana, and Virginia, passing a bill for statewide video franchising. I think the move toward franchise reform at the State level shows that something needs to be done here at the Federal level as soon as possible.

I'm less pleased with the Universal Service Fund section of the bill, because it expands the USF without addressing the needed re-

forms on the distribution end. I believe that universal service subsidies play a critical role in bringing communications service to rural, high-cost areas, but in a communications industry that is growing more fiercely competitive each day, Congress should really struggle to keep Universal Service Fund minimum, because, fundamentally, USF has been set up to help narrowly defined groups at the expense of consumers, as a whole.

Moreover, the Universal Service Fund price manipulations and price averaging distort competition. It doesn't make sense to subsidize two companies in a rural area to compete against each other.

Equally problematic is dedicating the subsidy to only one favored provider, which makes it highly unlikely that a second provider will ever want to compete with the established favorite. In either case, universal service subsidies hurt rural consumers, because, while they appear to keep prices artificially low in rural markets in the short term, they make these markets less attractive to new entrants in the long term.

While the legislation does include some good reforms to USF, such as broadening the base of contributions, it does not address the existing rate-of-return regulation, which delivers no incentives for rural incumbents to provide the best service to the customers at the lowest price. In fact, it actually discourages efficiency and the deployment of the best technology.

Because of the cost to consumers, as a whole, and the economic distortions USF creates, I think it is important that Congress not expand it until it is truly reformed. The fund should be designed so that each dollar is invested as wisely as possible, it is fair to everyone who pays in, and it has an effective auditing system in place to promote accountability and punish abuse.

Again, Mr. Chairman, I thank you for bringing this bill forward. I yield back.

The CHAIRMAN. Senator Ensign?

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

Senator ENSIGN. Thank you, Mr. Chairman. I applaud your efforts on this bill and appreciate the co-sponsorship of Co-Chairman Inouye.

I think this is an incredibly important piece of legislation. Let me just lay out a few principles.

Video is what the public is wanting, wanting more choice in video, wanting more price competition in video, more services. And that really is what is going to drive the broadband buildout in the United States. And that's the purpose—the most important purpose for me in this legislation is to make America more competitive in the world, as far as broadband deployment is concerned. And I think that this legislation will go a great deal of the way toward encouraging more and more broadband buildout. There are a lot of obstacles right now to folks getting the financing. If the incentives aren't there, the financing won't come. And with 33,000 different local cable franchise authorities and different rules, it's very difficult for competition to break into the marketplace. And as we're seeing the video deployment—I'll use Fallon, Nevada, as a good example. A little local community is taking fiber all the way to the

home in their new builds. Well, what's the incentive for them to take fiber all the way to the home? It's so that they can take video services, IPTV, to the home to be able to compete with the cable companies and the satellite companies. And if we're seeing there's an economic incentive for a small community to do it, obviously there's going to be an economic incentive for the phone companies to compete with satellite, cable, and even the power companies. And that's the idea, the more competition, the more there is room out there for people to improve their networks constantly. Cable has to constantly improve their networks. Phone companies, everybody, will have to constantly improve the type of services and the type of networks that they have.

Now, Mr. Chairman, the cities have obviously given a lot of pushback on the legislation from the beginning, but I think that you have addressed two of the major problems that the cities had with this bill—first of all, that you guarantee the full 5 percent franchise fee that they receive, but you also did an additional 1 percent for institutional networks and public, educational, and government channels. I think this is probably a little too much, on the 1 percent, but certainly the cities should be pleased with this piece of the legislation.

Local governments also need to remember that every customer that leaves satellite and switches to this new IPTV service, this is new revenues for the cities, because satellite customers don't pay the 5 percent franchise fee.

You've also expanded the powers of local governments to manage the rights-of-way by adding the following items the cities can require of the carriers: payment of bonds, providing security funds, letters of credit, insurance, indemnification, penalties for failure to address these issues, and liquidated damages for violations.

By addressing these key concerns from cities, you have given them their top asks. I know that there are still some at the local level that want to keep their power, that they want to keep control. But in today's day and age, we no longer have monopolies. In this highly regulatory environment, we need to take off that regulation so that market forces can be at play, so that consumers, in the end, benefit.

We focus on the consumers here. What were local cable franchise authorities put in place for? They were put in place to protect the consumer. There is nothing that protects the consumer better than competition. The more competition, the better off the consumer is going to be for prices, for service, virtually everything that you can think of. And that's what this bill does, it brings more competition to the marketplace. And that's why I think it is so important that we pass this legislation, and that we don't let politics get in the middle of delaying this legislation. The sooner that we can get this legislation in place, work out the differences between the House and the Senate, pass it, and get it signed into law this year, I think that America is going to be much better off, and we're going to have a lot more network capacity out there, a lot more broadband brought to rural communities and across the United States.

And one final comment. While I may have some differences in the way that we do this Universal Service Fund, there is no question in my mind that this piece of legislation, without the Uni-

versal Service Fund, would do more for rural customers in getting them broadband than all the money you could ever pour into the Universal Service Fund.

So, Mr. Chairman, I appreciate the legislation that's before us today. I look forward to hearings on it, and look forward to marking up the bill.

The CHAIRMAN. Thank you very much.  
Senator Bill Nelson?

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

Senator BILL NELSON. Thank you, Mr. Chairman. Mr. Chairman, I just want to make six points.

I think it's very necessary that we proceed, in a bipartisan fashion, in working together to craft a bill.

Things have changed significantly since 1996. It's now time to spur vigorous competition, lower prices, and broadband choices for all, including the rural and the poor.

Third, it's time for streamlined video franchising. That's why I support this.

Fourth, this bill does well for the telephone companies and cable. It tries to strike a level playing field.

Fifth, this bill does not protect the cities. And that concerns me.

And, sixth and finally, on the Universal Service Fund reform, I'm wary of any contribution mechanism that is based on phone numbers. That would amount to a regressive tax, and it could hurt low-volume users like senior citizens, of which we have plenty in my State.

Thank you, Mr. Chairman.

The CHAIRMAN. We have a few right up here.  
Senator Ben Nelson?

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

Senator BEN NELSON. Thank you, Mr. Chairman.

I, too, am pleased that you have scheduled this hearing for today, and that these discussions will be on very important communications issues that are—must be addressed.

They're important policy decisions that deserve full debate. And, of course, I think these hearings are crucial in ensuring that we, as a committee, can, as my colleague from Florida said, get bipartisan consensus. If we can develop a bipartisan consensus in this committee and get a bill out, then we do have an opportunity to get something on the floor. If we fail to get something on a bipartisan basis, I don't see how we can ever hope to be successful as we move things forward on the floor.

Now, first, as it relates to video franchising, I support streamlining the video franchising process so it will encourage competition in the video market. I believe it's always in the best interest of consumers when we facilitate competition at every rational level. And I also believe it's important that we facilitate that—as we facilitate it, we provide for local control, where it's necessary and reasonable, to protect consumers. So, I am concerned about making sure that we do what we can to protect local interests.

And I look forward, today, and others—other discussions—to exploring where that balance should be struck with the witnesses today. I think there is a question about how you do strike that balance.

And as for universal service, it's obviously an enormously important program for my State, and I know for any State that has a significant rural population or a particularly broad expanse of area. In the past 10 years since the last major telecommunications bill was passed, universal service has been an important catalyst for deployment of communication infrastructure in rural areas of this Nation. It's ensured rural access to telephone services at rates similar to urban areas, and it's contributed toward making communications affordable for schools, libraries, and rural healthcare providers. And it must, in fact, continue to do that.

So, the stability of this Universal Service Fund that's—it's being challenged by changes in technology, and we must reform the contribution base to ensure its viability.

So, thank you very much, Mr. Chairman, for holding this hearing. I look forward to the testimony and the opportunity to learn more from our witnesses.

Thank you.

The CHAIRMAN. Thank you very much.  
Senator Lautenberg?

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

Senator LAUTENBERG. Thanks, Mr. Chairman.

We are engaged in quite a process here, and I hear my colleagues discussing bipartisanship and the interest that we have in achieving that kind of a standard. And I agree. But I wonder, Mr. Chairman, if, with the timeline that's prescribed here now, whether we can get to all parts of this very important, and very large, by the way, piece of legislation and still maintain a bipartisan spirit.

And I think it's great that new companies are poised to enter the television markets. Competition, it's been said by others, is one way to be sure that the consumer can get the best price and the best quality.

Verizon, in my State, has already announced plans to serve almost 150 communities. And competition will not only mean the lowest rate for consumers, but it'll mean more choices. People will be able to get video, voice, and data services from the source that best suits their needs. But we shouldn't rush into setting up new rules without maintaining a level playing field for companies and ensuring the best interest of the consumers.

The Communications Act required that cable companies must be responsive to the needs and interests of the local community. And these words might not carry much legal weight, but the idea behind them is important—and critical, I think. Local governments are usually in the best position to determine the specific needs of residents in their communities, and especially in matters regarding utilities and services. And we need to be careful about usurping local rights, including the right to negotiate franchise agreements with television providers. Local governments have expressed seri-

ous concerns with this draft legislation. And we've got to address these concerns.

Companies that are just entering the video market would like to circumvent local agreements by signing a national pact, but that could give them an unfair advantage over their competitors, especially if they're allowed to cherry-pick the most lucrative part of the market.

And I also note that many States are stepping in to create state-wide franchises. And such legislation appears on the fast track in my home State of New Jersey.

The New Jersey bill, which Verizon supports, would speed competition while maintaining local control. It would also ensure widespread competition by requiring buildout to the 60 most densest towns, within 3 years. This statewide bill could be more beneficial to my constituents than the Federal bill we're presently considering.

We also, obviously, have in mind the Universal Service Fund. The Fund is growing. It stands at \$7.1 billion today, compared with just \$1.7 billion, 9 years ago. So, we've got to make sure that this fund doesn't grow out of control. And we want to be certain that it remains financially viable. And though New Jersey is not considered rural in very much of its borders, the fact is that I have supported Essential Air Service and other services that are required for communities that are at distant places.

One Universal Service Fund program is especially important to my State, and that is the schools and libraries fund, otherwise known as the E-Rate Fund. This fund is vital to thousands of schools and libraries throughout America. It provides discounts for telecom services, internal connections, and Internet access, enabling millions of schoolchildren and library patrons to gain access to important communications.

So, I certainly support increased oversight on all of the universal service funds. But E-Rate has got to remain a national commitment.

And, Mr. Chairman, once again, I thank you for bringing this bill up. But I urge that we have sufficient time to study this bill and have a good, honest debate.

And I thank you very much.

The CHAIRMAN. Senator, I'd point out we've had 15 hearings on this bill before this date. This is not the first hearing.

Senator Dorgan?

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

Senator DORGAN. Mr. Chairman, thank you very much.

This is a complicated set of issues, and I think there is always, and will always be, a tension between competition and concentration. All of my colleagues have talked about competition. There is a natural, inevitable tension between competition and concentration.

I was here in 1996 when we rewrote the Telecommunications Act. The plum at that point was to allow the regional Bells to get into long distance. That was the big plum. Long distance is largely now a giveaway item. The proposition was, if we allowed them to

get into long distance, we would do that on the basis that they would compete with each other for the local exchange. They didn't have much of an appetite to get involved in competition, one to another, so they didn't actively compete in the local exchange. And, again, some years later, now long distance is pretty much almost given away. Not completely, but it doesn't have the value it was described as having 10 years ago.

The major activity in the past 10 years has been merger activity. We now come to this table with both cable and also the telephone companies—having merged with some very large companies. With tens and tens of billions of dollars at stake, many of these companies are betting their companies on the future. None of us quite know what the future will be, or how technology will evolve. The cable companies bring video into the home. They now want to bring telephone into the home—telephone service. The telephone companies bring telephone service into the home. They now want to bring cable into the home. Both of them want to have opportunities to steer people to the Internet.

As they do that, my interests are, What is going to best incentivize the buildout of broadband, yes, to rural areas? I don't share my friend from Nevada's assessment that competition will inevitably provide robust opportunities in rural America. Didn't happen with electricity. It didn't happen with telephone service. Won't happen with broadband buildout.

The free market system, in my judgment, needs some regulation. We need some plans and guidance on how we're going to accomplish what our intentions are with this.

And so, universal service—I'm very interested in rural universal service. I'm interested in the competitive forces that will build out whatever it can build out. But I know that the buildout will always go to where the income stream is most generous to support the buildout first. And areas that will remain last will become part of the digital divide unless we have approaches here in this markup that decide the direction that we want and the structure that we want for it, which includes some regulation.

I will be concerned about an issue called "Internet freedom." Some call it "Net neutrality." The open architecture of the Internet, I think, is very important. And we'll have some amendments, I assume, and some discussion, about that issue. It's complicated. No question about it. But I think Internet freedom is very, very important.

The universal service issue and the Universal Service Fund is very important to me. Senator Smith and I have introduced a piece of legislation on that.

So, there are a lot for us to do here. And I know that the stakes are very, very big. I just finished reading a book about one company that bet its future, and lost. It actually—its name is still around, but—you know, they're—companies are making very big wagers on the future. They have about as much clarity about the future as we have. We don't know what technology is going to exist 5 years from now, or what the future's going to hold.

I was just thinking, in 1998, guys named Larry and Sergey actually moved from their dorm room to a garage of a neighbor with a garage door opener. That was their—where their business moved.



That was January 1998. Their business is now worth more than General Motors, Ford, and Coca Cola combined, \$120 billion. It's called Google.

Well, that didn't exist in 1996, when we rewrote the Telecommunications Act. I don't know what the future's going to be. I think we ought to be legislating, we ought to be thinking about this, working on it seriously. I will be someone who wants us to go in a methodical, thoughtful way that gets it right. I'm much more interested in getting it right than I am in speed this summer.

And so, Mr. Chairman, thank you, and thank the Ranking Member, for laying out a series of issues for us to begin chewing on. And my hope is that, when we get through with all this, we will have advanced the interests of the entire country to have better telecommunications, broader access across the entire country.

The CHAIRMAN. Senator Boxer?

**STATEMENT OF HON. BARBARA BOXER,  
U.S. SENATOR FROM CALIFORNIA**

Senator BOXER. Thank you, Mr. Chairman.

And I'd like my full statement to be placed in the record, and I'll summarize it, if I might.

The CHAIRMAN. Yes, ma'am.

Senator BOXER. Thank you.

[The prepared statement of Senator Boxer follows:]

PREPARED STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM CALIFORNIA

Mr. Chairman, thank you for holding this hearing on the "Communications, Consumer's Choice, and Broadband Deployment Act of 2006." It is an aggressive bill that attempts to address many contentious communications issues.

The bill would fundamentally change the way telephone, cable, and satellite companies are regulated. And have a tremendous impact on the technology and media industries.

It also would radically alter cities' and municipalities' regulatory authority over the distribution of video and broadband services in their communities and limit their ability to provide consumer protections to their residents.

Because of the reach of this bill, I am very interested in hearing the opinions of the experts on today's panel.

We are dealing with services that affect the daily lives of every American—their telephone, cable television, and Internet access. The industries that provide these services are drivers of the U.S. economy.

Any changes to the way they are regulated should be well thought out and based on sound policy choices.

I have always supported legislation that promotes competition, encourages economic growth, and protects consumers. I think that we all can agree on those principals.

Unfortunately, I have serious concerns that the bill as drafted will not achieve those goals. I look forward to working with my colleagues on the Committee to address the important issues raised in the bill.

Senator BOXER. Mr. Chairman, thank you for holding this hearing on Communications, Consumer's Choice, and Broadband Act of 2006.

This is a very aggressive bill. It attempts to address many contentious issues that impact all our states. But I have to believe, after looking at all the various parts that you deal with, it's a tremendous impact on my home state. So, I also want to proceed in a deliberate fashion, be very careful that we don't have unintended consequences, because the bill would fundamentally change the

way telephone, cable, and satellite companies are regulated. It would also radically alter cities' and municipalities' regulatory authority over the distribution of video and broadband service, and limit the ability of locals to provide consumer protection.

And I also would like to pick up on something Senator Dorgan said. You know, the statement that was made by Senator Ensign, I thought quite eloquently, that the way he wants to protect consumers is—for competition to rear ahead—is very good, in theory. But, in practice, as you look at that, and you step over the local communities, it could have a very adverse impact. I could tell you this, because we deregulated electricity in our State, much to the chagrin of consumers, who revolted against what had happened. It did not work out right, and it opened up the door to Enron. And, at the end of the day, people are just having to cut back on everything else they do in life in order to pay for their electricity.

So, for me, I would be very cautious on this, just as one Senator. And I would say, having been a county supervisor when I started my career, one of the issues that was the biggest issue before us is cable rates. And I will say, if we suddenly take all this back, just expect to be flooded with that kind of issue, which I don't think belongs here. I think we've got other things we need to work on. And I would certainly like to say that our local people could handle this issue.

So, we have a broadcast flag issue, that's also going to be considered later, that is very important to the protection of intellectual property, very important to my State. Universal service, I would agree with Senator Lautenberg on that. And, finally, on Net neutrality, if we don't do this right, we're going to put a lot of people in the slow lane. As a matter of fact, we're going to have a lot of people not able to access the Internet. And it's a very unfair system.

Mr. Chairman, I would say, if we don't do something on Net neutrality, it would be akin to you're going to take your car onto the highway, you've done it every day, you've got 15 minutes to get to work, you're blocked from getting on the highway, suddenly a car comes behind, and it—all the trucks that are blocking the highway part for that car, you think it's time for you, and you still can't get on the highway. This is a—if we don't do this Net neutrality, I think we're going to have a lot of people shut out of that highway.

And so, I look forward to working with you. I know that your staff has been working diligently with ours, and I hope we can come to some good conclusion.

Thank you very much.

Senator SUNUNU. Mr. Chairman?

The CHAIRMAN. Well, thank you very much.

We're going to go to the witnesses now. I would say, again, we've had a whole series of hearings on this. We've had—how many sessions? On these bills or in this?

Senator BOXER. No, this bill.

The CHAIRMAN. This bill is—

Senator BOXER. This is the first hearing on this bill.

The CHAIRMAN. I'm not going to debate it. This bill is a composition of the bills we've had hearings on. And, I tell you, this Senator

is going to see that this bill gets to the floor and it passes the Senate. It will do so this year.

Senator BOXER. Don't you need the votes of the Committee to do that?

The CHAIRMAN. I think we'll have them.

Senator BOXER. Well, good.

Senator SUNUNU. Mr. Chairman?

The CHAIRMAN. Yes, sir.

Senator SUNUNU. You know, I did not provide any formal remarks, but if I might make a couple of quick comments before we go to the panel?

The CHAIRMAN. Sure.

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

Senator SUNUNU. I appreciate that. And I very much appreciate your determination to work through legislation, given some of the differing viewpoints that have been provided.

I was not here in 1996, but a number of comments have been made about that piece of legislation, and I'm a little bit confused by them, because what I heard was, "Well, we didn't get it right in 1996." It seems to me that the things that people are complaining we didn't get right were those very provisions of the bill that assume that Congress knew where the industry was heading, where technology was heading, and where products and services were heading. The discussion was made that the big carrot was long distance, because we knew, in Congress, that that was of value, that that was the key, to competition in the industry, so we made provisions that were very specific to providing this one service, and now long distance is being given away for free, and we've seen the value of bandwidth go to zero.

But, in response to that realization, my colleagues are saying, "So, what we need to make sure is that we get all of the regulations right this time." And I think that is a complete non sequitur. We don't know where the industry is headed, or technologies are headed, or services are headed. For that very reason, we should be very careful and reluctant to regulate the Internet. We should be very careful and reluctant to create technology mandates. There are some in this bill. We should be very careful and reluctant to create subsidies that subsidize a specific company. It might be in rural America, which we all love, but we've got to be careful about subsidizing a specific company in rural America, to the exclusion of others.

So, those are the very things we should be most concerned about in crafting this legislation. I view that as the lesson, to the extent that there is one, of 1996.

There's some good news in the industry, there's some bad news in the industry. I think we should be realistic about it, honest about it. We do have tens of millions, effectively hundreds of millions, of consumers in the country that do have access to broadband. There are over 100 million households in this country that do have access to broadband. We want to make sure that, where there are shortfalls, that perhaps we do a better job. But we need to be very careful about assuming that this time Congress is

really going to be right about where the industry is headed, where technology is headed, where services are headed, because if we make that foolish assumption, then we won't get this right, we won't pass a good bill, and we'll be back here in 5 or 6 years. I'm sure there are some people in the room that would love to be back in 4 or 5 or 6 years marking up another big telecom bill, but that's not my interest.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

I didn't predict, incidentally, we'd have 100 percent support, but I think we'll have bipartisan support.

Mr. McSlarrow?

**STATEMENT OF KYLE McSLARROW, PRESIDENT/CEO,  
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION  
(NCTA)**

Mr. McSLARROW. Mr. Chairman, thank you.

And let me congratulate you and the Co-Chairman and members of the Committee for tackling a comprehensive bill. I know it has made it harder, but, speaking for my industry—we're a broadband provider, and so our focus is, as the largest broadband provider in the United States, obviously, on highspeed Internet, cable television, which is obviously the origins of the industry, and, increasingly, digital phone, where we now have millions of customers, and probably millions more over the next couple of years—so, there's almost no part of this bill that, in some fashion or another, doesn't touch our industry.

And let me just say, right at the outset, we are very grateful for the approach that you've taken. I think this is a fair bill. We obviously have some concerns, which I've expressed in detail in my written testimony. But we are very appreciative that—at least in this draft bill, that you recognize that, in terms of the cross-competition that's taking place, not just between the Bells and cable, but other industries, as well, we need to look at not just video competition, but voice competition, as well. We're appreciative of the fact that you have made an attempt to provide a level playing field on which we can all compete. We're very appreciative of that, particularly with Title VI and video—and this video service, that you've eliminated or reduced a number of regulatory provisions that were unnecessary in this day and age. And we appreciate how you tackled the very difficult issues regarding the digital transition and Net neutrality.

Since I'm on the second panel, I'll talk about the Universal Service Fund a little bit later, on that panel.

Just breaking down three issues. And there are many, obviously, important issues in this draft bill.

On video, as I say in the written testimony, there are some ideas that we have that we think will get us to a closer approximation, to a level playing field, in this day and age. And one issue that has been mentioned briefly a couple times is this issue of non-discrimination in the provision of video service. You can make an intellectual argument, completely coherent argument, that a non-discrimination provision, in this day and age, should not apply. But, in fact, everybody, most of the members on the dais, the tele-

phone companies, cable industry, other providers, all say that we should have a nondiscrimination clause in the provision of video service.

My point would be that, if it means anything, it has to mean something in the context of the community that you're taking a look at. Right now, wittingly or not, the bill allows new entrants to self-select the franchise area. So, if it's small enough, then the nondiscrimination clause becomes an illusion. So, my point, really, to you, Mr. Chairman, Mr. Co-Chairman, and to members of the Committee, is that we would urge you to take a look at that in order to make sure that it means something.

On voice interconnection, I think the draft bill goes a long way toward promoting voice competition. We're very grateful for that. And we think there are a few tweaks that we would recommend—in particular, those circumstances where rural telephone companies basically refuse to interconnect with Voice over Internet Protocol providers. That's something that I think, in terms of promoting competition, as most of the members have said today, in rural communities, would be an ideal policy outcome.

And, finally, I know you're going to have a hearing next week on it, but it's already come up. Let me just say a few words about Net neutrality. In my mind, given where the draft bill is right now, this is now the No. 1 issue. And I've been—obviously, I've testified before you before on this, and I've been on the panels. I think this is a very hard issue—very thoughtful people on either side of the issue—you said you either deserve credit or blame for the provision. I don't want to hurt you here, but I want to give you credit for it. I just think this is the kind of issue that is most appropriately studied a lot more. Very smart people in the industries, in Congress, staff, are trying to grapple with this. I just see no possibility that you can legislate on it in a substantive way. And I think it's a binary choice. I don't think this is one of those issues between no regulation, a little bit of regulation, and a lot. I think this is a fundamental stark choice between no regulation of the Internet or some regulation of the Internet. And our choice, our recommendation to you is to be very cautious. The best way to promote investment and competition in broadband is to stay away from Net neutrality, as it's commonly understood.

With that, thank you, Mr. Chairman.

[The prepared statement of Mr. McSlarrow follows:]

PREPARED STATEMENT OF KYLE MCSLARROW, PRESIDENT/CEO,  
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION (NCTA)

Chairman Stevens, Co-Chairman Inouye and members of the Committee, my name is Kyle McSlarrow and I serve as President and CEO of the National Cable & Telecommunications Association (NCTA), which is the principal trade association representing the cable industry in the United States. Its members include cable operators serving more than 90 percent of the Nation's cable television subscribers, as well as more than 200 cable programming networks. NCTA's members also include suppliers of equipment and services to the cable industry. The cable industry is the Nation's largest broadband provider of high speed Internet access after investing \$100 billion over ten years to build out a two-way interactive network with fiber optic technology. Cable companies also provide state-of-the-art digital telephone service to millions of American consumers.

Thank you for inviting me to comment on legislation pending before the Committee. I would like to commend Chairman Stevens and Co-Chairman Inouye for holding extensive informational hearings and for the thoughtful manner in which

this legislation was crafted. We appreciate your giving the cable industry the opportunity to share its views on a wide variety of issues and your willingness to incorporate some of our industry's key priorities. In particular, we thank the Chairman and Committee staff for taking a close look at Title VI and for limiting and in some cases eliminating a number of economic regulations first imposed in the 1980s such as rate regulation and leased access that are no longer necessary in today's competitive video marketplace. We appreciate that the legislation before us moves in a direction of enabling all providers to compete on a level playing field in both video, and just as importantly, voice services. And while we have concerns with some provisions of this bill that address the Universal Service Fund, the cable industry supports the *Broadband for Unserved Areas Account*. In addition, we strongly support the very thoughtful approaches to difficult issues like net neutrality and the digital transition.

#### **Cable Embraces Competition and Less Regulation**

Mr. Chairman, the cable industry fully embraces, and thrives today in, a robust, competitive marketplace. Our consistent policy over several decades has been to minimize regulation on us and our competitors. The cable industry has never asked Congress for a handout and we don't seek to obtain regulatory advantages over our competitors. Nor have we opposed efforts designed to lighten regulatory burdens on our competitors in order to foster fair competition on a level playing field.

For example, in 1999 the cable industry supported the Satellite Home Viewer Improvement Act (SHVIA), which authorized direct broadcast satellite (DBS) providers to offer local broadcast signals. DBS providers were given "local-into-local" authority but were required to follow the same rules as cable and other MVPDs when they offered local signals. SHVIA established a fair and level playing field for multichannel video competition. And as a result, growth in DBS subscribership exploded and competition in the multichannel video marketplace is thriving. Today, two national DBS providers have captured nearly 30 percent of the MVPD marketplace.

The cable industry did not oppose a key provision of the 1996 Telecom Act that eliminated rules prohibiting telephone companies from offering video service. Rather, we supported that legislation because it offered all competitors the ability to enter new markets on fair, market-based terms and established a stable deregulatory environment. And, more recently, the cable industry supported the efforts of the telephone companies to deregulate their high-speed Internet access service so that they could compete with all broadband providers on a level playing field.

#### **Franchise Reform Legislation Should Streamline the Process and Establish a Level Playing Field**

The legislation pending before this Committee would amend a number of existing telecommunications laws, many of which directly affect the cable industry, including Title III of S. 2686 which seeks to streamline the franchising process for video service providers. As we have made clear at prior hearings on this topic, our primary interest in franchise reform is to ensure that all competitors in the video marketplace compete under the same set of rules, rules that can undoubtedly be streamlined in a dynamically competitive marketplace.

To the extent Congress believes that the franchise process needs to be modernized, the cable industry has clearly stated its preferred path to reform. We have expressed support for franchise reform that embodies the following principles:

- First, in order to expedite entry to market for new competitors, we believe that Congress should streamline the process by limiting the time that local franchising authorities have to consider an application to provide video service.
- Second, it is critical for all providers of video services to be treated on a level playing field. An incumbent should have the right to opt into any new franchise agreement that has better terms and conditions. The government should not pick winners and losers in the broadband industry by establishing a different set of rules that favor one provider over another.
- Third, local governments should maintain oversight with respect to rights-of-way management, meeting community needs and interests (including the equitable sharing of any PEG and institutional network responsibilities), and enforcement of non-discrimination requirements.

While the legislation under consideration today includes provisions that are designed to promote a level playing field, we have some concerns regarding how those provisions would be implemented, and we believe that changes are necessary in order to ensure that all video providers have the opportunity to compete under a streamlined franchise process. The bill's anti-discrimination provisions also appear somewhat illusory under the current definitions of franchise areas. We would like

to continue working with the Committee to ensure that all neighborhoods benefit from competition.

**The Telephone Companies Have Had a Decade to Enter the Video Market**

In 1996 when Congress lifted the ban on telephone entry into the video business, it was a significant change in Federal telecommunications policy. For decades, Congress kept the telephone companies out of the video business for fear that their monopoly control over the local phone market would allow them to exert market power in a way that would harm video competition. This threat was based on the telephone companies' anticompetitive behavior regarding pole attachments and their incentive and ability to shift costs associated with video service into their regulated telephone rate base and thereby unfairly cross-subsidize their entry into the video business with revenues from their telephone monopoly.

However, Congress lifted the ban in 1996 largely because the 1996 Telecommunications Act also established rules to promote competition in the local voice market. Congress hoped that such competition would inhibit the ability of the Bells to use their telephone monopoly to enter the video marketplace in an anticompetitive manner.

The 1996 Act gave the phone companies four options for entering the video business and expressly stated that if they chose to enter as a cable system, they would be subject to the same requirements of Title VI as any other cable operator. At that time, the telephone companies didn't complain that the local franchising process was a barrier to entry and Congress chose not to eliminate for telephone companies that chose to enter the cable business, any of the traditional requirements that apply to cable operators, whether they were first to the market or last. To the contrary, recognizing that large incumbent telephone companies were fully capable of competing vigorously in the video marketplace, Congress stipulated that cable operators would be free from any remaining rate regulation whenever a telephone company entered an operator's franchise area.

Now a decade later, having made little effort to enter the video business, the phone companies are back claiming that they need special rules that would allow them to enter the video marketplace in a manner that would give them a regulatory advantage over their competitors. It is remarkable that Congress would even entertain the Bells' new pleas for special favors when the very rationale for allowing the Bell companies to enter the video business in the first place has yet to materialize—competition in the local voice market. Rather than spending the last ten years offering video competition, as they promised, they have invested their time and tremendous financial resources in the courts and at the FCC attempting to frustrate Congressional efforts to promote voice competition. They have successfully crushed most of their local voice competitors and swallowed their long distance competition. Ten years after the passage of the 1996 Telecom Act, the incumbent telephone companies still have a vice grip on 85 percent of the local telephone marketplace.

Meanwhile, during those same ten years, competition to cable operators has increased dramatically most notably through the presence of two large DBS operators. In stark contrast to the behavior of the Bell companies, the cable industry responded to the deregulation of the 1996 Telecom Act and vibrant competition by investing \$100 billion in private risk capital to upgrade its facilities with state of the art fiber optic technology. The industry made this investment without government subsidies and with no guarantee of a return on its investment.

And just as it created a multichannel video service from scratch, cable pioneered the residential broadband marketplace, while the telephone companies kept DSL technology on the shelf in order to preserve their high-priced T1 business service. Cable's innovation and risk-taking made cable the Nation's leading broadband provider of high-speed Internet access.

The cable industry has embraced convergence. We have created a broadband platform which delivers digital video, high definition television, digital telephone service, and an array of additional interactive services. As such, we commend the Committee for focusing on how best to promote and encourage broadband deployment and adoption and avoiding policies that could threaten investment in the upgrades necessary to offer the next generation of broadband services.

**New Government Fees Should Not Be Imposed on Broadband Service**

The cable industry strongly supports the goals and purposes of the Universal Service Fund (USF). Thus, cable operators that offer VoIP services already pay millions of dollars into the current Universal Service Fund and we support making that obligation clear in law. In addition, cable companies that offer traditional circuit switched service pay into the fund exactly the same as all other incumbent and competitive local exchange carriers that offer circuit switched service. It is further our

view that universal service eligibility should be technology-neutral such that all facilities-based providers of voice services who are willing to meet universal service obligations should be eligible to *receive* universal service distributions.

We share the concerns of policymakers, industry stakeholders and the public that the universal service program, as it stands today, is not sustainable. The current USF contribution mechanism, which relies on the assessment of interstate telecommunications revenues only, virtually guarantees that the fund will continue to shrink. To address this problem, the cable industry has long advocated the adoption of a mechanism that collects universal service contributions based on assigned telephone numbers. This is a simple yet effective reform that will sustain the long-term health of this fund while still adapting to the evolving technology and economics of voice telephony. Under a telephone numbers-based system, all that matters is whether or not the service uses a phone number. Adoption of this approach would promote competitive neutrality among all voice telephone providers—those who offer their services as a replacement for plain old telephone service (POTS)—and would avoid assessments on services that only include a voice component but are not a substitute for POTS.

The cable industry is pleased that the legislation introduced by Chairman Stevens would give the FCC the option of establishing a numbers-based assessment scheme. We would like to work with the Committee on language that would give priority to the numbers-based option and ensure that future assessments are limited to the kind of voice services I described and not extended to broadband and Internet services. The imposition of new fees on broadband service at the same time policymakers seek to encourage more widespread deployment and service penetration would be counter-productive and would raise the price of high-speed Internet services for current and potential broadband customers. We believe that an appropriately crafted numbers-based assessment plan that avoids assessing broadband service will raise the revenue necessary to put the Universal Service Fund on solid and stable ground.

#### **Broadband Subsidies Should be Focused Solely on Unserved Areas**

Mr. Chairman, the cable industry shares your desire to ensure that all Americans, including those who live in rural communities, have access to broadband service. The good news is that broadband deployment is accelerating rapidly all across the country. High speed Internet access is available in 103 million homes passed by cable, representing 93 percent of U.S. households.

The cable industry alone has spent billions to upgrade its facilities and deploy broadband services in rural communities. We did this without a government mandate and without a government subsidy because we wanted to make certain that our customers have the same access to advanced digital technology as all Americans. We took the risk and invested private capital in order to provide broadband services in the communities we serve.

The cable industry's view is that the government should not use Universal Service Funds to subsidize broadband in communities where companies are already offering consumers broadband service. It is profoundly unfair for the government to subsidize a broadband competitor to cable operators, many of which are small rural broadband providers that have stepped up to the plate and answered the call to help close the digital divide. Furthermore, providing broadband service in high cost rural areas is often economically risky. Faced with a competitor subsidized by the government could make that risk unsustainable. A better use of scarce resources would be to target areas where a market-based solution has not developed.

The *Broadband for Unserved Areas Account* included in your bill is an appropriate approach to promoting broadband deployment in areas where it is otherwise uneconomic to do so because it caps the level of government funding for facilities-based providers to deploy broadband, so as not to drain the Universal Service Fund's limited resources, and it specifically targets funds to areas without broadband service. However, we urge you to keep in mind that programs designed to subsidize private entities to deploy broadband service have the potential for abuse and should receive stringent government oversight to ensure that government funds are clearly targeted only to areas where no one is offering broadband service.

An example of a well intentioned program that has not lived up to its stated purpose of providing funds for broadband deployment in unserved areas of the country is the current Rural Utilities Service (RUS) broadband loan program. Loan money from this program is being used to subsidize cable, phone and other competitors in markets where there are already two or more broadband providers. As noted above, this type of subsidized competition penalizes private entities serving those markets and discourages private investment in rural America. In its September 30, 2005 report, the Office of the Inspector General of the U.S. Department of Agriculture



found that the RUS had failed to maintain its intended focus on rural communities without preexisting broadband service, questioned whether the Government should be providing loans to competing rural providers when many small communities might be hard pressed to support even a single company, and observed that the RUS, by granting such loans, may be “creating an uneven playing field for pre-existing providers operating without Government subsidies.”

#### **Rights and Obligations of VoIP Providers**

We are pleased that your bill includes language that extends to VoIP providers the same interconnection rights Congress established in 1996 to traditional competitive local exchange carriers (CLECs) to promote voice competition. The 1996 Telecom Act gave CLECs interconnection rights to competitive local exchange carriers so they could exchange traffic with the Bells on an economic basis, without glitches or delays, in order to promote local voice competition. Limiting interconnection and related rights to providers of voice services that use traditional circuit-switched technology would ensure the Bells retain their market dominance by hampering the introduction of cable’s digital voice services—the best hope for widespread competition in the residential voice market. The bill correctly recognizes that any legislative effort to promote competition in communications would be incomplete unless it also addressed barriers to voice competition, especially where the Bell companies still control 85 percent of the market. And while this bill provides a solid foundation, we recommend changes be made in a few areas including, for instance, limiting these rights, duties, and obligations to facilities-based VoIP providers, who have made a commitment to deploying their own networks and infrastructure, and also urge that rural telephone carriers be required to exchange VoIP traffic with telecommunications carriers with whom they have existing interconnection agreements.

#### **The Bill Rightly Avoids Regulating Broadband Internet Services in the Name of “Network Neutrality”**

Cable supports Congress’s longstanding policy of leaving the Internet unregulated and recognizes that such an approach has been a success and has encouraged tens of billions of dollars in investment. The cable industry believes that those who call for regulation in the name of “network neutrality” are offering a solution in search of a problem. However, we strongly support this bill’s approach which requires the FCC to report annually to Congress on what is actually taking place in an extremely dynamic and evolving marketplace. We believe that FCC oversight of the Internet access marketplace will confirm that there is no evidence of harm or market failure to justify what amounts to imposing common carrier regulation on broadband service.

With bandwidth usage growing at a rapid pace, continued investment will be needed to keep broadband services robust. If broadband providers are to continue to make these investments, and if consumers are going to be given the levels of services and innovative new products and features they desire, all at prices they can afford, broadband providers need to have continuing flexibility to develop new business models and pricing plans. Network neutrality rules will stifle that flexibility and discourage capital investment.

The broadband marketplace is booming and hotly competitive. No real-world problems needing a regulatory solution have been identified. The pace of technological development is breathtaking. There can be no better circumstances than these to let the marketplace work, let companies invest, and let competitors compete.

#### **Program Access**

Existing program access rules should not be expanded to include terrestrially-delivered services or other programming services not owned by a multichannel video program distributor. However, to the extent Congress believes that cable-owned programming should be covered by the existing program access rules, such rules should apply to programming owned by any multichannel video programming distributor.

In 1992, when cable’s share of the multichannel video market was 95 percent, Congress enacted comprehensive program access requirements to stimulate competition in the multichannel video marketplace by ensuring that cable’s competitors had access to programming they viewed as critical for their success. The enactment of these rules was a significant departure from the generally recognized competition principle that exclusivity serves as a pro-competitive tool that benefits consumers and provides incentives to cable operators and their competitors to invest in the development of unique video services such as local and regional programming.

In enacting these program access rules, Congress consciously and correctly exempted terrestrially-delivered cable program networks. Congress struck a deliberate balance between ensuring that cable’s then-fledgling competitors could not be denied

sufficient access to popular satellite-delivered programming in which cable companies had an ownership interest while preserving the pro-competitive benefits of exclusivity in order to foster new program networks. Program networks, especially local and regional services, are high-risk ventures—some of which have failed in recent years. Offering distributors the opportunity to be the exclusive source of such programming can be essential to attracting investment, promotion, and carriage.

Today, it is clear that Congress's decision to exempt terrestrially-delivered networks has not impeded competition, and indeed competition in the multichannel video marketplace is thriving. Over the past decade, cable's share of multichannel video customers has dropped from 95 percent to 68 percent, and almost 30 million subscribers (about 1 in 3) receive their multichannel video programming from non-cable providers. Each of the cable industry's two largest competitors—DIRECTV and EchoStar—are larger than all but one cable company, and the Nation's largest telephone companies are now deploying video services. Finally, in the past decade, the percentage of program services in which cable companies have a financial interest has declined sharply, from 53 percent to 23 percent.

There is no evidence of any problems with the current program access rules or with the multichannel video marketplace. The goal that Congress envisioned in 1992, a highly competitive multichannel video marketplace, has been reached. In addition, the FCC has found no evidence of any abuses of the existing program access rules in general and with respect to terrestrial services in particular.

#### *Specific Issues Raised by the Draft Bill*

While there is much to commend in S. 2686—in particular the elimination of unnecessary economic regulation of cable services and the absence of a “net neutrality” mandate—as with any bill of this size and scope there are areas of ambiguity and room for some improvements. In this spirit we have identified a variety of specific issues raised by the bill. On the franchising side, these issues include the creation of two different regulatory schemes—“old” and “new” Title VI—for functionally equivalent services and an opt-in scheme that ties the regulation of existing cable operators to the business decisions of cable's competitors. With respect to universal service, the bill appears to require contributions from cable modem services in all cases, seemingly deprives VoIP providers of eligibility to receive funds, lacks provisions to encourage efficiency in the disbursement of money from the rural and high-cost funds, and limits auditing safeguards to the e-rate program. We discuss these issues and others below. We look forward to working cooperatively with Chairman Stevens, Co-Chairman Inouye and all Members of the Committee to address these matters.

#### *Video Franchising*

*Role of Local Governments; Prohibition on Discrimination.* We have consistently said that because each community is unique in demography, economics, and geography, local governments are uniquely positioned to ensure that video providers meet each community's needs and interests in a fair and equitable manner. The Federal Government has neither the resources nor the expertise to address these issues. While S. 2686 prohibits a video service provider from denying service to potential subscribers on the basis of race or religion, in addition to income, it would deprive franchising authorities of the authority to enforce this prohibition, leaving enforcement to the FCC and reducing local governments to the status of a complainant. We continue to believe that local governments are much better equipped than the FCC to investigate and determine instances of discriminatory conduct. We also note that franchise revocation is available as a remedy only for making false statements to the FCC related to the provision of service in a franchise. We would suggest also making false statements to the franchise authority grounds for revocation.

Related to the goal of nondiscrimination is the determination of a video service provider's franchise area. Prohibitions on income-, race-, or even religion-based discrimination can be rendered meaningless if a provider can self-define its franchise area to be just the wealthiest communities or the wealthiest neighborhoods in a town. We urge the Committee to consider defining franchise area to be the area served by existing cable operator or entire geographic area of the franchising authority.

*Treating Like Services Alike.* While we strongly agree that the bill's franchising provisions should apply to all providers of video programming that make use of the public rights-of-way, regardless of the delivery technology they use, the blanket replacement of the core terms “cable service” and “cable operator” with “video service” and “video service provider” could have unintended consequences. Must-carry obligations, for instance, apply only to a “cable operator of a cable system.” Since the bill refers to “video service systems,” it is unclear whether must-carry would even apply

to a “video service provider.” While this is presumably not the bill’s intent, it does suggest the kinds of problems that this substitution-of-terms approach presents. We believe it is more prudent to retain the existing definitions of “cable service” and cable operator,” and amend them to make them explicitly technology-neutral. If the Committee decides to retain the new definition of “video service provider,” it should clarify that the exemption for wireless and satellite providers applies to those entities only to the extent they are using those technologies.

*Treatment of Existing Cable Operators; Opt-In Provisions.* While we believe that local governments should retain their current role in ensuring that all video service providers meet local needs and interests, we have also consistently said that economic regulation of the cable industry, devised when the video marketplace was far less competitive, warrants a *comprehensive* re-examination. We are therefore pleased that S. 2686 gives existing cable operators the benefits of a streamlined regulatory framework—“new” Title VI—in markets where new video service providers enter after the date of enactment.

We are concerned, however, that the bill’s opt-in opportunities for existing operators are too limited. While there is a “competition trigger,” for instance, it would not apply in markets where a wireline competitor already provides service, or where an existing operator faces effective competition from DBS. In these situations, the existing operator would remain subject to “old” Title VI. Existing providers should not be bound by the business decisions of other providers in this manner. Opt-in should be allowed for every existing cable providers beginning on the date of enactment. All providers should compete on a level playing field.

*Clarifications to PEG/INET Support Fee.* The bill rewards an applicant that is granted a default franchise with exemption from the 1 percent PEG/INET support fee. While this may provide an incentive for a local authority to act on an application, it could penalize competing providers by requiring them to offer service under a different fee structure. All holders of a streamlined franchise should be required to pay the PEG/INET support fee. With regard to that fee, the bill refers to an offset against the fee from “incremental” operating costs, but does not specify which such costs would be included. Any operating costs should be allowed as an offset against the fee. The bill also does not specifically permit a video service provider to itemize the new 1 percent PEG/INET support fee, as cable operators are permitted to do today with respect to franchisee fees. This issue should be addressed. Finally, the bill should expressly preempt any attempt from the franchising authority to require “voluntary” PEG and INET support above and beyond 1 percent fee.

*Franchise Fees.* With regard to the 5 percent franchise fee, we are pleased with the effort made by this bill to limit the definition of gross revenue on which franchise fees are based. For instance, unlike the House bill, S. 2686 does not expressly include advertising revenue in the definition of gross revenue. Local ad revenue is projected to more than triple over the next ten years from \$4.6 billion in 2005 to \$13.3 billion in 2015. In our view, franchise fees should be closely linked with an operator’s use of public rights-of-way and management of those rights-of-way by a local franchise authority -and not include peripheral revenue streams that could result in a windfall for franchising authorities. The connection between cable’s access to rights-of-way and the selling of advertising is attenuated at best, and therefore we support the Committee’s efforts in limiting the definition of gross revenues. To remove any ambiguity on this point, gross revenues should be limited to revenues from subscribers.

Further clarification is also needed to ensure cable operators are not required to pay a separate franchise fee assessed on the money they collect from subscribers and remit to franchising authorities in payment of the franchise fee (a fee on a fee). Consistent with the goal of a level playing field, the bill should specify that competing video service providers in the same franchise area should pay the same franchise fee. Further, the bill should limit the information that a State commission can request in a franchise fee audit to only those items directly relating to the gross revenues definition, and should prohibit requests for corporate financial information not directly related to local system’s gross revenues.

*Preemption of Local Franchising Authority.* Several courts have held that in the absence of express Congressional preemption, State and localities may have an independent State law basis for imposing franchise requirements. If the goal of S. 2686 is a uniform national policy, the bill should include express preemption language. Compliance with Title VI should be an explicit requirement—but the only requirement—for offering video programming service to subscribers.

*Rights-of-Way Management.* The bill eliminates the provision in current law granting cable operators access to easements dedicated to “comparable uses.” This provision has been important in enabling cable operators to gain access to rights-of-way already being made available to gas, water, and electric companies, without

having to renegotiate easements. This provision should be included in S. 2686, and consideration given to expanding what is meant by “dedicated” to include private agreements as well as public dedications. We also note that the bill’s cost-based limitation on local permitting fees does not clearly apply to other rights-of-way management fees. The cost-based standard should be extended to all rights-of-way-related fees, to ensure that the fees imposed by the bill are the exclusive “rent” paid for use of the rights-of-way.

*Clarifications To Franchise Application Process.* It appears that the applicant rather than the franchising authority specifies the length of the franchise term. This is clearly an area in which the local authority should have input. Further, the bill does not clearly address the consequences of an applicant’s refusal to accept the terms proposed by a franchising authority, and does not impose a deadline on a local franchise authority to address the reasons for such refusal. One approach for remedying this issue would be to specify that a refusal to accept terms is deemed a rejection of the application, subject to appeal by the applicant.

*Integrated Set-Top Boxes.* To the extent the Committee is going to revise Title VI generally, we urge you to repeal the FCC’s rule that bans integrated set-top boxes (the set-tops leased today with the security features embedded in the box) and requires operators to re-engineer their set-top boxes to include separate security technology in boxes leased beginning in July 2007. At a time when Congress has spoken clearly about the need to move to the digital transition for broadcasters, the success of that transition is dependent on consumers having access to the lowest cost digital converter boxes for both over-the-air broadcast and cable services. The set-top box ban is anti-consumer and will slow the digital transition.

Requiring that every operator’s leased box have separate security will increase lease costs by roughly \$2–\$3 per box per month. This additional cost to consumers is wholly unnecessary. The purpose of the rule was to ensure that cable operators would support retail devices that used separate security devices (called CableCARDS), the theory being that if operators had to make sure the cards worked with their own leased boxes, the cards would also be certain to work in retail CableCARD-enabled devices. With the FCC’s adoption of rules implementing the landmark “Plug and Play” agreement, requiring cable operators to support CableCARD-enabled retail devices, the rationale for the integration ban ceased to exist.

Separate security is used in “cable ready” devices sold in retail outlets, so that those devices can be made available anywhere in the country and used on any operator’s system. If a consumer moves, he or she simply needs to obtain a CableCARD from his or her new cable operator to be used in the device. By contrast, consumers who lease their boxes from a cable operator today do not need separate security because their leased set-top boxes are used only in their operator’s system and are returned when the consumer moves. More significantly, with or without the integration ban, cable operators have strong marketplace incentives to make sure CableCARD-enabled retail devices work and receive cable’s services in order to compete with DBS, which has enjoyed a retail presence for a decade. Congress should repeal the ban to ensure that consumers can choose whether to lease a set-top box without paying an unnecessary financial penalty for their choice.

*Satellite Services of a Video Service Provider.* The bill exempts “satellite carriers” from the definition of video service provider, and therefore from the obligation to pay franchise fees. That exemption should not apply to a video service provider who uses satellite to avoid its obligation to provide comparable services to all neighborhoods in a community. AT&T, for example, has announced its intention to use satellite to extend its service offerings to portions of its service areas, rather than using its own network. As an extension of its wireline service, AT&T’s satellite offering should be subject to franchise fees to ensure a level playing field with existing cable operators in those markets.

*Miscellaneous Issues.* Finally, a number of other provisions in Title III of the bill raise concerns:

- *Expansion of FCC Authority Over Equipment.* The bill proposes to delete references to “cassette” and to replace “tape” with “copy” in existing Section 624A of the Cable Act. This would broaden existing law by giving the FCC the authority to compel cable operators to accommodate digital DVR functionality and copy capabilities. We urge the Committee to reconsider this unwarranted expansion of the Commission’s powers.
- *Shared Headends.* S. 2686 prohibits vertically-integrated “video service programming vendors” from denying access to a video service provider solely because that provider uses a shared headend. This provision would effectively deprive programmers of control over their intellectual property because program-

ming is delivered on an “all or nothing” basis to all systems sharing a headend. We urge the Committee to remove this provision of the bill.

- *Offset for Telecommunications Service Sales Tax.* New Section 622(d)(3) appears to require States to offset the franchise fee against any telecommunications sales tax. Particularly if this is intended as a dollar-for-dollar offset, rather than a percentage-based offset, it could give an unfair advantage to the incumbent telephone companies.
- *Local Review of Sales and Transfers.* S. 2686 repeals the provision in existing law that limits local review of cable sales and transfers to 120 days, but it does not prohibit such review. Without language expressly prohibiting such review, the only effect of this language would be to remove the deadline in current law.
- *Program Access Rights for Multicast Broadcasters.* The bill removes a provision of existing law, added in 1996, clarifying that multibroadcasters are not considered “multichannel video programming distributors” with rights to demand cable programming services under the program access law. Broadcasters have the resources to develop their own programming for their digital streams. There is no justification to expand the reach of the program access law for their benefit.
- *Purposes of Title VI.* The bill replaces the current purposes of Title VI, which include the encouragement of growth and development of cable, with single purpose of establishing a “comprehensive Federal legal framework” for franchising. We encourage the Committee to consider additional purposes, such as establishment and maintenance of level playing field and an appropriate role for local governments.

#### *Universal Service*

As I explained earlier, the cable industry supports the principles underlying the universal service regime, and we agree that universal service reform is needed. It is essential, however, that any reform address disbursements as well as contributions. The goals of reform should be to ensure that contributions are assessed fairly, eligibility and distributions are determined equitably, efficiently, and support is targeted to the appropriate services. On all three of these objectives, the bill represents an important and thoughtful starting point, but more work is needed. We stand ready to assist the Committee to make sure universal service is put on a fair and firm footing.

*Contributions.* Proposed new Section 254(d)(1) requires all communications service providers, which would include providers of broadband services (at least 200 kilobits per second in one direction), to pay into the Universal Service Fund. This provision could be read as a mandate to assess contributions on broadband revenues even if the Commission otherwise concludes that a numbers-based contribution methodology would be sufficient. We strongly urge the Committee to eliminate any ambiguity on this point by barring the FCC from imposing a contribution requirement based on broadband revenues.

As noted earlier, the assessment of broadband service revenues would impose new fees on broadband service at the same time policymakers seek to encourage more widespread deployment and service penetration. These new fees would raise the price of broadband for current as well as potential broadband customers, and penalize those who have worked diligently to deploy broadband to nearly the entire nation. The assessment of broadband service is unnecessary to the goal of a stable, sufficient and predictable fund.

*Eligibility to Receive Funds.* The bill perpetuates several requirements that will impede the eligibility of new entrants to receive Universal Service Funds, even if they are the most efficient provider of basic services. For instance, it retains the existing statutory requirement that a recipient must be an “eligible telecommunications carrier” (ETC), potentially excluding VoIP service providers if VoIP is classified as information service. The bill also codifies the FCC’s existing restrictions on ETC eligibility, including the requirement to offer local usage plans comparable to those offered by incumbent local exchange carrier (ILEC) in the area and to provide equal access to long distance carriers if all other ETCs in area relinquish their designations.

Those ILEC-centric obligations and others, including a requirement that the ETC must provide 5-year plan of how support will be used in “every wire center” for which it seeks designation, skew against universal service eligibility for providers with innovative service offerings and those whose footprints do not match the service territory of the incumbent carriers (just as the Bells argue they should not have to provide video service beyond their telephone network footprint). Competitors should not have to mimic ILEC service offerings or network architecture or geographic coverage to qualify for universal service support. Cable telephony providers

should be eligible if they offer supported services throughout their cable franchise areas, without regard to the historical ILEC study area or technology.

*Promoting Efficiency.* Any universal service reform effort must address the “demand” side—distributions—as well as the contribution “supply” side. In this regard, there must be an attempt to introduce more efficiency into the rural and high-cost support mechanisms. As competitive options become available to rural consumers, it may be possible to cap the existing funds or even reduce them. Congress should also consider the possibility of promoting more efficient use of Universal Service Funds by establishing a cost benchmark for awarding support.

Finally, while we agree that it is critically important to ensure that providers of supported services to consumers in rural and high-cost areas have adequate funding, as universal service contributors we also believe that funding must be subject to reasonable and regular oversight. We note that S. 2686 requires the establishment of appropriate fiscal controls and accountability standards for the “E-rate” programs. These requirements should be applied to the rural and high-cost programs as well.

*Targeting Support.* The requirement that all Universal Service Fund recipients deploy broadband appears to validate—even if indirectly—using funds for broadband deployment. Even without a direct broadband subsidy from the Universal Service Fund, recipients will have additional revenue to spend on broadband because they no longer have to self-fund the deployment of their basic services. Cable companies are understandably very reluctant to contribute revenues from their own broadband services to subsidize their competitors, either directly or even by supplying them with fungible resources. The broadband prerequisite should be clarified to ensure that recipients do not directly use funds intended for basic voice service for broadband deployment instead.

The proposed new broadband account, by contrast, is capped and available on a technology-neutral basis only in unserved areas. As noted earlier, we are pleased with the more targeted nature of this account. Nonetheless, we do not believe it is fair to allow one technology—satellite—to obtain subsidies for customer premises equipment. If the satellite providers has no other facilities in an unserved area, we believe it would make more sense to apply the subsidy to offset a subscriber’s monthly bill for service than to fund his or her purchase of equipment.

#### *Interconnection*

We support the technology-neutral intent of the interconnection provisions of the bill, which extends the rights, duties, and obligations of carriers under sections 251 and 252 of the Communications Act to VoIP service providers. However, we would suggest limiting these rights, duties, and obligations to facilities-based VoIP providers, who have made a commitment to deploying their own networks and infrastructure. A non-facilities-based provider should not have the right to order facilities-based entities on whose networks it rides to interconnect at a particular place or manner.

There are several other interconnection-related issues that the Committee should consider addressing in order to ensure that facilities-based competitors can compete fairly with the entrenched Bell monopolists and other incumbent carriers. First, we strongly urge the Committee to address rural telephone carriers’ recent refusals to exchange VoIP traffic with telecommunications carriers, even though they have existing interconnection agreements with those carriers. Rural carriers’ resistance on this point is depriving rural consumers of competitive voice services.

The bill should also ensure that incumbent local exchange carriers have a continuing responsibility to interconnect with other voice providers, regardless of whether the ILECs are reclassified as information service providers. Finally, the bill needs to include effective measures to ensure cost-based pricing for special access and transit services. ILECs are often the only suppliers of these critical links.

#### *Video and Audio Flag*

While NCTA has been neutral on whether to codify the FCC’s broadcast flag rules, if Congress is going to do so we would urge you to consider granting the FCC express authorization for the Commission to make several modifications to those rules, particularly the ability to exempt home networking solutions under control of a multichannel video programming distributor from the FCC’s certification process for output protection technologies. Whatever the merits of requiring certification of home networking devices made available at retail, there is no need to impose this requirement on equipment under the control of a cable operator or other MVPD. In this regard, we note that the bill would already permit the transmission of digital broadcast signals over a home network. Separately, rather than specify only that approved flag technologies be offered on a reasonable and nondiscriminatory basis,

we would also propose that the bill alternatively permit licensing on “terms of reciprocal non-assertion.”

*White Spaces*

We do not oppose the provisions in S. 2686 imposing a deadline on the FCC’s “white space” proceeding. However, we would urge the Committee to include language that expressly protects cable equipment and systems, and not just broadcasters, from interference by unlicensed devices.

*Digital Television*

*Mandatory Carriage of All Digital Streams on the Basic Tier.* The bill requires a cable operator to put all digital signals of a broadcaster, not just the primary signal, on the broadcast basic tier. Such a requirement would have the perverse effect of discouraging voluntary agreements with cable operators to carry additional digital programming streams. It is a requirement, moreover, that would appear to apply only to existing cable operators, since video service providers would not be required to offer a broadcast basic tier. This provision should be removed.

*Energy Efficiency Requirement for “Converter Boxes.”* The bill would require the Commission to set energy standards for converter boxes. The standards would apply until May 17, 2009. To the extent this provision is aimed at all set-top boxes and not just the basic converters eligible for the subsidy established by the Deficit Reduction Act of 2005, we are concerned that it could hamstring technological advances and slow the digital transition. Set-top boxes have evolved from simple tuners and descramblers to devices that may control multiple functions including digital television capability, a conduit to the Internet, program recording capability, storage of digital photos, and a platform for electronic games. Imposing energy efficiency standards now could limit the features and functionality that are built into a set-top device.

Focusing solely on the energy used by a set-top box also ignores the energy savings that these more sophisticated devices can produce. For instance, using broadband to telecommute would likely result in energy savings that vastly outweigh any additional energy usage by including broadband capability in an all-purpose device. Similarly, set-top boxes with video recording capability may produce a net energy savings as consumers abandon VCRs and other devices. The point is that it’s too soon to tell where technology may lead us. Set-top box designers should have the maximum flexibility to envision the future.

**Conclusion**

As Congress drafts changes to the Telecommunications Act of 1996, we urge you to treat like services alike, preferably in a deregulatory environment. We will do the rest by raising private risk capital, investing in new technology, offering better customer service, creating innovative new programming, and competing with other multichannel video providers in order to provide consumers with the best voice, video, and data services possible.

The CHAIRMAN. Thank you.

I apologize for not introducing you properly. President and Chief Executive Officer of U.S. Telecommunications. No, you’re—this is Walter McCormick. Mr. McSlarrow is President and Chief Executive Officer for National Cable & Telecommunications. Pardon me. We thank you for your constructive comments.

Mr. McCormick?

**STATEMENT OF WALTER B. MCCORMICK, JR., PRESIDENT/CEO, UNITED STATES TELECOM ASSOCIATION (USTELECOM)**

Mr. MCCORMICK. Mr. Chairman, Co-Chairman Inouye, thank you very much for the opportunity to appear before you today.

As I listened to the opening statements, Mr. Chairman, I was surprised, and somewhat concerned, by the comments that perhaps the Committee’s moving too fast. We see here a process that has been an extraordinarily comprehensive process, a truly extraordinary process, and a result that we think is exceptional. After more than a dozen hearings, some of which we had the opportunity to participate in, over the course of nearly 2 years, you have pro-

posed a comprehensive bill, with significant positive implications for all Americans and for the American economy. And I would submit to you, Mr. Chairman, to the members of the Committee, that a failure to act at this time is itself an action, an action that would have very negative consequences for the American economy in the 21st century and for our consumers.

As we read this bill, it is a bill that artfully incorporates important reforms that have been the subject of individual initiatives by virtually every member of this committee, initiatives that have been proposed by Senators Ensign, McCain, Vitter, DeMint, Rockefeller, Dorgan, Lott, Smith, Nelson, Snowe, Pryor, Inouye, and Burns. Indeed, at this point, virtually every member of this committee is on record, either through cosponsorship of specific legislation or through statements of policy made in press conferences or on the floor of the U.S. Senate, as being in favor of legislation that would provide for video franchising reform and universal service reform.

This bill is consistent with each of these objectives. And the vision set forth in this legislation, we believe, would provide a solid foundation for our country's continued leadership and innovation in the Information Age.

So, Mr. Chairman, we congratulate you and Co-Chairman Inouye for putting together what should be viewed as a real consensus package, a package that is broad in its scope and bold in its vision. It is a package that recognizes that the way in which Americans communicate has changed fundamentally since the 1996 Act.

And, for our members, the opportunity to enter the video market is the driving force behind new broadband investment. Enhanced networks will carry the commercial and cultural traffic of the 21st century information economy. Faster and cheaper information flows will enhance productivity and improve our ability to secure the homeland. These are all important and welcome gains. But to be financed through private capital, there must be a return on equity, and that return comes from being able to use your technology to offer everything that that technology has the capability to offer, and that includes video.

Mr. Chairman, the costs of not acting are significant. According to the Phoenix Center, if franchise reform were to be postponed until the next session of Congress, that 1-year delay would cost consumers an estimated \$8 billion. On a state-by-state basis, the numbers are equally substantial. Putting off franchise reform for 1 year would cost Alaska consumers \$12 million; Hawaii consumers, \$31 million; Florida consumers, \$626 million; and Montana consumers, \$22 million. So, I am pleased that each of the members of this committee is committed to moving forward with some important reforms this year.

And, Mr. Chairman, we look forward to working with you and the members of the Committee to see this legislation through to enactment.

[The prepared statement of Mr. McCormick follows:]



PREPARED STATEMENT OF WALTER B. MCCORMICK, JR., PRESIDENT/CEO,  
UNITED STATES TELECOM ASSOCIATION (USTELECOM)

Mr. Chairman, I am Walter McCormick, President and CEO of the United States Telecom Association (USTelecom). On behalf of our more than 1,200 member companies, I would like to thank you for this opportunity to appear before the Committee regarding S. 2686, the "Communications, Consumers' Choice, and Broadband Deployment Act of 2006."

This bill has been developed through an extraordinary process, and the result is equally exceptional. After more than a dozen hearings, you have proposed a comprehensive bill with significant positive implications for the U.S. economy and for all Americans. The vision set forth in this legislation would provide a solid foundation for our country's continued leadership and innovation in the information age. We admire your boldness; we respect your vision; and we thank you for your hard work.

To understand the importance of this bill, you must step back in time 18 months. As you know, USTelecom's membership ranges from the smallest rural telecom companies to some of the largest corporations in America. In November 2004, our diverse membership united around a bold vision of the future:

- Ensuring a strong and sustainable universal service system to provide affordable, reliable telecommunications for all Americans in the 21st century;
- Establishing consumer-controlled, market-based competition by eliminating government-managed competition.

We believe S. 2686 achieves these vital goals, which will unlock needed investment, innovation, job creation and economic growth. And, we appreciate this committee's leadership in working to update our laws to reflect the dramatic changes we have all witnessed as technology fundamentally reshapes the communications sector and delivers unprecedented voice, video and Internet choices to consumers.

Today, allow me to focus on three critical areas of your proposed legislation:

- Video franchising;
- Network Neutrality; and
- Universal service.

### **Title III—Streamlining the Franchising Process**

On the first matter, USTelecom strongly supports this bill's efforts to streamline the video franchising process. The net result would be accelerated broadband deployment, more competition for voice, video and data services, and lower prices for consumers.

For our members, the opportunity to enter the video market is the driving force for broadband investment. These enhanced networks will carry the commercial and cultural traffic of 21st Century America. Faster and cheaper information flows will enhance productivity and improve our ability to secure the homeland. These are important and welcome gains. But to be financed through private capital, there must be a return on equity. And that return comes from the sale of video services.

Unfortunately, our entry into video is delayed, and in some cases denied, by an archaic franchising regime. The streamlining proposed by S. 2686 would be a welcome remedy. We believe it would expedite our entry into the video market, speeding the arrival of competitive choices for consumers, while protecting local government revenues and right-of-way control.

The quicker Congress acts on this, the better it is for consumers. Time is money. According to a study by the Phoenix Center, if franchise reform were to be postponed until the next session of Congress, that one-year delay would cost consumers an estimated \$8 billion. On a state-by-state basis, the numbers are equally substantial. Putting off franchise reform for one year would cost:

- Alaska consumers—\$12 million;
- Hawaii consumers—\$31 million;
- Florida consumers—\$626 million; and
- Montana consumers—\$22 million.

Mr. Chairman, we realize you are results-oriented. Your legislation provides the opportunity to improve the household economics for 66 million cable television subscribers. With the rate relief that comes from competition so near at hand, Congress should not make consumers endure additional years of high rates.

The franchising process was used in the past to protect consumers from cable monopolies. It should not be used today to protect cable from competition. Competition benefits consumers. Cable did not go through a new franchising process to enter the

voice market. Phone companies similarly should not be impeded from entering the video market. The clear public interest lies with head-to-head competition. For example, when Verizon entered the video market in Keller, Texas, Charter Communications dropped its rates by a whopping 50 percent. So, as you can see, the sooner we streamline the franchising process—the better for consumers.

On the issue of net neutrality, USTelecom strongly supports the measured approach taken in S. 2686. As I have repeatedly testified, our companies will not block, impair, or degrade content, applications, or services. We stand by that pledge. We stand by it because it's the right thing to do and because consumers simply would not tolerate any other approach. Under S. 2686, our commitment to Internet freedom—to consumer control of their Internet experience—would be subject to ongoing monitoring and enforcement—without risking innovation and investment. We think this strikes the right balance. And, it takes an appropriate “first, do no harm” approach to government oversight of the Internet.

Under S. 2686, Internet users would have three layers of protection. The first two layers already exist. First, the discipline of a competitive marketplace. We have today wireless, cable and telecom companies offering high-speed Internet. We have satellite providers investing in upgraded systems to better deliver high-speed Internet. We have significant investments from municipalities and from massive Internet companies like Google in broadband over power line and WiFi. Consumers have choices. If any company sought to control their Internet experience, consumers no doubt would exercise their ability to make these choices.

Second, the FCC has adopted four guiding principles of Internet freedom and has made clear its intention to enforce them. S. 2686 would further mandate annual reports by the FCC to Congress to identify any actual problems that occur and to recommend solutions. This will offer a constant reminder to Internet providers that the specter of government regulation is out there, which is a powerful deterrent to inappropriate action. This approach also will ensure that questionable practices will be subject to prompt scrutiny by the FCC, Congress, and the wider online community.

This is the right approach given the fact that we are today dealing with a hypothetical problem. The one documented case of blocked traffic resulted in swift corrective action by the FCC. So the debate today focuses largely on “what if” scenarios. Those members of Congress who are calling today for a regulatory solution have sent a shudder through the investment community. As this committee has heard, Wall Street is bearish on network investment. If our next-generation broadband networks are subject to last-generation regulatory schemes, it is difficult to envision a future in which investment continues at a rate adequate to advance U.S. competitiveness, consumer choice and economic growth in a broadband world.

S. 2686 is a balanced alternative. It ensures both unqualified support and vigilance on behalf of continued Internet freedom. And, it reflects a sound, responsible awareness that market incentives must exist to encourage or at least *justify* the significant investment necessary to maintain and enhance U.S. broadband infrastructure.

#### **Title II—Universal Service Reform; Interconnection**

USTelecom members also strongly support your efforts to reform universal service. We have grown increasingly concerned with the precarious revenue base and rising expenditures. We appreciate your efforts to broaden the base, to include interstate, intrastate, and international calls, as well as other voice communications using alternative technologies. We support your efforts to expand the rural exemption, to wall off universal service revenues from the Anti-Deficiency Act, to prevent a primary-line mandate by the FCC, and to address the growing problem of phantom traffic.

In addition, S. 2686 takes important steps with regard to broadband to ensure that rural America is connected at high speeds and at a reasonable cost. With so many communications services migrating to broadband, rural areas need broadband like never before. Franchise reform will help, as will the dedicated broadband fund envisioned in S. 2686.

Our foremost concern in Title II is the extensive interconnection rights granted to voiceover-IP providers—providers with no facilities of their own. Although we respect the Committee's desire to promote competition, we believe this provision goes too far. As written, the bill gives these carriers an abundance of rights and privileges, but few of the duties and obligations that fall to facilities-based providers who are making the infrastructure investments—such as law enforcement obligations and payment of appropriate intercarrier compensation when connecting to the public network. Moreover, the interconnection language must be clarified to ensure the rural exemption is not adversely affected.

**Broadly Updating Our Nation's Telecom Laws**

Mr. Chairman, it hardly takes an industry expert to see plainly that the world of communications has changed. It is time to move beyond government-managed competition and embrace market-based competition. Consumers should have the ability to obtain the services they want from the companies they choose. They, rather than outdated government policies, should determine the future course of innovation . . . something this legislation would accomplish.

USTelecom applauds you for your work lifting the barriers to real competition in video services, for eschewing heavy-handed, premature regulation of the Internet, and for reforming and thus safeguarding the future of universal service. We hope the Senate will see fit to enact your vision into law before the end of the 109th Congress.

The CHAIRMAN. Thank you very much.

Our next witness is Mayor Michael Guido, Vice President of the U.S. Conference on Mayors, from Dearborn, Michigan.

Mayor, glad to have you here.

**STATEMENT OF HON. MICHAEL A. GUIDO, MAYOR, DEARBORN MICHIGAN; VICE PRESIDENT, U.S. CONFERENCE OF MAYORS (USCM)**

Mayor GUIDO. Thank you very much, Mr. Chairman, Senator Inouye—it was nice to have you in my city on Saturday to receive the Access Award—distinguished members of the Committee. I'm honored to appear before you on behalf of seven different organizations that represent local governments in every State of the Union to testify about the video franchising title, S. 2686, Communications, Consumer's Choice, and Broadband Deployment Act of 2006.

I want to begin, Mr. Chairman, with a simple statement of fact. America's local elected officials strongly support technological innovation and competition in the video marketplace. Using the franchising authority granted to local governments, we have a long record of successfully delivering on that statement to all of our constituents, and we want to continue to be able to do so.

That's why we're concerned about certain aspects of the video franchising bill before you today. In our view, it represents a significant step backward for the ability to deliver, to all residents, the latest in video technology at the best possible price.

This bill appears to preserve local video franchising authority, but, in fact, it will strip that authority away from thousands of elected mayors, commissions, and councils across America, and place it in the hands of five unelected commissioners of the Federal Communications Commission here in Washington, D.C.

The requirements in the bill that franchise authorities act within 15 days, and approve a franchise in just 30 days, is unreasonable and unworkable. And while local government is perhaps the most nimble and responsive to local concerns, even that timetable is unrealistic.

Such a requirement would, in many instances, violate State and local law. It would deprive local elected officials of their statutory rights and authority. And it would leave consumers without a voice in their own communities. Surely, that cannot be your intent.

Next, the bill would send any and all disputes about access and the use of publicly owned rights-of-way to the FCC. Clearly, the agency, as capable as it is, has neither the resources nor the expertise to handle such issues.

The bill would second-guess the general police powers of the community, but also the policies and engineering practices of public works departments in every city, town, or village. Do we really want questions over the use of neighborhood sidewalks and sidestreets to be settled perhaps thousands of miles away? Who is better able to address such disputes, the mayor of Seattle, Washington, or the city manager of Bozeman, Montana, for example, or an FCC staffer here in Washington?

Third, the bill would result in a significant loss of financial support to local governments. I recognize that the intent is not to disadvantage localities financially; however, by excluding advertising and home-shopping revenues from the mix, the rent paid for the use of public property will surely decrease. Furthermore, reducing the base gross revenues will undermine my ability, and that of all of my counterparts, to provide needed services through the use of public, educational, and government access facilities and institutional networks. It will also deprive local citizens of local public safety and local government information they currently receive through these uniquely local resources.

Fourth, I regret that the bill's attempt to prevent redlining will not accomplish that goal. Video programmers will be able to pick and choose the neighborhoods they serve, while bypassing others entirely. Providers will decide where to extend service based on which neighborhoods promise the greatest return for the smallest outlay. As a business model, that probably makes sense, but, as a public policy tool to promote the broadest possible access to broadband service, it makes no sense at all. Raising the specter of redlining is not a red herring, it's an effort to raise a red flag against a provision that will increase the access gap unless it's significantly changed.

Fifth, and finally, the bill appears to undermine the taxing authority of State and local governments in areas that have nothing to do with compensation for the use of public rights-of-way. Those provisions, which are both vague and confusing, should be eliminated.

Mr. Chairman, Senator Inouye, and members of this Committee, back home in Dearborn I often tell people who come to see me seeking city support for a project or an initiative that government gets involved—city government gets involved when we can do what's best and bring the best results for Dearborn. I would suggest that a similar approach is in order here. Let's make sure that whatever changes are made to the current system of video franchising actually brings about the right results for Dearborn and every other city in America.

Thank you.

[The prepared statement of Mayor Guido follows:]

PREPARED STATEMENT OF HON. MICHAEL A. GUIDO, MAYOR, DEARBORN MICHIGAN;  
VICE PRESIDENT, U.S. CONFERENCE OF MAYORS (USCM)

#### **Introduction**

Good morning, Chairman Stevens, Senator Inouye and members of this Committee, I am Michael A. Guido, Mayor of Dearborn, Michigan. I am honored to be here today to testify not only on behalf of the The United States Conference of Mayors (USCM) where I am the Vice President, but also on behalf of local governments across this Nation, as represented by the National League of Cities (NLC), the Na-

tional Association of Counties (NACo), the National Conference of Black Mayors, the National Association of Telecommunications Officers and Advisors (NATOA), the Government Finance Officers Association (GFOA), and TeleCommUnity.<sup>1</sup>

On behalf of America's local elected officials and their advisors, I want to stress that America's local governments embrace technological innovation and competition in the video marketplace. We want and welcome real competition in a technologically neutral manner. Local governments—and our residents—support the deployment of new video services as rapidly as the market will allow. We appreciate the recognition of the importance of municipal provisioning of broadband where communities believe that it is in their best interest. We trust that the Committee will consider ensuring that the opportunity for local governments to partner with the private sector, or self provision broadband services, remain genuine and that any barrier to such provisioning is removed. We appreciate the important work of the Chair and Co-Chair on the issues of Universal Service and Interoperability, and we look forward to working with the Committee to ensure that such issues are addressed appropriately.

Since today's hearing, and this panel in particular, is focused on the video franchising title of the bill, my remarks today are directed to that issue. I would also like to express our concerns with the current draft of the Communications, Consumer's Choice, and Broadband Deployment Act of 2006 (S. 2686). In so doing, I want to emphasize that we have met with the Committee staff and shared these concerns with them. We understand that this is still a work in progress, and we look forward to continuing our work with the Committee to make improvements to the bill.

The concerns of local government reflect the scope and variety of issues raised in this legislation, and it will take time to ascertain its impact on the wide array of stakeholders that it affects. But that's what makes preserving the local voice in video franchising so important. It permits each community, based on unique community needs and citizen input, to decide for itself—in a fair, equitable and politically accountable manner—the nature of the video service that will be provided to its citizens. Local governments should retain their authority to supervise rights-of-way and recover the associated costs for doing so, require the payment of a reasonable franchise fee, ensure access to all and require appropriate public, educational and government (PEG) access channels and institutional networks (I-Nets) support. The Federal Government has neither the resources nor the expertise to address such issues.

The limited and severely restricted role of local governments over providers for the delivery of video services in this bill is troubling. Indeed, proposed section 601 would abolish the long-standing Congressional policy that franchise procedures and standards should assure that cable systems are “responsive to the needs and interests of the local community.” And while we believe your intentions may have been to affirm the role of local governments in the video franchising process, the legislation, in its current form, would severely undermine local franchising enforcement and compliance authority, threaten local budgets, limit the benefit of broadband-video competition to a few well-to-do neighborhoods, weaken provisions that ensure that video providers meet each community's unique needs and interests, and undermine the ability of local government to protect their residents. This bill would do harm to citizens, consumers of these new services, and the communities in which they reside in five significant ways:

First, while ostensibly preserving local franchising authority, the net effect of the legislation is to strip authority from local governments and grant that authority to the Federal Communications Commission (FCC). It is essential that the Committee understand that the requirement for a franchise authority to act in 15 days, and to approve a franchise in 30 days, would in many instances violate state and local law, deprive elected officials of their statutory rights and authority, and leave consumers without a voice in their community.

Second, the bill would send all rights-of-way disputes to the FCC, an agency that lacks the resources and expertise to handle them. The bill would second guess not only the general police powers of the community, but the policies and engineering practices of public works departments nationwide—and put those decisions within

<sup>1</sup> USMC, NLC, NCBM and NACo collectively represent the interests of almost every municipal or county government in the United States. 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 the country 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.

a Federal agency with no stake in the outcome other than to speed deployment at any or all cost.

Third, while the intent may have been to keep localities financially whole, the bill would result in a significant loss of financial support to local governments. The exclusion of advertising and home shopping revenues would significantly diminish the rent paid for the use of public property. Further, the reduction in the base of gross revenues will undermine local government's ability to provide necessary services through the use of public, educational and government access facilities and deprive public safety and governmental use of institutional networks.

Fourth, while at first glance the bill appears to prohibit redlining, it would permit video providers to pick and choose the neighborhoods they would like to serve and bypass others completely. This bill will not enhance the position of this country in the standing of broadband deployment, but will certainly widen the gap of those who have access. Rather than ensure that everyone is served and served equitably, this legislation will continue the downward spiral that the unregulated market has created thus far.

Fifth, it appears that the bill undermines the taxing authority of state and local governments in areas wholly unrelated to rights-of-way compensation.

#### **Local Governments Concerns—No Choice and No Deployment**

For local government, this debate is not about stifling competition or throwing up roadblocks to delay new entrants from entering into the video marketplace. To suggest otherwise is nonsense. Rather, this debate is about protecting core local government functions—a job our citizens expect their local officials to do. It's about streets and sidewalks, public safety, first responders, citizen involvement in local politics, and seeing that all of our residents are afforded the same, equal opportunity of access to these technological advances that increased competition will bring into our communities.

Local governments have been managing communications competition for many years now and are familiar with the needs of new entrants into the market. The twist to the current debate is one which focuses not on the "new" entrant, but on the entrenched monopolist entering into a "new" line of offerings. After many years of false starts and broken promises—the potential entry into video by a few, well-funded and dominate players has placed in jeopardy the entirety of the statutory structure that guides such entry.

Local governments understand the need to streamline our deliberative processes—to speed up the franchise application timeline, and we could support changes in Federal law that established the current process for franchising. However, in the process of making these changes we need to ensure that our communities are served and our citizens' concerns are heard.

You may have heard about the recent push by many local communities in Michigan to get AT&T to enter into the video marketplace. These communities, representing approximately 60 percent of the state's population, formally asked AT&T to respond to the more than 600 invitations and resolutions sent to it asking the company to sign local franchise agreements and start real competition for video customers. But AT&T remained silent, leading Michigan's towns and cities to publicly ask AT&T, "Can you hear us now? We want competition!" It was not until the media was alerted that AT&T finally began to respond.

Local government is concerned that the continued rhetoric and unfounded, unsubstantiated claims of delays and barriers to entry into the marketplace voiced by the very same companies that now, at last, seek to provide video services in our communities and "promise to do right by us," have led some members of Congress to believe that competition and innovation will flourish only if local government is removed from the franchising equation. Their new mantra is "national franchising now." But a national franchising scheme just doesn't add up. Hundreds of millions of dollars have been spent perpetuating this myth.

For months, the telephone companies wanting to enter into the video marketplace have been stating—in print and on television advertising, and at public hearings like this—that they intend to keep local governments whole. They say they are prepared to pay the same franchise fees that cable companies pay now. They say they will carry and support public, educational and government (PEG) access channels and institutional networks (I-Nets). They say they support the preservation of state and local governments' authority to manage their public rights-of-way. And they say that they believe in and support full customer access to the services they intend to provide.

But when you look at this legislation, we are again disappointed to find these commitments to keep local governments—and their citizens—whole, are empty. This legislation, which—in reality—seeks to create a national franchising scheme, takes

away many of the bargained for benefits that our citizens enjoy and expect to receive from these companies that come into our towns and cities and make use of the public's rights-of-way. The very benefits and services the telephone companies say they are supportive of are either watered down or are totally missing in this legislation. For example, the bill permits the local franchising authority to impose and collect a franchise fee not to exceed five percent of the provider's gross revenue. However, at the same time, the bill redefines "gross revenues" to exclude advertising and home shopping revenues. As a result, communities may see their franchisee fees decrease by as much as fifteen to twenty percent.

Local governments and our citizens have been waiting for competition in the video arena for years—indeed, since 1992 when the Communications Act explicitly guaranteed such opportunities. In 1996, after telephone company leaders promised to enter the video market and provide real competition and consumer choice, Federal law was changed once again to encourage that entry and to provide regulatory relief in exchange. Industry leaders predicted great things for consumers, but consumers never got competition or lower rates—all they got were higher bills.

Today, we are hearing once again from those who clamored for change over a decade ago for another rewrite to the rules of a game that they have sat out of for over 10 years. Once again, we are hearing promises of great things to come for consumers. And we have been told time and again that local governments will be kept financially whole, that local governments will see their revenues preserved and even possibly grow.

Local government franchising is not the reason the telephone companies have sat out of the game. Current Federal law is not the reason they haven't gotten into the game. The simple reason they have been sitting on the sidelines until now is because of marketplace economics. Until recently, the provision of bundled services hasn't proven to be as financially attractive as the telephone companies' business plans have required in order for them to step up to the plate and get in the game.

Tossing away local franchising and the ability of local governments to truly control and protect the public rights-of-way and to confer this authority on the Federal Communications Commission is not the solution. Such a scheme just doesn't add up. This is a concern that we have raised on numerous occasions—in private discussions, in public forums, and at previous House and Senate hearings. Protecting local franchising authority has been, and will continue to be, the same message and the same position that we have been advocating for years because the process works. Let local government continue to have its voice heard in the franchising process and let local government continue to maintain its historic authority over the public rights-of-way—where it belongs. And let the courts, not the FCC, continue to have the authority to resolve any disputes that may arise.

This Committee, in its desire to speed up the entry of new video competitors in the marketplace, should not give these companies a blank check. Rather, it should strive to ensure that all providers have similar responsibilities in providing video services so that all consumers may enjoy the benefits of such services on a non-discriminatory basis.

#### **Preserve Local Authority Over the Public Rights-of-Way**

Even though technologies change, some things remain the same. For example, most of the infrastructure being installed or improved for the provision of these new services must still be placed in public streets and sidewalks. Local officials are the trustees of public property and must manage it for the benefit of all. We require—because we must—important public safety controls to ensure that telecommunications uses are compatible with water, gas, and electric infrastructure that are also in the public rights-of-way. Ensuring that the installation of new services in the public rights-of-way doesn't result in gas leaks, electrical outages, and water main breaks are among the core police responsibilities of local government, as is ensuring the efficient and safe movement of traffic over, under, and adjacent to these facilities. Local government is in the best position to manage these competing interests. It is local government that can best handle the complaints that arise from the installation of these services. It is local government that is in the best position to ensure that local problems are resolved in a timely and efficient manner. It is local government that is in the best position to ensure that a resource owned by the public is put to the best use for its citizens. And while our citizens want what they have long been promised—better services at lower prices—they don't want potholes in their roads, dangerous sidewalks, water main breaks, and rush hour traffic jams as a consequence. The proposed bill will eliminate many of the protections that current statutory authority and local authority address today.

We look forward to working with Committee members to make sure that any legislation that is ultimately approved by the Senate does not abrogate this core tenet of federalism.

**Keep Localities Financially Whole—Protect Public, Educational and Government (PEG) Access Channels and Institutional Networks (I-Net)**

There's no disputing that communications companies are innovative. When you look back over the past 100 years, the changes we have seen in technology are absolutely mind-boggling. And new technologies and new products are coming onto the market so quickly that it makes your head spin. Last year's cell phone that took still photos is already being replaced with this year's cell phone that can play television programs and take both still photos and videos! You can't help but laugh when you watch a motion picture from a few years ago and see someone talking on a cell phone the size of an NBA player's shoe.

But at the same time, the social obligations that have developed over the past decades have endured. These obligations include the continuing financial support for the provision of public, educational and government (PEG) access channels and institutional networks (I-Nets); prohibitions against redlining; and customer service and consumer protection.

There is no argument that locally produced video programming performs an important civic function by providing essential local news and information. Under existing law, a certain amount of cable system capacity and financial support for that capacity may be set aside for the local community's 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 government channels. Once the local franchising authority has established the required number of PEG channels and the financial support required to meet local community needs, it then determines the nature of the use, which may be mixed between any of the three categories.

Current provisions of the Cable Act dealing with PEG access channels are intended to provide all members of the local community with access to the medium of television. And this system has worked very well. Whether it is video coverage of governmental meetings, information about government services or special programs, or local law enforcement's most wanted, these channels permit local communities to disseminate information and to better serve and interact with their constituents. Local governments continue to make innovative uses of this programming capacity as new interactive technologies allow more valuable information to be made available to our constituents.

Under the current framework, local communities are permitted to freely negotiate with video providers the amount of PEG financial support that will be provided to the community. But under this proposed bill, PEG fees would be set at a uniform rate of one percent of the provider's gross revenue. While many communities across the country already impose a one percent of gross revenue formula for PEG financial support, a number of communities across the Nation have entered into freely negotiated franchise agreements with video providers that provide for additional financial support. This legislation would strip those communities of the support that their video providers agreed to give to support these vital local resources. Some communities would lose up to 67 percent of their PEG financial support under this proposed legislation.

Even more troubling is this legislation's treatment of I-Net support. The bill provides that a local franchising authority may require an existing video provider to continue to provide any existing institutional network. But it also permits the operator to deduct the incremental cost of operating such a network from the one percent PEG fee. If that incremental cost exceeds the one percent PEG fee, the local franchising authority could very well be faced with the Hobson's choice of giving up all or a good portion of its PEG support to maintain the existing institutional network, or simply abandon the I-Net altogether. And remember: In many communities I-Nets are used for vital local government purposes, including public safety, first responder and homeland security purposes.

Furthermore, unlike the current Cable Act, the proposed legislation explicitly excludes advertising and home shopping revenues from its definition of "gross revenue." As a result, local governments will see an almost immediate drop in both franchise fees and PEG funding under the one percent funding formula. The promise to keep local governments whole just doesn't ring true.

The Congressional Budget Office recently examined the Communications Opportunity, Promotion, and Enhancement (COPE) Act of 2006 (H.R. 5252). It estimated that by 2011, local communities could lose anywhere from \$100 million to \$350 million dollars in PEG and I-Net support as a result of the bill limiting such support to one percent of the operator's gross revenues. And COPE, unlike this bill, includes



advertising and home shopping in its definition of “gross revenues” and does not contain the I-Net offset. We have not yet had enough time to ascertain exactly how much more revenue local governments would lose under this proposed bill. The loss could be staggering!

Decisions concerning the need and extent of PEG access channels and institutional networks are best made at the local level, based on the unique needs of each community. This Committee should resist industry pressure to impose a one-size-fits-all financial support scheme that just doesn’t add up.

### **Prohibit Redlining**

It is imperative that video providers treat all residents of the community alike, just as local governments are obligated to treat all video providers alike. There is nothing in the current Federal law that requires a new video entrant to deploy its services to the entire community immediately. But if the telephone companies have their way, there will be nothing in Federal law that would require them to deploy their video services throughout their existing service area—ever.

Redlining is the practice of refusing to serve a particular area because of the race or income of its residents. The term redlining became familiar back in the 1930s when lenders began using racial criteria when assessing lending and insurance risks. Green lines were used for newer, affluent areas, while red lines were used for black and poor white neighborhoods. The Federal Housing Administration actually used this methodology in assessing areas for federally insured new housing loans.

Any new telecommunications legislation must be drafted to ensure that the income, race, or any other discriminatory factor is not used to assess areas for the deployment of new and innovative video services. Unfortunately, this bill in its current form would allow a provider the option of serving only a defined portion of the community and bypass other areas as long as the provider did not refuse to provide service to an individual poor person living on the same street as wealthier consumers.

Contrary to what some industry officials say, redlining is not a red herring. Communities across the country have seen the telephone companies bypass poorer neighborhoods while upgrading services in more affluent areas. Indeed, it has been reported that AT&T informed its Wall Street investors that in Michigan, the company was going to provide its video product to ninety percent of its “high value” residents, but to only five percent of its “low value” residents, which it defines as those customers who buy less than \$110 a month in telecommunications services. It’s not hard to see how such a business plan on a national scale will deprive millions of Americans of the benefits of increased competition and technological advances.

This Committee should not endorse legislation that would in any way permit new entrants to deny video access to our residents and should tell these companies to put away their red pens.

### **Protect State and Local Taxing Authority**

The bill contains three tax saving clauses in sections 622(d)(1), (2), and (3), each more successively narrowly-tailored than the next. They are not only confusing, but internally inconsistent as well. While section 622(d)(1) appears sufficient by itself to protect locally-imposed taxes as well as any state-imposed telecommunications taxes that are not imposed in lieu of rights-of-way compensation, sections 622(d)(2) and (3) contradict it. Exactly how the FCC or a judge is expected to make sense of the three provisions is anyone’s guess.

Section 622(d)(2) is redundant with the definition of “franchise fee” as amended in proposed section 622(d)(1) and should be eliminated. However, section 622(d)(3) is more troubling. It suggests that locally-imposed taxes (as opposed to those imposed by the state) are not protected from preemption. The section also suggests that even state-imposed telecommunications taxes that are not in lieu of rights-of-way compensation are not saved. By including these two unnecessary sections, the bill creates only more mischief on local governments and creates an issue that simply does not need to exist.

### **Conclusion**

In the rush to embrace new technology, and to enhance the entry of new competitors in the market, it is the responsibility of local government to ensure that our citizens are protected and public resources are preserved. We value the deliberative process, such as this hearing today, to be sure that we are making informed decisions. Local control and oversight should not be confused with delay and barriers to competition. The franchising process should be designed to promote fairness for consumers and promote a level playing field for all providers.

Franchises don't simply give permission to provide video services to our citizens; they are the core tool—a contract—we use to manage public sidewalks and streets, provide for public safety and homeland security, enhance competition, provide locally-originated programming, and collect compensation for the private use of public rights-of-way.

Collectively, we represent the interests of almost every municipal and county government in the United States. We strongly endorse promoting competition that will permit new video providers to come into our communities on a level playing field, while preserving local franchising authority that has proved to be so valuable to our cities and counties around the country. We would be pleased to provide this Committee with additional information to further your assessment of these concerns as you continue your deliberations on video franchising. We note that there remain a significant number of areas within the bill that we have not yet addressed, including consumer protection and privacy which are in the forefront of areas of concerns by communications consumers today. We look forward to continuing our work in assessing the legislation and its impact, and believe that the Committee should continue its excellent work and ensure a strong record in support of any decision to change existing law.

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

The CHAIRMAN. Thank you very much, Mayor. We'll be glad to sit down with representatives of your organization and go through your suggestions. As I said in the beginning, I think some of the comments that have been made about the provisions of the bill so far are correct, and we need to modify them. So, we will consult with you. But those were not our provisions. They were submitted by others, who—and we put them in the bill. It is a draft bill. We appreciate the way you've approached it.

Our next witness is Ms. Johnson, who's Chairman of Video Access Alliance, of Tallahassee, Florida.

Ms. Johnson?

**STATEMENT OF JULIA L. JOHNSON, CHAIRPERSON,  
VIDEO ACCESS ALLIANCE**

Ms. JOHNSON. Thank you, Mr. Chairman.

Mr. Chairman and other members of the Committee, it's an honor to have the opportunity to speak with you today.

I think it has been about 10 years since I had the opportunity in the context of being the Chair of the Florida Public Service Commission, when we were debating and discussing the Telecommunications rewrite dealing with universal service issues, unbundled network elements, and the 271 process.

I believe that our opportunity to discuss the evolution and the advancements that have been made in the telecommunications markets over the last 10 years is a tribute to the work that was done. So, as the gentlemen and this lady sit and banter about what we'd like to see in this legislation, I ask that you consider this a tribute of sorts to the progress made in the last 10 years, a tribute to the technological advancements of our Nation, and to the many new opportunities for consumers, all due to your leadership.

The Alliance is a not-for-profit focused on supporting policies that promote competition in the market for the delivery of video services. Our coalition consists of entrepreneurs, executives from independent, emerging, and minority networks, and other content providers and industry participants. Unfortunately, much of the current debate has turned into a cable-versus-telecom fight, so much of the dialogue is focused on policies that benefit or harm competi-

tors or categories of competitors, when, instead, we should focus consistently and unrelentingly on the benefits to consumers.

In the video market, no one has to speculate as to whether competition will benefit consumers. We know that it will. Creating an environment that allows for rapid investment and deployment of new video platforms will have a compounding consumer benefit. That is to say, competition will lead the underlying video distribution networks to lower their prices. Additionally, with real content competition, there will be a need for networks to distinguish their offerings, which will allow for more diverse and higher-quality content. Furthermore, competition in the programming content space will lead to more competitively priced programming. The result will be extraordinary savings for consumers, higher-quality programming, and greater choice for consumers.

Fortunately, this legislation encourages such competition. We, again, applaud the Committee's efforts in working to do so.

We all recognize that the current market environment denies consumers full benefit. The facts are undeniable. Independent networks, as a group, are excluded under current market structures. Research indicates that under the current structure, top video distribution networks, on a nonpremium national basis, carried less than 1 percent of the channels with no media affiliation. Less than 1 percent of those channels. Furthermore, the FCC has found that cable TV providers, when they offer—the FCC has found that cable television providers offer less than 6 percent fewer programs in the absence of competition.

In a market characterized by discrimination and blockout of independent channels, the FCC's existing program carriage rules do not adequately address remedies for relief, and require modification to help independent channels. This is important, because independent channels have been shown to cost less than a third of what affiliate channels cost. So, independent channels apply another downward pricing pressure on what consumers ultimately pay. Independent channels have been frozen out of the cable TV market. And while we empathize with the worries of the content providers on the Internet side, there has not been a systemic market dysfunction in the Internet space. Whereas, in the cable TV market, competition and independent channels have been severely stifled in a demonstrative manner.

Therefore, as a matter of urgency, we would ask that we focus on cable TV neutrality, and that being video distribution competition. We believe that with video reform, all consumers will benefit, particularly minorities. A number of our members are minorities or focus on minority markets, and the availability of these new offerings would be tremendously powerful and important to use.

We have a unique interest, both socially and economically, to ensure that consumers have access to all of the amazing innovations video franchise reform will bring. Giving minority consumers enormous buying power, we firmly believe that minority consumers will be particularly attractive to all providers in the video distribution space. A market-driven formula, coupled with the redlining safeguards included in this legislation, is the best solution to ensure all consumers benefit from video franchise reform.

I, again, applaud the Commission's efforts, and respectfully request that you continue to make video franchise reform a priority this year.

Thank you, Mr. Chairman.

[The prepared statement of Ms. Johnson follows:]

PREPARED STATEMENT OF JULIA L. JOHNSON, CHAIRPERSON,  
VIDEO ACCESS ALLIANCE

**Introduction**

Good morning Mr. Chairman and members of the Committee. Thank you for the opportunity to address you today.

I am Julia Johnson, Chairperson of the Video Access Alliance. The Alliance is a non-profit organization focused on supporting policies that promote competition in the market for the delivery of video services—whether by incumbent cable companies, traditional telecommunications companies or others—to consumers. We serve as an educational, advocacy and advisory group for independent, emerging and minority networks, content providers, programmers, entertainers and other industry participants. Our coalition consists of entrepreneurs and executives from minority and independent networks including MultiChannel Ventures, The Employment & Career Channel, The America Channel, The Tennis Channel, Black Education Network and ImaginAsian TV, to name a few.

For Alliance members, removing barriers to the deployment of innovative and competitive video service means more avenues to deliver more quality diverse programming to consumers at lower prices. As an organization, we believe that removing barriers to deployment of competitive video platforms will benefit all communities.

Unfortunately, much of the current debate has turned into a cable versus telecom fight. So much of the dialogue is focused on policies that benefit or harm competitors or categories of competitors when, instead, the focus should consistently and unrelentingly be on the consumer. The Video Access Alliance is not “for” or “against” cable. The Alliance is not “for” or “against” the telephone companies. We are for innovation and investment. We are for competition, consumer choice, lower consumer prices, and more diversity.

**Guiding Principles**

We are guided by a belief in several foundational principles, which include the following:

- Competitive platforms, innovative technologies, new business models, increased consumer choice and lower consumer prices should characterize the market for video services.
- Competitive video technologies are spurring innovation and investment—the result being robust product, service and price competition amongst an array of competitive video providers to the benefit of all consumers.
- The existing cable franchise process, one focused on the provision of video services by local cable monopolies, is not well-suited for the expeditious development of a competitive video market.
- The video market is national in scope (*i.e.*, national companies making national investments to deliver video across state borders) and the need to avoid patchwork policies argues strongly for national regulation..
- National regulation should be minimalist in nature, to encourage greater competition amongst providers and, thus, to ensure that consumer welfare is maximized.

The stakes of the current debate before this Committee are high. As stakeholders in different camps wave the consumer flag, it is important to bear in mind that consumers are entitled to more competition, greater choice, better prices, and more diversity. Policy should not be about protecting competitors or categories of competitors, but on policies that create competition and an environment for rapid investment and innovation.

The Alliance advocates for more platforms, which will lead to more robust and diverse content offerings, at lower prices, for America's consumers. We strongly support the need for more video distribution systems and encourage the use of broadband deployment into communities to bring consumers more innovative options.

The Alliance supports greater competition in the video delivery market. Fortunately, this legislation encourages such competition.

#### **Consumers Benefit from Choice**

Consumers and the economy will benefit if companies invest in new video networks and build the infrastructure as quickly as possible. Additionally, consumers and the economy will benefit if the cable companies respond to that competition as quickly as possible. In addition to bringing more choices to more consumers, the competitive expansion of distribution networks will create a larger and more diverse base of distribution outlets for minorities and other entrepreneurs to create new programming and content businesses—all of which will generate more competition and choice, lower prices, and increase diversity in the content space.

In the video market, policy makers do not have to speculate as to whether competition will benefit consumers. We know that it will. The General Accounting Office, for example, has concluded that where broadband service providers have entered markets and provided video services, basic cable rates have declined (GAO-04-241, February 2004). Specifically, the GAO concluded that “BSP’s entry into a market benefited consumers in the form of lower prices for subscription television, high speed Internet access and local telephone services.”

Creating an environment that allows for rapid investment in and deployment of new video platforms will have a “compounding” consumer benefit. That is to say, competition will lead the underlying video distribution networks to lower their prices. Additionally, *with competition*, there will be a need for networks to distinguish their offerings—which will allow for more diverse and higher quality content. Furthermore, competition in the programming/content space will lead to more competitively priced programming—independent channels having been shown to apply downward pricing pressure on affiliate channels.

The result will be extraordinary savings for consumers, higher quality programming and greater choice for consumers.

#### **Importance of Reform for Independent Networks**

We all recognize that the current market environment denies these full benefits to consumers. The facts are undeniable: Independent networks, as a group, are excluded under the current structure. Recent research indicates that under the current market structure, the top video distribution networks carried—on a non-premium, national basis—less than 1 percent of channels with no media affiliation. A number of studies, including one by the GAO as well as academic studies, confirm that the top cable operators are much more likely to carry their own affiliated channels than independents. Furthermore, the FCC has found that cable television providers offer at least 6 percent fewer programs in the absence of competition. At the same time, independent channels have been shown to cost less than 1/3 of what affiliated channels cost. So independent channels apply downward pricing pressure on what the consumer pays. In a market characterized by severe discrimination and lockout of independent channels, the FCC’s existing program carriage rules do not provide an adequate mechanism for relief, and require modification to help independent channels.

The best way to ensure diversity of information sources, lower prices for cable TV, higher quality programming and more consumer choice is to create an environment that allows for the rapid deployment of more platforms and greater competition—which will also create more competition in the content space.

Competition will super-charge the video delivery market and have a favorable economic impact on our economy. We support greater competition in the video delivery market—and fortunately this legislation does just that. We would like to see telecommunications companies expand their video networks as quickly as possible. We’d like to see the cable companies expand their networks as quickly as possible. And we again applaud the Committee’s efforts in working to do so.

Delay in the passage of this bill would be disastrous for independent networks, and for consumers. It will exacerbate the problem of higher prices and poor choice. Expeditious passage of video franchise reform is a matter of great urgency, for the consumer and for competition in both distribution and content.

#### **Promoting Content and Programming Diversity**

Independent channels have been frozen out of the cable TV market. While we empathize with the worries of the content providers on the Internet side, there has not been a systemic market dysfunction in broadband, whereas in the cable TV market, competition and independent channels have been severely stifled. A look at consumer benefits clearly demonstrate this: Over the last several years broadband prices have come down precipitously while cable prices have risen over 86 percent in the last ten years. In the broadband market there are millions of content pro-

viders, while in the cable TV market a small group of companies control most of the content. Therefore as a matter of urgency, what we need right now is “TV Neutrality,” not “Net Neutrality.” Consumers need more distributor competitors, and more content competitors—and more competition will generate more choice, better prices, and greater diversity. We should monitor potential future abuses in broadband, and take action in the future if it becomes necessary. But as a matter of urgency in the video space, let’s not hurt consumers by delaying video franchise relief.

The Alliance asks that you focus on the issues of unreasonable control of content distribution, lack of competition and lack of choice, and that you remain focused on resolving a real market problem in need of urgent relief—which is the need for real competition in the cable TV market in order to bring consumers lower prices and greater choices.

We believe that new choice in programming is just one benefit of reforming our video franchise laws. Equally important to the minority communities that many of our coalition members serve are the technological advances and increased capacity competition would undoubtedly create. We strongly believe that innovation, open markets and fair competition will encourage investment in infrastructure that will allow for the new applications and distribution models. These applications, many of which have yet to be invented, will bring opportunities like distance education, global commerce and telemedicine closer to all consumers.

#### **Minority Markets and Consumers**

A number of our members are minorities or focus on minority markets, and the issue of availability of these new offerings is of tremendous importance to us. We have a unique interest—both socially and economically—to ensure that consumers have access to all the amazing innovations video franchise reform will bring. We believe that the best way to ensure networks are built and available to all is to *let the markets work*. Given minority consumers’ enormous buying power, we firmly believe that minority consumers will be particularly attractive to all providers in the video distribution marketplace.

Minority consumers have been shown in recent studies to spend more on media products and services than other demographics. According to a study by Horowitz Associates, minorities are the top subscribers to premium channels and have higher penetration rates for digital television.

A market-driven solution, coupled with the redlining safeguards included in the legislation, provide the best solution to ensure all consumers benefit from video franchise reform.

#### **Conclusion**

In conclusion, the more choices consumers have in the video market, the better. Expanded video distribution networks, and the resulting competition amongst providers, will result in lower consumer prices, higher quality diverse consumer programming and overall enhanced consumer choice. Moreover, we know that this expansion will create more opportunities for independent, minority, emerging, and other non-mainstream networks to be distributed into all communities.

The beneficiaries of a robust video market are the consumers. As such, all of us concerned with public policy decisions must continuously pursue policies to ensure that we as a nation help provide consumers with more choices of innovative technologies as expeditiously as possible.

I again applaud the Committee’s efforts and respectfully ask that you continue to make video franchise reform, and the legislation that is the subject of this hearing, a priority this year. As consumers, we will all benefit from more robust competition in the market for the delivery of video services.

Again, thank you for inviting me to testify today.

The CHAIRMAN. Well, thank you very much, Ms. Johnson.

Next is Gene Kimmelman, Senior Director of Public Policy from the Consumer’s Union.

Nice to have you back, Mr. Kimmelman.

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

Mr. KIMMELMAN. Thank you, Mr. Chairman, Co-Chairman Inouye, and members of the Committee.

I, also, want to applaud you. You've got some great concepts that you've put forward here, particularly related to expanding universal service to broadband, ensuring that new spectrum is made available for more competition, trying to get at some of the problems of independent programmers by preventing anti-competitive practices.

But, Mr. Chairman, there are some significant shortcomings, we believe, in the bill, and I think history will shed some light on the nature of the shortcomings.

In 1992, you, in Congress, stepped in and, with that dirty little word, "targeted regulation," you actually jump-started competition to cable by helping the DBS satellite industry emerge and grow by getting access to programming and bringing us the first signs of true competition to cable. But then in 1996 I think there was an overexuberance, a feeling of enthusiasm about where things stood, and a desire to deregulate without full knowledge of whether there was really an open, fully competitive market. And I think as Senator Burns referred to, the result, in some ways, has been disastrous. Consumers are paying more than twice as much for cable now than they did then. Rates are up 68 percent, if you give cable credit for all the channels that they put on, even ones that people don't even watch. And we have a few media giants, as Ms. Johnson indicated, who really are controlling almost all the popular programming. So, something went wrong there, and now we clearly do need legislation. We clearly need legislation to address this lack of competition. And we have phone companies and communities interested in stepping in and offering us something.

But the executives of the phone companies, in hearings here, in hearings in the House, in public statements, will not commit to driving down prices. Phone company executives will not commit to serving all rural and low-density areas. They will not commit to serve middle- and low-income consumers in their neighborhoods. They will not commit to serve communities of color. But—and this bill doesn't make them do that. And then, most importantly, what concerns us is that the bill turns around and, even where a phone company doesn't really enter the market, or doesn't enter the entire market, it allows the cable companies to back away from all of those obligations they've had in the past, and not even offer a basic tier, limited to low price, guaranteeing local broadcast channels and PEG channels are available on a low-cost tier. We fear the result in that imbalance is that the phone companies start entering. And some people will get benefits. But when cable pulls back on its rate and service obligations, many consumers will actually face price increases. That has to be corrected in the bill.

In looking at consumer complaints, billing complaints, service complaints, the common day-to-day hassles with the cable companies, the bill moves regulation of those issues to the Federal Communications Commission. We don't see any way that, at the Federal level, FCC can handle these local neighborhood, house-to-house concerns that really ought to be left with the local government. And, unfortunately, the bill fails to keep the Internet free of all anti-competitive discrimination, even if we don't get more robust competition from more distribution systems.

So, the bottom line, Mr. Chairman, is that we think, again, the danger here is a reliance upon the hope of competition rather than the reality of competition, and we need more meaningful signs of broadband competition before Congress eliminates these public responsibilities that exist in current law.

So, we urge you to go back to the drawing board and make some adjustments here to balance this bill and ensure that, really, all consumers can benefit from the entry of telephone companies and community broadband systems to the market, so that it's not just high-end customers, not just customers who want three or four services for \$150 a month who get the benefit, but instead that consumers across the board benefit from this. You have the opportunity, and we think that this is the right time to move, but the bill does need significant adjustments.

Thank you, Mr. Chairman.

[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 Communications, Consumer's Choice, and Broadband Deployment Act of 2006 and the need for expanded consumer choice and access to competitive video and broadband services. We agree with and support the goals of the legislation: to expand viable, affordable competitive video offerings and increase access to vital broadband services.

Unfortunately, while the legislation takes some strong steps toward achieving the goal of expanded broadband access through a more robust Universal Service Fund and expanded access to unlicensed spectrum, it also takes steps backward by limiting the ability of communities to provide affordable broadband services. More importantly, the legislation falls far short of providing middle and low-income consumers, particularly those in rural areas, with meaningful competition and relief from skyrocketing costs and limited choices in the video marketplace. And without any requirement for competition, the bill simultaneously eliminates prohibitions against discriminatory cable pricing, strikes current requirements for, and rate regulation of, an affordable basic cable tier, and reduces consumers' ability to resolve service, billing and other disputes with cable and telephone companies in a timely manner. While the legislation ensures that cable-owned programming is made available to new competitors, that provision alone does nothing to hold down cable rates. Under S. 2686, it is most likely that competition will come only to the most privileged rather than those who most need the relief that competition brings. Consumers in areas unserved by new competitors will likely be made worse off.

As we noted in our testimony before the Committee earlier this year, over the last decade, consumers have suffered under monopolistic cable pricing that has resulted in a 68 percent increase in rates—nearly two and a half times the rate of inflation. Limited satellite competition has not policed cable rates. In addition to skyrocketing rates, consumers have virtually no choice among providers or channel offerings. Sat-

<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 non-commercial 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.



ellite television, the primary competitor to cable, has had virtually no price disciplining effect.

In the broadband market, consumers face at best a duopoly, where 98 percent of broadband lines in the Nation are owned and controlled by cable and telephone companies. At best, consumers have a choice of only those two providers, and many have no choice at all: approximately 30 percent of Americans have only cable modem or DSL options,<sup>4</sup> and 9 percent, mostly consumers in rural America, have none.<sup>5</sup> Where broadband is available, it is often priced out of the average consumer's reach.

The deplorable state of competition within the video and broadband marketplace is the result of the failed policies of the 1996 Telecommunication Act, which did too little to promote meaningful competition in wireline communications services and went too far in deregulating cable rates. The result has been an explosion in mergers that have reduced competitive market options. Moreover, the Federal Communications Commission's (FCC) decision to deregulate broadband services has eliminated the possibility for markets to grow alternative wireline broadband providers and provided cable and telephone companies with both unprecedented power and an irresistible incentive to discriminate against Internet-based content and service providers that could compete with their own offerings.

Given the interest of the telephone companies in offering video services and the growing interest among communities in providing broadband services as an alternative to incumbents, Congress has a unique opportunity to correct the failed policies of the FCC and the 1996 Act by promoting competition that will both discipline cable rates and ensure that consumers not only have access to broadband, but also unfettered access to the competitive services offered via broadband wires. Congress also has the responsibility not to repeat the mistakes of the 1996 Act: prematurely deregulating rates and eliminating nondiscrimination rules before competition actually unfolds.

To serve consumers' interests, the public policy goal must be to maximize, as rapidly as possible, the benefits of new technologies and competitive markets to every American household. Without significant changes, however, S. 2686 is likely to make the majority of consumers worse off than they are now, bringing higher, not lower, video and broadband prices; reducing consumer protections; limiting access to competitive video and Internet-based service providers; and imposing greater barriers to municipally offered broadband services.

#### **Consumers Who Most Need Competition Will Be the Least Likely to Receive It**

Because the legislation does not require new video service providers operating under the streamlined franchise process to offer service to all consumers, new entrants will be free to offer service to only wealthy neighborhoods, leaving behind middle and low-income consumers who most need cable rate relief. The bill's default franchise provisions triggered after 30 days of the franchise application effectively eliminate the existing authority of communities to require that video providers serve all residents—something virtually every franchising authority has required of video service providers.

To ensure that the benefits of competition come to those who need it most, the legislation should require telephone companies entering the video market to build out their services to all consumers within a franchise area over a reasonable period of time, with appropriate accommodations for very low-density areas. This is not only critical to ensure that video competition disciplines cable rates, it is also central to reversing the alarming trends of inadequate competition in the broadband market. Next generation cable services bring broadband as well. Absent a build-out requirement, underserved areas will be permanently stranded on the wrong side of the digital divide.

As we noted in our earlier testimony, skepticism that telephone companies will offer their video services to all residents rather than just the wealthiest is particularly warranted given SBC's statements last year 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 communications services per month on a large bundle of video, voice and data services—but only to 5 percent of its low-value customers. Similarly, Verizon's conduct to date strongly suggests it is seeking franchise agreements for its FiOS service in only the wealthiest counties in the country.

<sup>4</sup> "Broadband Reality Check: FCC Ignores America's Digital Divide," Free Press, August, 2005.

<sup>5</sup> "Broadband Deployment is Extensive throughout the United States, but it is Difficult to Assess the Extend of Deployment Gaps in Rural Areas," GAO-06-426, Government Accountability Office, May 2006.

To effectively enhance competition and ensure that its benefits come to all consumers, any franchising legislation must require new entrants to build-out their services to all consumers over a reasonable period of time. Particularly in areas where telephone companies already have facilities, build-out should be timely and mandatory.

In the absence of build-out requirements, Congress should establish financial incentives for new entrants to serve the entire community. Telephone companies that do not agree to serve the entire community should be required 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. Those resources could be used to establish community broadband networks, competitive commercial services to areas unserved 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.

**Consumers May See Their Cable Rates Rise, Not Fall; Affordable Basic Broadcast Tier Is Eliminated**

By striking Section 623, the bill eliminates the few protections against cable price gouging that remain in current law. Regardless of whether there is any competition in a market, S. 2686 strikes the requirement that providers charge uniform rates across the franchise area. Equally troubling, the legislation inexplicably eliminates the authority for localities to regulate rates for the basic tier, which includes local broadcast stations and public access programming, and eliminates entirely any requirement that a basic tier be offered.

Consumer experience with deregulation in the absence of competition demonstrates that rate deregulation without adequate competition leads to skyrocketing prices. The presence of two satellite providers has not been sufficient to police cable rates; in fact, the availability of satellite has only a marginal impact on prices. Not only would the legislation virtually guarantee that basic cable rates will soar in some areas, the elimination of uniform rate requirements creates both the incentive and the ability for cable providers to increase rates charged to lower income populations to subsidize price breaks for the wealthier consumers they are trying to attract. Under the legislation, an incumbent cable provider could lower rates in areas served by new competitors and raise them elsewhere to offset losses from those discounts. Regardless of whether any competition exists, cable is given free-reign to price discriminate. Consumers who are not served by the new Bell competitor would be hit twice—they will lack a competitive alternative to the incumbent and they may face higher cable rates and declining service quality. During a March 2006 House Telecommunications and Internet Subcommittee hearing, Kyle McSlarrow, the head of the National Cable and Telecommunications Association refused to pledge that cable providers would not increase rates to some consumers if uniform rate regulation was eliminated. If Congress does not require that new market entrants build out to all consumers, it must, at a minimum, require that cable incumbents maintain a uniform rate structure.

Moreover, eliminating the requirement for an affordable basic cable tier could severely disadvantage consumers. Basic cable allows consumers to affordably access their local broadcast stations where over-the-air reception is poor, and provides them with affordable access to community programming. In addition, under current law, consumers who want to buy only pay channels, like HBO, need only buy the basic tier, not expanded basic to access those channels.

Without the basic tier requirement, video service providers could locate broadcast stations within the expanded basic tier, dramatically increasing costs to those consumers who merely want access to local broadcast and public access channels. Worse, consumers who only want individual for-pay channels could now be required to buy the costly expanded basic tier to do so. Finally, even where cable companies opt to maintain a basic tier, the bill's elimination of local authority to regulate prices for that tier will result in substantial rate hikes.

By striking Section 623 from the Communications Act, S. 2686 effectively deregulates cable even where no competition exists. The impact on consumers would be devastating.

**Consumers May Be Denied Service Upgrades by Incumbent Cable Providers**

The legislation allows incumbent cable providers to jettison their existing franchise obligations, including existing build-out and upgrade requirements, by making them eligible for the streamlined franchise process as soon as another video service provider applies for a new franchise agreement, even if that new market entrant offers service to just one household in the franchise area. And upon expiration of

their existing franchise agreement, cable providers may use the streamlined franchise process even if no other competitor has entered its market. Allowing incumbent providers to backslide on their existing franchise obligations would have devastating impacts in any community where the new video entrant is not providing service throughout the community. If a telephone company offers its video service in only part of a franchise area, as allowed under the legislation, an incumbent cable provider will have both the ability and the financial incentive to offer service upgrades only to competitive areas while denying them to customers in neighborhoods not served by the new entrant. While the National Cable and Telecommunications Association has pointed out the importance of providing network upgrades in an equitable and non-discriminatory manner,<sup>6</sup> it has refused to pledge that cable providers will not to deny service upgrades or withdraw service to currently served areas if a national system of franchising is adopted.<sup>7</sup>

**Without Build Out Requirements, Anti-redlining Provisions Are Insufficient to Prevent Discrimination**

S. 2686 appropriately prohibits redlining based on income, race and religion. Unfortunately, in the absence of meaningful and enforceable requirements to offer services throughout a franchised community, the anti-redlining provisions, on their own, will not be sufficient to prevent redlining by new video providers. Existing Title VI anti-redlining provisions have only been effective after decades of cable-industry foot-dragging, because they exist in tandem with the ability of local franchise authorities to require service throughout the franchise area over time. Without requirements for build-out, anti-redlining provisions provide inadequate incentives or enforcement tools to ensure that moderate income and communities of color receive video and broadband services comparable to those offered to wealthy neighborhoods.

So long as the burden lies with consumers to prove that income, race or religion is the sole reason a cable company has denied service or upgrades—that is, that the provider had discriminatory intent rather than impact—the anti-redlining provision will be largely symbolic. Provider practices that have discriminatory impact will be permitted under the bill. Providers may attempt to justify failure to provide service to particular neighborhoods based on insufficient demand or economic infeasibility—a claim that would be difficult for the public to assess given the lack of access to adequate data. Therefore, any anti-redlining prohibition should create a presumption of redlining when service is denied to particular neighborhoods, rebuttable only upon evidence provided by video service providers that service is denied for bona fide reasons. Moreover, the anti-redlining language only prohibits intentional redlining within a local franchise area, allowing providers to effectively redline by opting to provide service only to wealthy LFAs, leaving lower and middle income LFA's behind.

The legislation should also provide for concurrent anti-redlining enforcement by states and localities and include strong penalties for violations. Localities, in particular, have specific knowledge of local economic circumstances; a providers' service history in the community; and other knowledge that allows them to identify redlining concerns. They are also more accountable and responsive to their citizens than Federal regulators and are more likely to take timely action to resolve redlining concerns.

In addition, to improve the effectiveness of anti-redlining enforcement, S. 2686 should require the FCC to collect data that will allow enforcement authorities to identify redlining violations. Currently, FCC lacks data that would help identify patterns of service and potential redlining in broadband—the technology over which telephone companies will deliver video services. Additional reporting requirements and analysis should be part of the systematic process of oversight. Cable service providers should be required to submit regular reports about the location, density, and level of service offered in each franchise area.

**Consumer Protections Are Weakened**

Under current law, states and localities have authority to establish more stringent cable customer service standards than required by Federal law. Localities are able to enforce those standards through the terms of and renewal process for their local franchising agreements. Many franchise authorities have staff and offices dedicated to resolution of cable complaints that provide for speedy resolution of customer bill-

<sup>6</sup>National Cable & Telecommunications Association, 2006, "The Bell Monopolies Want a Special Break to Enter the Video Business." [Http://www.ncta.com/pdf\\_files/Bell\\_Myths\\_FINAL\\_03.06.06.pdf](http://www.ncta.com/pdf_files/Bell_Myths_FINAL_03.06.06.pdf).

<sup>7</sup>Comments of NCTA, Hearing on Committee Print of the Communications Opportunity, Promotion, and Enhancement Act of 2006, Subcommittee on Telecommunications and the Internet, U.S. House of Representatives, March 31, 2006.

ing concerns, service outages and more. Penalties in the form of liquidated damages or mandatory discounts for customers harmed by a provider's violation of customer service standards are not uncommon.

S. 2686 strips states and localities of authority to establish consumer protections that exceed Federal minimum standards and eliminates the ability of localities to use the franchise agreement itself as an enforcement tool. The legislation provides no guarantee that federally established consumer protection standards would take into account unique local needs or be able to respond quickly to adapt regulations to novel anti-consumer behaviors.

Any national franchise legislation should retain state and local authority to establish customer service standards and consumer protections. When facing billing errors, failure to make service repairs, property damage by cable employees and other related hassles, consumers must have a means for timely and local resolution of complaints against their service providers. Federalizing consumer protection is simply not workable. The Federal Communications Commission is ill-equipped to establish regulations in a timely manner to protect consumers. If Congress intends to give consumers meaningful opportunities to have their complaints resolved, the legislation should ensure that customer service standards as well as the process for resolving complaints remains at the state and local level.

### **Broadband Discrimination Protections Are Inadequate**

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 essential to building broadband and telecommunications competition. Telephone companies 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. Congress should not overlook independent Internet content providers as additional competitors.

But that source of competition will be squelched without strong, enforceable prohibitions against network discrimination—protections that existed until they were recently eliminated by FCC's decision to reclassify cable modem and DSL as information services. As a result, cable and telephone companies will now have both the ability and the financial incentive to use their network control to prioritize their own video content over others—eliminating a potential source of video competition.

The cable and telephone companies who now object to strong network neutrality legislation have complained about the discriminatory practices of their own competitors who control a network to which they seek access and have sought legislative and regulatory relief. Time Warner has filed complaints against incumbent telephone companies over refusals to provide interconnection for its VoIP services. And Verizon has complained that Rainbow Media, and its parent company Cablevision, are denying Verizon carriage of its regional sports cable networks. In each of these cases, the discriminating party is using its power over a communications network and the content that flows over it to exclude competitors.

Fortunately, S. 2686 prohibits these anticompetitive discriminatory tactics. First, it grants interconnection rights to providers of IP-enabled voice service, ensuring that phone companies cannot prevent competitors from accessing the public switched telephone network. Second, it prohibits cable distributors that own regional sports networks from denying carriage of those networks to other video service providers. In doing so, the bill acknowledges the importance of providing telephone companies with fair access to cable programming and the importance of providing cable companies with fair access to the telephone network.

It is equally important for Congress to ensure that Internet based content and service providers receive comparable fair access to broadband networks controlled by the telephone and cable companies. Just as a cable company's VoIP service cannot be viable without nondiscriminatory interconnection to the telephone network, an independent VoIP provider's service will not be viable without nondiscriminatory treatment on broadband networks. If the largest telecommunications providers need protection from the discriminatory tactics of each other, Congress cannot reasonably expect small, entrepreneurial Internet-based businesses to compete with comparable protections from discriminatory behavior of cable and telephone giants.

Unfortunately, when it comes to broadband network discrimination, S. 2686 requires only a study when there is every reason to believe that both dominant cable and telephone providers will use their network control to discriminate against Internet-based companies that offer services that compete with their own. Both Verizon and AT&T have made clear their intent to give priority service to Internet-based services and content providers who pay for that right. But in prioritizing service for one provider, other providers will receive degraded service, reducing or eliminating

their viability in the market place. Moreover, any fees charged to Internet-based companies will inevitably be passed on to consumers who have already paid for high-speed access. Not only will consumers pay twice for broadband service, network discrimination in the form of access tiering will stifle the innovation that consumers have come to expect from the Internet. Only those companies that can afford to pay for access will be able to reach consumers, stifling innovation, impeding competition and hiking end user costs.

Consumers must not be forced to rely on the FCC's unenforceable and unduly vague policy statement on network nondiscrimination. It is critical that any legislation designed to promote competition in broadband and video also provide for strong, enforceable network neutrality requirements to ensure that consumers have access to all competitive telecommunications services, not just those offered by the dominant telephone and cable companies.

### **Video Content and Competitive Programming Choices**

In order for true price competition to emerge in video markets, Congress must also address the anticompetitive programming practices that reduce competitive opportunities in the video marketplace. The legislation has taken a strong step in that direction by eliminating the "terrestrial loophole" that have prevented cable competitors from offering regional sports networks so attractive to consumers. But more must be done to ensure that new video market entrants can compete with entrenched incumbents by offering innovative video packages and favorable pricing for those packages.

At the same time that the cable distribution market consolidated through mergers, 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.

Since the Bell video market entrants will have to purchase all popular programming from a handful of media and cable giants that overcharge and require purchase of large unwanted bundles of channels, it is extremely unlikely that the Bell's video packages will offer consumers any meaningful price reductions. Innovative programming packages that offer consumers smaller bundles of individual channels could give new entrants a significant competitive edge over dominant incumbents. Surveys have shown that the majority of consumers want the option to buy video service channel-by-channel.<sup>8</sup> In countries where such choice exists, cable prices are significantly lower. For example, according to FCC's chief economist, Hong Kong consumers who select channels a la carte pay fifty percent less than those who buy programming tiers.<sup>9</sup>

But program carriage contracts preclude cable competitors from offering consumers smaller bundles or individual channels. Such contracts typically stipulate that distributors must 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 or in specialty tiers. 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>10</sup>

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>11</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. And they account for almost 80 percent of the more than 90 cable networks with carriage above the 20 million subscriber mark.

<sup>8</sup>"How we pay for cable may be about to change; 'A la carte' programming picking up support over expanded-basic bundle," USA Today, March 2, 2006.

<sup>9</sup>"FCC Top Economist Trumpets a la Carte, MultiChannel News, May 10, 2006.

<sup>10</sup>Mark Cooper, *Time to Give Consumers Real Cable Choices*, Consumer Federation of America and Consumers Union, July 2004, p. 5.

<sup>11</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.

Moreover, cable operators are majority owners of one-fifth of the top 90 national networks—a substantial stake in the programming market.<sup>12</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>13</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>14</sup> and are the most popular.<sup>15</sup> Program ownership by dominant incumbent cable distributors also provides the incentive to withhold carriage of cable networks they own from competitive video distributors. This is the basis of Verizon’s recent complaint against Rainbow Media and Cablevision over sports channel carriage.

Independent, unaffiliated video service providers 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>16</sup> Telephone companies attempting to enter new markets and compete will face these same barriers.

It is therefore essential that any franchise legislation that hopes to expand competition in video markets prohibit the anticompetitive and coercive contractual requirements, including retransmission consent abuse. Failure to do so will impede the ability of any new video market entrant, including Verizon and AT&T, to compete on price or packages. They’ll be forced to buy the same channels their competitor is carrying; pay the same or greater licensing fees; and offer the same packages. Worse, they will be precluded from offering consumers channels individually or in specialty tiers, rather than in a large and costly bundle, 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.

#### **Universal Service and Broadband**

We applaud the provisions of S. 2686 that expand contributions into the Universal Service Fund to all providers of communications services. Doing so will not only improve equity of contributions, it will also address the depletion of fund revenues due to declining use of wire line telephone service and reduce the financial burdens on wire line telephone service customers. We likewise support provisions that require providers receiving USF contributions to provide broadband service within five years of passage. However, we remain concerned that the default waiver provisions may frustrate the goals of the policy. Moreover, the legislation does not stipulate that all of a carrier’s lines be broadband capable, but instead merely that the carrier have deployed broadband “within” its service area. To achieve the goals of universal broadband, it will be critical that carrier eligibility for USF be contingent on making broadband available to all of its customers.

We also suggest the following additional provisions: First, we urge the Committee to consider whether, in the context of broadband service, FCC should be given authority to provide USF distributions from the unserved area fund directly to consumers through a voucher system. Such flexibility could extend the limited funding for unserved areas by providing the subsidy directly to those consumers who find it difficult to afford broadband services. Second, we recommend that municipal broadband systems be made eligible for funding from the Broadband for Unserved Areas Account, which could enable communities to finance the construction of broadband networks where private players refuse to invest. Third, we recommend that USF funds be available only to those carriers that provide broadband to all neighborhoods and households in a community and that abide by the network non-discrimination rules noted above.

<sup>12</sup>GAO-04-8, p. 27.

<sup>13</sup>Id. at 29.

<sup>14</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>15</sup>Id. at ¶ 151.

<sup>16</sup>EchoStar Communications Corporation, Testimony of Charles Ergen, Chairman and 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 Right of Municipalities to Provide Broadband Networks May Be Hampered**

We applaud the inclusion in S. 2686 of provisions that bar states from preventing municipalities from offering broadband or other advanced communications services to their residents. Hundreds of communities have responded to the lack of affordable broadband access by creating their own networks through public-private partnerships, offering new opportunities for entrepreneurs. Community broadband networks offer an important option for communities in which broadband services reach only certain areas or are offered at prices out of reach for many consumers. Equally important, the mere possibility that a community may develop a broadband network helps discipline the marketplace. Efforts to prohibit these community networks merely stifle competition across a range of telecommunications services, stall local economic development efforts, and frustrate efforts to close the digital divide.

We therefore strongly support the approach of S. 1294, introduced by Senators McCain and Lautenberg, which clearly and unequivocally preserves the rights of localities to offer broadband services in any manner they choose. However, if Congress opts for legislation that requires communities to offer private entities a right of first refusal before offering their own advanced telecommunications services, such a provision must be structured so that it does not function as a de facto prohibition on municipal broadband systems. Imprecise notions of “equivalency” that do not account for the policy goals of the municipality can serve to preclude municipal systems even where the private entity proposal fails to meet the overall objectives of a community system.

We are concerned that S. 2686 includes conditions that may significantly hamper local community efforts to ensure needed broadband services are made available. Specifically, the bill requires communities to offer private companies with the right to bid on development of proposed networks. While the legislation stipulates that the request for bids may stipulate the price at which the service is offered as well as the coverage area, we recommend that Congress clarify that communities may stipulate in their request for proposals all service terms and conditions beyond price and functionality, such as specific price discounts, technology and training for low income consumers as well as open access and open source software requirements and that any bid offered must meet those terms. For example, Philadelphia Wireless, the now well-known community WiFi project, will provide for free access in public parks and some other outdoor areas, offer deep discounts for low-income consumers, and provide free computers and technology training for underserved populations.

Unless communities have the ability to ensure a private provider will actually offer the same services the municipality intended to provide, the efforts of communities to meet their policy goals will be thwarted. Moreover, no community should be forced to forego its own broadband build out plans if a bid-winning private sector entity is not prepared to immediately implement its plans. Therefore, any right of first refusal provision must stipulate tight and strict time frames in which private entities must begin implementation of the project. No community should be forced to delay its plans merely because a private provider is willing to offer the same service in the distant future.

### **Conclusion**

The need for greater competition in the monopolistic video marketplace is an urgent one—but it has been urgent for a decade. We urge Congress to preserve and enhance oversight of fundamental consumer and public needs as part of S. 2686 in order to ensure this legislation promotes robust competition. That requires adjusting the legislation to include provisions for mandatory build out requirements or, in lieu thereof, resources to meet the needs of underserved consumers; provisions that prevent cable providers from backsliding on their current obligations to serve the entire community; strong consumer protections with state and local regulatory and enforcement authority; prohibitions on anticompetitive contractual channel bundling requirements that reduce consumer choice and prevent product differentiation; and strong enforceable prohibitions on broadband network discrimination.

The CHAIRMAN. Thank you very much.

I will not ask any questions this time. I'll yield to Senator Inouye.

Senator INOUE. Thank you.

Mr. McSlarrow, I believe your testimony, your prepared testimony, suggests that local governments are best suited to meet the

needs of their communities in a fair, equitable manner, and oversight by local franchising authorities would be better than FCC. Can you tell us why?

Mr. MCSLAWROW. Mr. Co-Chairman, that's correct. Our preferred path to reform is along the lines that you and Senator Burns outlined several months ago. And while the bill does acknowledge that local governments have an appropriate role to play when it comes to management of rights-of-way, franchise fees, PEG, and I-Net obligations, as I point out in my testimony, I think it's hard to imagine, if you're going to have a meaningful nondiscrimination clause that addresses where the service territory is, that that's going to be managed out of the FCC in Washington. Those are peculiarly local issues. And so, I just think, as a matter of which level of government is best placed to deal with it, it would be at the—a local level. There are probably other issues like that, but fundamentally this is a process that's more than just simply paying of franchise fees. There's a lot of interaction that takes place between the local communities and any provider in today's market.

Now, with that said, as you've suggested and the chairman has put in this bill, there is no question that this entire process can and should be streamlined. We've been on record for a year as saying we would back a process that ended in 30 days to ensure that no new entrant would be kept out of the market, because everybody, rightly, believes that competition is the right policy. So, that's not really the issue. The issue is what sets of responsibilities are best placed at which levels of government.

Senator INOUE. Thank you very much.

Mayor Guido, you've suggested that this bill would have an impact upon the ability of your city or the State to operate and maintain the I-Net. Can you tell us why?

Mayor GUIDO. Well, I believe it—this is all inclusive. It's PEG channels and I-Net. It would limit the scope to 1 percent for the I-Net. Right now, our franchise fees are about 5 percent. Those dollars go toward the operation of public access, education, and government channels. We feel that, from a local level, we know what our constituents are looking for. The franchises that cities have had the opportunity to exercise over the years have worked well for us. Our concern is that we would be stripped of that local franchise agreement, that it would become federalized, it would be part of the FCC's being able to oversee it, and that we wouldn't have the ability to exercise, not only I-Net, but PEG channels, and have the revenues to operate these, as well.

Senator INOUE. So, you agree with the cable people that you're in a better position to do the business than FCC?

Mayor GUIDO. Well, this is something, Senator, that the cable companies and cities agree on this. We've worked, over the years, on franchising agreements. We do agree that—you know, we believe we've been fair and that cities have the best interests of their constituents at heart.

Senator INOUE. In the current debate, it's been suggested that the franchising authorities—that's city and State—are frustrating competition through delay and unreasonable requirements that are imposed on new entrants. Is there any credibility or—to that charge?



Mayor GUIDO. Well, I think you—the industry can always pull out one city that has been putting up roadblocks, but we can also point out industry members that we've had a hard time trying to come to an agreement with. We're not necessarily opposed to a timeline. We think that 15 and 30 days is unreasonable, perhaps 120 days. We have to fulfill a process and a requirement, in terms of publication, scheduling hearings and meetings in front of our city council. We do this with the simplest of purchases for office supplies in the city. We think we should take the time to do it in a multimillion-dollar deal that provides services to our community.

Senator INOUE. Mr. Kimmelman, the number of changes in Title VI seem less focused on eliminating barriers and more focused on eliminating the current power of localities to establish consumer protection. Are these provisions serious obstacles to entry, in your opinion?

Mr. KIMMELMAN. I don't see how leaving cities in charge of customer service complaints could be a barrier to competition. I think that there are certain things that just cannot be handled federally. I'm not saying that everything must remain local. I think that all levels of government have strengths and weaknesses. But there are certain things that really ought to be left local and have nothing to do with whether you're allowing a competitor in or not. I think it's critical to make sure that consumers who don't get adequate service from their cable company or their phone company, or have a billing complaint, have someone to turn to who can turn it around in a meaningful timeframe, and I seriously doubt the Federal Communications Commission can do that.

Senator INOUE. I will ask one more question.

The CHAIRMAN. Yes, sir.

Senator INOUE. Do you believe, Mr. Kimmelman, that it is reasonable to require existing telephone companies and operators to upgrade facilities uniformly over some reasonable period of time?

Mr. KIMMELMAN. Yes, sir. Senator Inouye, I think that everywhere where they have a telephone plant already in place, there's no reason why they can't upgrade in every neighborhood in every community, serving every consumer they have. I think that is reasonable. I think that those are comparable to a lot of what the cable industry was required to do previously. They were not necessarily willing to do it. It took 20 years and a lot of foot-dragging, but they finally got most of the way to fill build-out. And I think there's no reason the phone companies can't do the same thing.

Senator INOUE. What would be a reasonable period of time?

Mr. KIMMELMAN. Senator Inouye, I would suggest that you almost turn it over to them and give them a kind of a pay-or-play option, "You have the option to build-out, or you have the right to pay the community to make sure it gets done." I don't think it's appropriate to assume that you can just demand a company to do something it doesn't want to do. If that is required, the company may not do it well. But putting out a bonding requirement, a payment up front for every street they won't serve, every home they won't serve, every neighborhood they won't serve, but giving them the opportunity to serve everybody if they don't want to have to make that payment, I think, is the correct way. And it seems to me it shouldn't take forever.

Senator INOUE. Thank you very much.

The CHAIRMAN. Senator Pryor?

Senator PRYOR. Thank you, Mr. Chairman.

Let me just say, at the outset, that I like competition, and I think it's a good thing, good public policy. In fact, my suspicion is there are millions of Americans today who are very frustrated with the lousy service they receive from their cable company. And I think one reason they are is because, the way the cable structure is set up right now, the customer really has no recourse against a cable company. You know, you can complain, or you can talk to the city, but, basically, we just don't have a lot of recourse. I think competition will help on that.

Let me ask a question about the world of competition, as you all see it. And maybe I should direct this first Walter McCormick, if you don't mind, and others can chime in if they would like to.

I'm curious about how you see this unfolding, in terms of a competitive marketplace. I know, right now, for example, with wireless telephone, it's very, very competitive. But there's a common practice in wireless telephone where the customer is asked to sign a 1-year or a 2-year or a 3-year contract, you know, depending on the nature of the contract, et cetera. But do you see that happening—I know you can't speak for your—for any individual companies, but as an industry—do you see that type phenomenon happening with video franchise—with video service, where, when you switch over, you obligate yourself to a 6-month or a year or 2-year contract?

Mr. McCormick, could you take a swing at that, please?

Mr. MCCORMICK. Senator, I don't have any idea what the individual business plans would be of individual companies. I know, today, in Washington, D.C., there's a lot of competition among health clubs, but I don't think that you can join a health club without committing to a 6-month or a 1-year contract with the health club. And what we see in the telecommunications space is, we see extraordinary competition. Among cell phone providers, in some communities there are up to ten providers. Consumers can choose. In fact, 97 percent of the U.S. population today has a choice of at least three wireless carriers. And five wireless carriers are providing service nationwide. So, that's a lot of competition. There are probably more wireless carriers in the Washington, D.C., market than there are health club chains to choose from.

In the video space, we see enormous competition developing. You can watch *Desperate Housewives* over broadband today. You can download a movie. What we want to do is to be able to offer video over the network that was deployed for voice service. The cable industry deployed a network for video service. It now offers voice over that video network. We'd like to be able to offer video over our voice network. We think that new competition is good for consumers. And what that will mean is, further competition on the basis of price and quality of service, and we think that's good for consumers.

Senator PRYOR. Does anybody else have a comment on that?

Mr. KIMMELMAN. Senator Pryor, I would just say, I wouldn't be surprised if you would see long lock-in contracts, but you don't know what any company will do. That certainly would make sense from the consumer perspective, to get your telephone business,

your cable business, and your Internet business. And I'm sure there would be some discount incentive to do that.

Senator PRYOR. And, in your view, is that good or bad for the consumer?

Mr. KIMMELMAN. It's definitely good for those consumers who are willing to lock in that way. What I worry about is the differentiation of, you know, which neighborhood will get that offer, people who tend to spend \$100, \$150 a month on their bill. What about the people who only want a—5, 10, or 15 channels, or get a barebones telephone service package? Are they going to get the same deal or be offered service at all? I worry that that's going to be the differentiation, and it's troubling.

Senator PRYOR. Are you concerned that the bill, as it's currently drafted, doesn't address your concern?

Mr. KIMMELMAN. Correct. I'm concerned it gives way too much leeway for the phone company to discriminate in where it offers service—and I would understand why: they go in where they can make the most money. But the problem is that the bill immediately allows the cable company to pull back from current obligations to have uniform rates everywhere or to even offer a basic package at a low cost whether or not real competition develops. And I think until we see—and the market may play out beautifully, but until we see competition playing out across income levels and other divides, I think we ought to be more cautious about releasing those public obligations of cable companies.

Senator PRYOR. In other words, I guess, if I can rephrase what your concern is, you have a monopoly in cable right now. And with a new entrant coming into the market, your concern is, the—there may not be true competition there, because you may not have a choice all over town, but the monopoly can go basically on the free market and still be anti-competitive, I guess. Is that your—am I putting words in—

Mr. KIMMELMAN. Absolutely. I think the bill releases some public obligations too quickly here—I think, probably on the right assumption, that you want competition to happen. But you don't know if competition is really going to come across these different neighborhoods and communities. And it would be more prudent, from a consumer protection perspective, to provide a little more time and see that there is enough competition in the market, such that those protections are no longer needed.

Senator PRYOR. For most consumers around the country, competition never really came in the telephone—local telephone market.

Thank you, Mr. Chairman. I'm out of time.

The CHAIRMAN. Mr. Ben Nelson—Senator Ben Nelson, please.

Senator BEN NELSON. Thank you, Mr. Chairman.

If—in the franchise agreements governing the use of right-of-way—rights-of-way, if the actual terms aren't negotiated in those franchise fee agreements, will that lead to more disputes going to the FCC? What will be faced, in terms of that, given the fact that there may be more than one available provider coming into a market? How will we be able to resolve that without it just being turned over to a jumpball situation with the FCC? Anybody? Mr. Guido?

Mayor GUIDO. Yes, thank you, Senator.

I think, as an example, in the city of Dearborn, we do have competition. We have Comcast Cable. We have WOW Cable. Another Internet service provider is AT&T-SBC DSL service that's available in our city. And then we have inordinate number of cable providers that run to our industries. Ford Motors World Headquarters is in the city of Dearborn. And so, there are a lot of opportunities.

We have the same agreements with these providers. And we are very concerned about the use of our rights-of-way, the restoration of our rights-of-way, to make sure that they're put back in the same condition that they were found, and that the city gets the rent that it deserves for the use of the public property.

I think if we were—if we didn't have that type of control—if it were turned over to the FCC, for instance—it would put an inordinate burden on cities, because we would have to have some type of Washington law firm representing our interests here in front of the FCC so that, you know, we could get our day in court; whereas, right now we use the court system. So, we would find it a very difficult paradigm to use the FCC as the arbiter of these kind of issues, as opposed to local control, which we have now, and the court system as a backup.

Senator BEN NELSON. Would it make sense to, in this bill, try to resolve those questions about rights-of-way?

Mayor GUIDO. I think it would be helpful. We felt that the Cable Act of 1996 is a good template. I know that there was some debate earlier in the comments by the Committee as to whether or not there was value and merit to that Cable Act. You can't predict everything in the future, technology or otherwise. But we think that it's worked well. We could use it as a template, and perhaps try to massage it from there, as opposed to throwing it out and starting from scratch.

Senator BEN NELSON. Well, this would be less affected by technology, more affected just by rights to certain rights-of-way. Would that be a—

Mayor GUIDO. I would say that's a fair assessment.

Senator BEN NELSON. And then, currently under the bill, when the current cable franchise expires, the cable company gets the benefit of this new streamlined franchise process, regardless of whether there's any competition from a new entrant. Wouldn't it make more sense right now to streamline the process, whether there is competition or not?

Mayor GUIDO. I think mayors and city councils are willing to streamline the process. I think that's what you hear from the industry, and they hold the mayors up as the bad guys, as, you know, roadblocks, to technology. We all want technology for our communities and for our citizens. And if there was a streamlined system that we could agree to that wasn't onerous on us, like this 15 and 30 days, which we feel, you know, in a draft form, is a start, but not necessarily what we would like to end up, I think that would be helpful, and I think you could get buy-in from a local government.

Senator BEN NELSON. And it wouldn't have to be based on competition, it just would be based on—

Mayor GUIDO. Just on—

Senator BEN NELSON.—streamlining it for its own sake.

Mayor GUIDO. Just on deployment of the technology in your community, yes.

Senator BEN NELSON. OK.

Thank you, Mr. Chairman. Thank you.

The CHAIRMAN. Thank you, Senator.

Before I call on Senator Lautenberg, I have conferred with Senator Inouye. We have, currently, a hearing scheduled on May 25th. We're going to change the schedule. And, on June 5th, we'll issue a revised draft that will be put together on a bipartisan basis during the recess that will come up at the end of May. On June 8th, I want to announce we'll have a hearing on the revised draft. And on June 15th we'll do our markup, rather than June 8th.

Senator Lautenberg?

Senator LAUTENBERG. Yes, thanks, Mr. Chairman. That's a very good change in plan, because one of the things that concerned me was that since there were 15 hearings, I assume that in selecting out of what those 15 hearings uncovered or developed was a consensus view that was done by staff, primarily, to make sure that what they thought was the consensus view was, in reality, a good and fair recognition of what each of the parties on opposing sides determined. So, we might have to have original text from those committee hearings attached to the bill so that we can all be reminded about what was said at those hearings.

Mr. McCormick, I have a question that relates to your testimony this morning in which you identify the costs that might occur for Alaska, Hawaii, Florida, and Montana. I assume you knew that there were Senators from these States at this Committee. An interesting coincidence. But how did you arrive at these numbers? Was that what might have been saved if actions were taken sooner?

Mr. MCCORMICK. Senator, this was a report from the Phoenix Center. It was a report with regard to the costs of not moving forward with franchise reform. It was—

Senator LAUTENBERG. I see.

Mr. MCCORMICK.—based upon—and I'd be happy to provide a copy of—

Senator LAUTENBERG. Yes.

Mr. MCCORMICK.—the report.

Senator LAUTENBERG. And maybe instead of rounding, you could give us the precise numbers that you think that might be the result.

What was the New Jersey figure?

Mr. MCCORMICK. Senator, I don't have that, but I'd be happy to provide it for the record.

Mr. MCCORMICK. Again, it was a Phoenix Center study that I was citing. It was not a U.S. Telecom study.

Senator LAUTENBERG. OK. That's a little bit randomized, in my view, but I thank you for that contribution.

Mayor Guido, you got a lot of nails to hit on the head in where you think the communities ought to be. And, with great respect, I note that. You make a comment about the requirement for franchise authority to act in 15 days and approve a franchise in 30, and a kind of rush to judgment. Those are the rules. And I'm one of those who believes that the communities have to have a voice here.

And I respect the fact that you've outlined in your testimony what some of the problems are.

Mr. McCormick, New Jersey may soon grant a statewide franchise to make it easier for the phone companies to enter the video market, but they'd have to serve the 60 largest towns within 3 years. You know about New Jersey, and we have 560 communities, individual communities, a lot of them very small. If the states are acting on this issue, why is Federal legislation necessary?

Mr. MCCORMICK. Senator, in every other area of communications, at this point, we have recognized communications as inherently interstate. With regard to broadband, with regard to wireless, with regard to satellite, with regard to every other form of entertainment and communications—it's regarded as inherently interstate. Today, you can download a movie, you can watch NBC online. And what we're trying to do at this point is to move forward with a new business that's going to deliver services that are inherently interstate.

This Committee and this government, with regard to the cable industry being able to move into the voice business, did so not pursuant to local franchise regulation. They had a franchise, they were able to add voice without a franchise. We have a franchise to offer voice. We'd like to be able to add video.

And so, what you have is, the world's changed since 1996, and technology's taken us to a place where you have the ability to offer services over—

Senator LAUTENBERG. Are you prohibited from going ahead and offering video in the communities that are already cabled? I don't think so.

Mr. MCCORMICK. It is our belief that the way in which the 1996 Act was written, and the prior 1984 Cable Act, that a multichannel video offering that we would be providing on a terrestrial basis could be interpreted as being cable service, and, therefore, requiring a franchise from the local franchising authority, rather than being able to be offered pursuant to the franchise that we hold. And so, for example, it creates great dislocation. We have a rural company with just 40,000 customers. It's a co-op. It's owned by its customers. It crosses 25 franchise areas.

Senator LAUTENBERG. Right. But there are lots of communities, I'm sure, where as opposed to waiting for a legislative solution, a court certainly could hear that. And you have lots of lawyers, and you can make a judgment about whether or not you're really prohibited. It's my view—I'm not a lawyer, so you can't judge by me. I did run a company with 16,000 employees, but I would think that it's worth a try. And, again, New Jersey is trying to open up the process.

So, thank you.

Thanks, The CHAIRMAN.

The CHAIRMAN. I did announce that—the hearing dates. We're going to have to revise that because of a conflict of Senator Inouye. And we will issue the revised hearing. But we will not have the hearing on the 8th. It will be on the—what date?—on the 13th.

Senator BOXER. You mean the markup?

The CHAIRMAN. The markup will be on the 13th. The hearing will—we're going to have to straighten out the dates. I just want

to tell you what—Senator Inouye has indicated he is—cannot do the hearing on the 8th. So, we will announce a new date for the hearing, and the markup will follow the hearing.

Senator Dorgan?

Senator DORGAN. Mr. Chairman, thank you very much.

Let me thank the witnesses for bringing your different perspectives. And many are very different, coming from different business models, and so on, to the Committee.

Mr. Kimmelman, first let me ask you about this so-called “Net neutrality,” or what I call “Internet freedom.” A couple of my colleagues, one from this committee, sent out a “Dear Colleague” yesterday, calling it “stifling regulation on the Internet, opposing the heavy hand of regulation.” In fact, the intent of this would be exactly the opposite of that. Give me your perspective of the need for an open architecture that is free, and remains free.

And let me just read a statement. This is a statement from Ed Whitacre. In fact, this is the one that piqued my attention last fall. Ed Whitacre, then CEO of SBC, said—he’s talking about Google—“They don’t have any fiber out there. They don’t have any wires. They don’t have anything. They use my lines for free, and that’s bull. For a Google or a Yahoo! or a Vonage or anybody to expect to use these pipes for free is nuts.”

So, when I saw that, last fall, I got interested, because, whether it’s Google or Yahoo!—I mean, I actually—I kidded, yesterday. I said, “I pay the price of a small used car every month for the right of having a wire coming in for cable and for broadband.” And, you know, I wouldn’t be without it, but I pay for this, and I don’t want to have an access where I am told that, “Well, if you want Google to come in, they have to pay Verizon or SBC something to bring”—so, that’s what piqued my interest in this issue of trying to keep the Internet free, and the architecture free, and the issue of Internet freedom, or “Net neutrality,” as it’s called.

Mr. Kimmelman, your evaluation of that?

Mr. KIMMELMAN. Well, Senator, the big problem here is, there are very few broadband pipes into the home. It’s usually only a telephone wire or a cable wire. Some people are fortunate enough to have both options. Satellite’s trying to find another way, and maybe we’ll see broadband over powerlines someday. But we live in a world where the cable and telephone are the gatekeepers. And net neutrality is not a question about whether a Google should pay or a consumer should pay. Everyone should pay for what they use. The difficulty here is whether they’re—whether you’re allowing any discrimination through by letting the gatekeeper decide what Internet content and services reach the consumer, how they reach them, at what speed, at what quality, and whether there’s an ability to manipulate that in any way. And, obviously, if there were five, six, ten providers, we wouldn’t worry about that, it would be an open, competitive market. But with only cable and telephone broadband providers, there’s a significant concern about anti-competitive practices, and there’s a history of these companies trying to overcharge, block competition. We’ve seen it in the phone companies, we’ve seen it in the cable companies. That’s why some form of non-discrimination requirement in statute is critical.

Senator DORGAN. So, the telephone companies now want to come in and provide, essentially, a cable service, plus an Internet service. And I—if that brings two competitors into a circumstance where there is now one, I say, “Good.” I think competition is good. And the question I have about that is this. They—I’m told there are, what, 30,000 franchises? And so, the telephone companies would like to get in and compete sooner rather than later and have some streamlined franchising opportunities, rather than going one by one across the entire United States.

The question I have is this, about buildout. When the cable companies go to a community and get a franchise, are there, in most cases, a buildout requirement to that franchise? And should there be some sort of buildout requirement—or will there be a buildout requirement, whether it’s a State judgment or a local judgment or action the Congress takes, with respect to the franchising issues, dealing with the telephone companies and their competition?

Mr. McSlarrow, are the cable companies largely, with respect to franchises, required to build out in certain ways?

Mr. MCSLAWROW. Senator, they are, although I would note that that’s for video service.

Senator DORGAN. Right.

Mr. MCSLAWROW. When it comes to phone and highspeed data, we have built out our entire communities, even though there has been no obligation at all, because we just want to do that. So, when you come back to video, I think—your second question was whether or not I think we should impose that as a matter of law—I think it’s an odd thing for me, as the competitor, to say “impose a build-out requirement on my competitor.” That’s just a strange thing.

Senator DORGAN. But you don’t have—

Mr. MCSLAWROW. I—but I do think the point of local involvement is that there’s a proxy for the community that they can do that negotiation.

Senator DORGAN. Interesting. My interest isn’t whether it’s—whether it’s a neighborhood—and in rural America, the whole area is the neighborhood—my interest is in how this happens, that we want to stimulate competition and provide the best opportunity to have robust competition. Everybody talks about—and I, in fact, said it—the world has changed. But, you know, one thing hasn’t changed, and that’s the consumer. The consumer wants the best product, for a fair price. And the only way you get that is through robust competition. And much of that competition is diminished. And now, the question is, How can you connect the ends of these two plates of spaghetti and see if you can make something of it? And I don’t quite know how to do that. This is very complicated.

I might mention one other things, Mr. Chairman. A piece that is not quite related to this, but, in many ways, is, and a piece that I would expect to offer an amendment on in this process, as well, is the issue of media concentration, because the Federal Communications Commission, as the chairman has said, we’re set to go now, given the Federal court decisions, and, you know, “Katie, bar the door,” cross-ownership television and radio concentration, which has just been an orgy of concentration. I think we have to find a way in this legislation to slow them down, as well. They began a localism proceedings, and never finished it. They shouldn’t



be doing anything with respect to the media concentration rules, or media ownership rules, until they finish their localism proceeding. And I would expect to offer amendments on that.

But I—let me say, again, it's very helpful to have all of you come in and say, "Here's our business. Here's our plan. Here's what we're doing. Here's what we represent," because, as we put those together, then we understand what kind of legislative interests we might have that can benefit the entire country.

Thank you very much.

The CHAIRMAN. Thank you very much.

Our next is Senator Boxer.

Senator BOXER. Thanks, Mr. Chairman. I, also, want to thank the panel, all of you.

I want to say, Mr. Mayor, I found your presentation really good, in the sense that it's very clearly understood. And, matter of fact, I wrote on a—sort of, to my staff, that this is an example of very clear thinking and very clear writing. And I thought that I would just simply say that your—by reiterating your points, that the bill, as it is written, "while ostensibly preserving local franchising authority, the net effect is to strip authority from local governments and grant the authority to the FCC." Point made. Because I—that's our analysis in our office, as well.

Second, "The bill would send all rights-of-way disputes to the FCC, an agency that lacks the resources and expertise to handle them." I think that's an understatement.

Third, "While the intent may have been to keep localities financially whole, the bill would result in a significant loss of financial support to local governments." And as someone who's champion of local government, I think you know how to spend the money better than most, because you see it, and the folks can knock on your door. I think that's a sad, perhaps unintended, consequence, perhaps a planned consequence, of this legislation, as written.

Fourth, while at first glance the bill appears to prohibit redlining, it would permit video providers to pick and choose the neighborhoods they'd like to serve. I think that's an important point, because clearly our private sector is going to act from their own best interest—for their own best interest. That's generally what they do. That's—they have to respond to their shareholders. I don't call them "bad" for that at all. But the point of our involvement is to just say, through our legislation, "Let's make sure that whatever we do helps the community, doesn't hurt the community." I think the bill, as written, will, in fact, lead to redlining. And I'm going to ask a little bit more about that in a minute.

Fifth, it appears the bill undermines the taxing authority of State and local government in areas wholly unrelated to rights-of-way. And that has to be a concern to all of us, I think, on both sides of the aisle, that do have respect for our local—people who are trying to provide services at the local level.

So, I just wanted to thank you very much, Mr. Mayor, because I think what you have said is really clear and will help us as we sit down with the Chairman and Co-Chairman to try and fight for the cities and the people in the cities. Thank you for that.

Ms. Johnson, I just have a concern here that I know Congressman Markey had, as well, and that is, you know, your approach to

this, because I think, although you are here representing Video Access Alliance, you also, as I understand it, run another company, Net Communications, LLC, which—you testified before a House Telecommunications Subcommittee—that clients include telephone companies. It's also my understanding that you're a member of the Board of MasTec, a company whose core activities are the building, installation, maintenance, and upgrade of communications and utility infrastructure and transportation systems. And among its largest clients are Verizon and Bell South.

The reason I bring this out is, I appreciate your intelligence that you bring to this, and your—how articulate you are, but I really don't see you as an independent voice. I mean, I—would you like to challenge that? Because I know that—when was this organization formed, this independent organization, Video Access? When was it formed?

Ms. JOHNSON. It was formed at the beginning of the year to specifically—

Senator BOXER. And what's its—

Ms. JOHNSON.—specifically to address the issues of multiple platforms. And I would like to respond to the—

Senator BOXER. Sure, please.

Ms. JOHNSON.—the issues that you've raised.

Senator BOXER. I would appreciate it.

Ms. JOHNSON. As it relates to—you're right, I am the proud owner of a company, maybe not often seen, African-American women heading up such organizations, but it's a great team, and we are proud of the work that we do. I have the opportunity that so many of us don't have—

Senator BOXER. Well, I'm not talking about that.

Ms. JOHNSON.—of serving on a—

Senator BOXER. We're very proud of you. I just want to get to the point of—

Ms. JOHNSON. I'm—

Senator BOXER.—you are testifying today as an independent voice. My view is that you're really not an independent voice, because you represent phone companies in your other business. I'm just trying to establish that.

Ms. JOHNSON. Yes, and I'm trying to respond to it, as well.

Senator BOXER. Yes.

Ms. JOHNSON. MasTec represents cable, electric, telecom, water, waste water, a series of industry groups, not just one sector. So, the point there, I'm not—

Senator BOXER. Well, water has—

Ms. JOHNSON.—understanding.

Senator BOXER.—nothing to do with this bill. So—

Ms. JOHNSON. Certainly. But cable and telcom do—

Senator BOXER. Sure do. That's my—

Ms. JOHNSON.—as well as—

Senator BOXER.—point.

Ms. JOHNSON. And it—and so, my point would be that there's a balance in the approach, and that we represent—over the years, I've represented numerous entities, and including local governments over the years. So—but as to my membership and the people

that I represent today, they are—they are not telcom companies. They are not—

Senator BOXER. No, I understand.

Ms. JOHNSON.—and they are not cable companies. They are independent networks. They are entrepreneurs that are, indeed, seeking this kind of relief. And their advocacy—whether I own independent companies or not, their advocacy, their positions, what they bring to communities, the diverse content that they offer, is real. And for me to have the opportunity to speak on their behalf—

Senator BOXER. OK, I—

Ms. JOHNSON.—not Julia Johnson's behalf, but on their behalf—

Senator BOXER. Right.

Ms. JOHNSON.—is a very legitimate—

Senator BOXER. OK—

Ms. JOHNSON.—honorable thing.

Senator BOXER. OK, I think you're totally honorable.

Ms. JOHNSON. Thank you.

Senator BOXER. I'm just making the case, as Congressman Markey made, that, as we approach the rewrite of this bill, or the modification to this bill, I want to look to the truly independent voices, is all I'm saying, because, I'll tell you something, I'm here to represent the people of my State, and not any special interest. And I was just making that point, because I think, in my own view, the truly independent voices, as I see it, happen to be the mayor and Mr. Kimmelman, just in my view, because of the other clients that you have. I just want to put that on the record. And I thank you.

The CHAIRMAN. Thank you—

Ms. JOHNSON. Thank you.

The CHAIRMAN.—very much.

Senator Smith, you're recognized, please.

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

Senator SMITH. Thank you, Mr. Chairman.

I've had the obligation to be in three different committees this morning, and so I was not here for an opening statement, and would ask that mine be included in the record.

The CHAIRMAN. Without objection, so ordered.

All of the statements you presented will be printed in the record in full.

[The prepared statement of Senator Smith follows:]

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

Thank you, Chairman Stevens and Co-Chairman Inouye, for convening these hearings on telecommunications law reform and more specifically to discuss changes to Universal Service and Video Franchising regulations.

The last major telecommunications legislation was signed into law a decade ago. During this time the accelerated growth of the Internet has fundamentally changed the way Americans communicate and conduct business. Rightly, our Federal Internet policies have favored a light regulatory touch. Free of government interference, the Internet grew exponentially during the 1990s and the United States was a world leader in network deployment.

Since the turn of the century, however, our legacy telecommunications laws have been exposed as out-of-date. An oft-cited International Telecommunications Union study recently revealed that the U.S. has fallen to 16th in global broadband deployment. These rankings are unacceptable for the world leader in innovation.

It is essential that we modernize our telecommunications laws now. Any reform measures must encourage the deployment of broadband to all Americans, meet the reality of today's marketplace, and ensure that we do not damage the long-term competitiveness and economic well-being of the United States.

I am pleased that the Committee's draft telecom reform legislation includes revisions to the Universal Service Fund regulations to encourage the ubiquitous deployment of broadband networks to Americans and to allow local municipalities to offer broadband services. I have well-established my position that access to broadband services should be just as available to rural communities as urban areas. Further, allowing localities to offer broadband services to the public will help to expedite the deployment of broadband service, especially where private companies have failed to meet the community's needs.

Likewise, I have long advocated Video Franchise reform and applaud the Committee's recognition of this issue by including it in its draft telecom reform bill. The video marketplace today is vastly different than when Congress first authorized local regulation of cable television service in 1984. In those days, a typical American community was served by a local cable company that had a few hundred or a few thousand subscribers. Twenty years later, many of those communities are still served by just a single cable company.

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 2006 article from *The Oregonian*, Portland-area cable rates are set to increase by another seven percent this year. Although satellite TV services have made great strides during their twelve years of existence—serving over twenty million subscribers—they have failed to exhibit price control on cable.

Thankfully, some of the largest communications companies in the country are now investing billions of dollars in high speed networks capable of offering video and other services that will compete with cable. However, under current law, these companies 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. Existing video franchising regulations no longer meet the reality of today's marketplace. These regulations, while once desirable, now serve as barriers to competitive entry and disincentives to network investment. We must encourage these investments by freeing video providers from unnecessary federal, state and local regulations.

Taken together, these reforms will help create ubiquitous broadband networks, modernize our telecom laws to meet the reality of today's marketplace, and bolster the long-term competitiveness and economic well-being of the United States. I look forward to working in a bipartisan effort to take up these issues in quick order in the coming weeks.

The CHAIRMAN. Thank you, Senator.

Senator SMITH. Mr. Mayor, a question I have, somewhat as a followup to Senator Boxer, is from a different approach. I want to be sensitive to the local franchises and the fees and everything that our local communities have become accustomed to receiving. However, one of the questions I have—everything that I understand that local franchises or communities require is, in this bill, statutorily required—but the question I have is, What do local communities do for the taxes they want to keep?

Mayor GUIDO. Are you talking about the taxes that we collect, in general, or are you talking about the—

Senator SMITH. Well, I mean—

Mayor GUIDO.—telecom taxes, the—

Senator SMITH. I mean, I—

Mayor GUIDO.—5 percent—

Senator SMITH.—I—

Mayor GUIDO.—the 5 percent plus the I-Net—

Senator SMITH. I—Yes, all of that. I mean, I just—I’m—I don’t want to take their revenue source away, but I also think government has an obligation to provide something for the taxes that it collects.

Mayor GUIDO. We agree. And you certainly—our feet are held to the fire on a local level on a daily basis, so we believe that, in our communities, we provide the services that people see, feel, and touch every day, whether it’s a police car, a rubbish truck, a fire engine, whatever. These are the things that people, you know, want in our communities, and they determine where they want to live by the services that are provided.

Senator SMITH. Well, I—

Mayor GUIDO. The dollars that—

Senator SMITH.—understand that.

Mayor GUIDO. The dollars that we collect in—for—is a rent, if you will, for the use of public rights-of-way. This is public property that cities and taxpayers have paid for, have acquired over the years, have maintained, pay insurance on, and so forth. And it’s a rent for—that we receive for the use of that right-of-way. We provide—

Senator SMITH. But are there—I obviously understand there’s no relationship between your TV, necessarily, and the firetruck down the street, but are there services you’re providing relative to video?

Mayor GUIDO. But—yes, we are. And we do. And we’re very proud of the fact that—you know, that we run a studio that provides public information.

Senator SMITH. But isn’t the public information access—isn’t that all provided for now, statutorily, in this bill?

Mayor GUIDO. But it’s—the fees that we collect help pay for that information, the disbursement of that information. In other words, we could not operate—we could not have our camera people and our producers and so forth if we didn’t have those dollars that we collect from the cable franchise.

Senator SMITH. So, what—there ought to be some relationship between those costs of providing, via public access television and things, to the amounts collected.

Mayor GUIDO. Well—

Senator SMITH. Unless we just say honestly to the public, "This is just another way we’re going to tax you."

Mayor GUIDO. Well, I think that—I think that, you know, cities are under attack on every level, whether it’s from the Federal level or the State level, in terms of our revenues and the revenue sources. And we zealously guard them. And, while this bill tries to protect our revenues, or at least it states that, it doesn’t include the revenues for advertising and for home shopping networks, which is about a 15- to 20-percent reduction. The City of San Antonio, I believe, collects about \$9 million, currently, through their franchise fees. They would be reduced to about \$7.6 million—they would lose if this bill were to go in without amendments. And so—

Senator SMITH. Well—

Mayor GUIDO.—these are dollars that we use for programming. These are dollars that we use for operations. And I think that they all go into the same pot. They’re all in the—they’re all in the local

pots, like when we send tax dollars to Washington. They could be for defense, they could be for—

Senator SMITH. Well, I—

Mayor GUIDO.—Medicare—

Senator SMITH.—I don't want to sound insensitive to it, but I'm being asked this by local consumers who are saying, "What's this for? What am I getting for this?" And, frankly, I'm asking these questions because I'm being asked these questions.

To a larger question that I—Kyle, you spoke to it—many of you have, many of my colleagues, I assume have—certainly, Senator Dorgan did—Kyle, your comments were—actually struck me as credible on the issue of Net neutrality, because you could clearly make the argument that it would be good for the cable industry if this whole thing just went away. And there's a very real likelihood that this whole issue could die over Net neutrality. And yet, you said, "Notwithstanding that, stay away from it and let this evolve with a lot more thought, and perhaps with less regulation," that we're faced with a fundamental choice between regulating or not regulating.

My question to you is, if that is the choice—and that means this thing just gets hung up in the Senate, which is easy to predict right now—do any of you have any other ideas? Is there another middle ground? Because, literally, the Senate may be the strainer that this just can't pass through unless we find a way to accommodate the legitimate interests being put forward on both sides. Any good ideas?

Mr. McCORMICK. Well, Senator, I thank you put your finger on it. I think Kyle did, as well. I mean, the issue here is whether or not to provide consumers with additional choice for video. It's a good thing. It's a good thing for consumers.

Net neutrality, or so-called net neutrality, is totally irrelevant to that issue. And, as we are learning, nobody really knows what this whole net neutrality thing means, or what problem exists. Everybody agrees—there's consensus—that there's no problem today. It's what-if legislation. So, our hope would be, let's move forward with giving consumers video choice. Let's move forward with the important USF reforms. And let's let this net neutrality debate better define itself, let the problem better define itself, before Congress attempts to put a solution on something that's in search of a problem.

Mr. KIMMELMAN. Senator, if I could just weigh in. I don't believe this is a new problem. This is an old problem with a new name. This is—

Senator SMITH. Right.

Mr. KIMMELMAN.—a problem of discrimination on networks. And it doesn't surprise me that the cable industry would take the stand it does, because probably in reality it knows that anything that's nondiscriminatory that applies to the phone company would have to apply to the cable industry, as well. You couldn't do it one way without the other. And they probably fear that even more than the telephone companies getting into their business.

If we had an option of looking at a third, a fourth, a fifth pipe into people's homes—wireless, wire, however you do it—I don't think it would be an issue. But so long as it's the two industries

that have a track record—with interconnection, video programming, or whatever—of a lot of disputes about anti-competitive practices, I don't think you can avoid addressing the issue.

Senator SMITH. Well, how about if there's legitimate payment for access, but you don't limit the numbers of people or companies—a Google or a Yahoo!—that have access to that, so the consumer still retains—

Mr. KIMMELMAN. Senator, I urge you to dig into it, because I don't believe anyone is really asking for a free ride. I think everyone is asking for some clarity as to what the rules of the road are, what is a fair payment, and whether you are sure you can get your content on or your service through without being overtly or subtly blocked or impeded. I've not seen anyone ask for a free ride.

Senator SMITH. Well, bottom line is that investors need to get paid on their investments in order for this to be deployed, and consumers need choices. And that's how we've got to figure out how to split this baby, because I hate to see this bill die over that issue.

The CHAIRMAN. Thank you very much.

And we thank you, as members of the panel.

We'd like now to turn to the second panel: Shirley Bloomfield and Walter McCormick, Kyle McSlarrow, The Honorable Steve Largent, Joslyn Read, and Philip McClelland.

Thank you very much.

Mayor GUIDO. Mr. Chairman, may I thank you for your offer to work with the mayors of the United States and local governments. Thank you so much.

The CHAIRMAN. I'm happy to do that, Mayor. I will call your attention—we believe there will be competition in each one of these cities. You're not going to get these fees from just one source, you're going to get multiple sources. We do want to sit down and talk to you about that. And we will work it out.

We'll take a short recess here for a station break, sort of.

[Laughter.]

[Recess.]

The CHAIRMAN. Ms. Bloomfield, if we may—

Thank you very much. We're pleased—your statements will be printed in the record, as though read. I appreciate your comments. We want to finish today. We thank you for your—for waiting so long. And as a result of what's gone on today, we're going to change the Committee policy about when we call on witnesses to testify.

Ms. Bloomfield?

**STATEMENT OF SHIRLEY A. BLOOMFIELD, VICE PRESIDENT,  
GOVERNMENT AFFAIRS AND ASSOCIATION SERVICES,  
NATIONAL TELECOMMUNICATIONS COOPERATIVE  
ASSOCIATION**

Ms. BLOOMFIELD. Good morning. I'm Shirley Bloomfield, Vice President of Government Affairs and Association Services for the National Telecommunications Cooperative Association. I'm here today on behalf of the Coalition to Keep American Connected.

The Coalition is organized by ITTA, WTA, OPASTCO, and NTCA. And, together, we collectively represent more than 700 small and community-based telephone companies serving millions of consumers in over 40 percent of the land mass of this country.

Generally the rural sector of the communications industry views the comprehensive nature of S. 2686 very positively. We think the legislation includes many pro-consumer provisions and takes constructive steps to modernize and bring accountability to the Universal Service Fund.

USF is critical to ensuring that all consumers have access to affordable telecommunications services and the latest technologies, no matter where they live. The committee's leadership on these issues shows the commitment to craft a solution that modernizes the current Universal Service Fund and the vision to bring broadband to consumers everywhere.

Supporting universal service and broadband deployment will provide consumers access to new products and services. Likewise, the video elements of the legislation contain a number of provisions that will bring answers and stability to confusing situations that exist now under current law.

Overall, the intent of Subtitle 2, Modernizing Universal Service, is on target, as it will appropriately broaden the base of contributors to the program. In addition, the new definition of "communications service" will serve the industry well and will alleviate a lot of today's concerns that we have regarding what is a telecommunications service and what is an information service.

The definition of "broadband speed" being at least 200 kilobits per second in at least one direction might be an acceptable baseline, yet technological capability and consumer demand continue to evolve to the degree that this may already be an outmoded target. There are different speeds suggested at different points in the bill, and we believe these should be reevaluated to ensure consistency with the objectives that the Committee intended.

We also concur with the interconnection guidelines that require an ILEC to interconnect with a requesting VoIP provider, so long as the VoIP provider takes on the rights and obligations that a requesting telecommunications carrier would, including paying access charges and contributing to universal service.

The language tightening eligibility requirements for eligible communications carrier is long overdue and a positive addition to the bill. Consideration may be given to tightening the requirements even further by ensuring that any eligible carrier is compensated based on their own costs and not on the identical costs of the incumbent carrier. This would help to alleviate concerns some members of this committee have demonstrated on controlling the growth of the fund.

We think that the 5-year upgrade period demonstrating how high-cost support will be used to improve coverage in services and the quality with the waiver process is a very good approach. We believe the language needs more clarification on defining broadband availability. In doing so, we would urge that the assessment be based on access to broadband and not the actual take-rates. We've been doing a lot of broadband studies, and these broadband studies show that even while buildout is rapid in these rural telco markets, the consumer take-rates continue to lag behind. The establishment of a broadband account for unserved areas may prove to be a useful way to get broadband out to really remote areas of our country. Limiting it to unserved areas-only helps to



tighten the use of the Universal Service Funds. However, the language in this section regarding opening a door to all aspects of the provision of satellite-oriented services does raise substantial competitive questions that require a closer look.

We're also concerned that setting a lower transmission speed requirement than the target for the rest of the Nation does not necessarily ensure comparable services. We should not be subjecting rural Americans in unserved areas to substandard broadband service in comparison to the rest of the Nation, particularly when cost recovery funds such as these are being made available to offset the deployment costs.

Additionally, the primary line language is very positive and will, once and for all, preclude the FCC from giving further consideration to this concept. The Anti-Deficiency Act exemption currently sponsored as separate legislation by more than half of the U.S. Senate is also excellent.

Because universal service is the primary focus of the Coalition to Keep America Connected, on behalf of NCTA I just wanted to say that Title III on streamlining the franchising process should be modified to ensure that it applies universally to all video content providers to eliminate any and all video programming vendor loopholes. Rural telephone companies have long been the video provider in the rural communities, thanks, in part, to the early cable cross-ownership exemptions. And we're seeing many of our member companies using the IPTV model as a way to boost their take rates for deployed broadband services. We support streamlining the franchising process.

The included shared headend provision is very important to rural carriers. This cost-effective method of video delivery is needed to ensure that video competition, or even just video service, is available in all markets, regardless of how sparsely populated they are. Access to affordable video programming is a huge obstacle for small carriers and for their consumers.

Additionally, we'd like to see an assurance that all telecommunications, cable, wireless, satellite, electric, and other companies have nondiscriminatory access to the Internet backbone in the future.

The Coalition to Keep America Connected thanks and commends you, Chairman Stevens and Co-Chairman Inouye, for your leadership, and we look forward to working closely with you and the entire Committee to ensure the best legislative outcome possible.

Thank you.

[The prepared statements of Ms. Bloomfield follow:]

PREPARED STATEMENT OF SHIRLEY A. BLOOMFIELD, VICE PRESIDENT,  
GOVERNMENT AFFAIRS AND ASSOCIATION SERVICES,  
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

ON BEHALF OF THE COALITION TO KEEP AMERICA CONNECTED

### **Introduction**

Good morning. I am Shirley Bloomfield, Vice President of Government Affairs and Association Services for the National Telecommunications Cooperative Association. I am here today to testify on behalf of the Coalition to Keep America Connected which represents rural consumers and small businesses from all across the nation. We thank you for the Committee's leadership on universal service issues that are so critical to rural America and specifically for the opportunity to testify before you.

The Coalition to Keep America Connected is organized by the Independent Telephone and Telecommunications Alliance (ITTA), the National Telecommunications Cooperative Association (NTCA), the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), and the Western Telecommunications Alliance (WTA). Collectively, our memberships include more than 700 small and midsize communications companies. Together these companies serve millions of consumers that reside throughout more than 40 percent of the landmass of rural America. Additional members of the Coalition include the National Cooperative Business Association, the Center for Rural Affairs, the Association of Educational Service Agencies, along with other rural focused organizations and businesses, including over 300 community-based communications providers.

Generally, the rural sector of the communications industry views the comprehensive nature of the “Communications, Consumer’s Choice, and Broadband Deployment Act of 2006” very positively. The legislation includes many pro-consumer provisions and takes many positive steps to modernize, and ensure accountability within, the universal service program and its related funding mechanism.

### **Summary/Overview**

Early on in the discussions about the potential Communications Act rewrite our organizations, like so many, set about identifying what we believed would be necessary from a rural consumer and small business perspective to ensure the development of a successful rewrite package. Today’s hi-tech revolution continues to yield unparalleled economic and policy pressures for the entire communications industry. Yet, as always the industry’s rural sector persists in aggressively embracing and offering the exciting new technologies and services associated with this era.

Over time, it has become crystal clear that the deployment of advanced infrastructure is more and more important as Americans increasingly rely upon communications services to satisfy their commerce, security, and entertainment needs. It is our conclusion that the deployment of advanced infrastructure that is fully capable of offering such services should become the hallmark of our national universal service policy.

Likewise, we believe that industry responsibilities must accompany the opportunity for any communications provider to operate in a competitive deregulatory environment. Universal service and intercarrier compensation and the ability to effectively negotiate interconnection and access matters are major keys to the ability of rural communications providers to recover their costs. For us to retain and build upon a nationwide ubiquitous communications network, all providers must embrace these elements of our national communications policy.

Early on we identified the following specific issues as being those we should focus our attention on during the rewrite debate.

- Universal service should be strengthened by tightening the process for determining program eligibility, providing support based on a carrier’s own costs, expanding the base of contributions, providing support for advanced systems, and removing the program from the Federal budgeting process.
- Intercarrier compensation arbitrage that is plaguing today’s system must be limited, yet in a way with minimal consumer impact and with appropriate transitions for carriers and policymakers alike.
- Nondiscriminatory interconnection and access to infrastructure content, roaming, spectrum, rights-of-way, and financing at appropriate rates, terms, and conditions with government default rates should be required.
- Finally, we believe it is imperative that policymakers practice smart rather than absolute deregulation, which is the key to achieving the regulatory flexibility so many seek. Generally a more flexible approach, rather than rigid deregulation will best serve consumers—and particularly those in rural markets. Following this policy course will maintain and encourage the entrepreneurial spirit that has long ensured America’s economic and technological superiority.

So, the question becomes, “how does S. 2686 stack up against this policy course outline that our rural organizations envision?” The short answer is that we believe the bill has hit the mark on virtually every point. Really, the suggestions offered in our submission today are merely to strengthen the already solid core that has already been built into S. 2686.

### **Universal Service**

Universal service has long served as the cornerstone of our Nation’s communications policy. It ensures that all Americans enjoy the benefits of a nationwide integrated communications network. And it is clear that our economic and national security insists that this policy be preserved. Driven by a unique cost-recovery process,

today's universal service system effectively ensures that all Americans, urban, suburban, and rural alike, have access to quality communications services that are comparable in price and scope. By emphasizing an assurance that necessary cost recovery is available to those that make the commitment to serve the Nation's most economically challenging markets, the policy concurrently ensures the highest level of communications connectivity among the public. Unfortunately, in many ways it could be argued that our national universal service policy has become the victim of its own success. Too often regulators and competitors alike have viewed the program as little more than a means of inciting artificial competition rather than serving as a cost recovery mechanism for those with a genuine commitment to high-cost markets. Policies must be crafted that will reestablish the value of this program for all consumers. In evaluating the universal service aspects of S. 2686 as well as other rewrite bills that are emerging both in the Senate and the House of Representatives we have been determining the degree to which they meet the following objectives:

- Removes the ambiguity that has evolved over the definitional differences between Information Services, Telecommunications Services, and Telecommunications.
- Alters the Contribution aspects of today's program to:
  - Allow for the full assessment of intrastate in addition to interstate and international revenues, or at the very least looks at alternatives or hybrids involving any combination of revenues, numbers, connections or IP addresses that will best ensure no parties are able to escape contribution responsibilities..
  - Expand the base of supporters to include all providers of 2-way communications regardless of the technology involved.
  - Set the stage for supporting cost recovery of broadband capable infrastructure.
  - Provide for the FCC to modify the scope of contributors in the future.
- Alters the Distribution aspects of today's program to:
  - Clarify that support is for cost recovery of networks that benefit all consumers throughout a given market, and not just those that are the most economical or easy to serve.
  - Reject the concepts of providing support directly to consumers or states via vouchers, auctions and/or block grants.
  - Eliminate the Federal Communications Commission's (FCC's) identical support rule that allows competitors to receive universal service support based on the incumbents costs.
  - Eliminate the FCC's parent trap rule that forces carriers acquiring exchanges to receive support based on the level of support, if any, that the previous owner/carrier was receiving.
  - Prohibit regulators from using universal service to incite artificial competition through the development of a much stricter checklist to determine universal service eligibility (eligible telecommunications carrier (ETC) determinations).
  - Maintain non-rural and rural fund distinctions.
  - Eliminate the regulatory cap on the fund that has already deprived rural carriers of more than \$2 billion in cost recovery they otherwise qualified for under the program.

#### **Contributions to Universal Service**

Clearly, overall the provisions of S. 2686 appropriately touch on most of these issues. We believe that for the most part the Title II, Subtitle A provisions of this bill will in fact help expand the base of contributors to the program which will provide relief to consumers at all levels. Naturally, our first choice with regard to a methodology is to stick with a purely revenues approach. It is a system that is proven and that has worked. The only reason we need to look at modifying it today is because interstate revenues have begun to drop due to the changing lines of business and the regulatory classification of different lines of business.

Thus, the language in this bill that provides for the assessment of all revenues is entirely appropriate. The bill also allows for assessments based upon working phone numbers or equivalents, identifier protocols, connections, or combinations thereof. The intent of the language seems to be clear that no methodology should unfairly allow certain industry sectors to escape participation in the assessment process. Some have suggested that perhaps a cooling off period should accompany the provisions that would allow methodologies other than the expanded revenues

approach. This would allow the other aspects of this legislation to become effective and would provide policymakers and the industry with a period of time to see if the expanded revenues approach might address the bulk of the shortfall issues we are observing today. We think this idea has a great deal of merit and would encourage the Committee to give it serious consideration.

We agree completely with the legislation's approach to expanding the base of contributors to include all those that are making use of the network today. As representatives of our industry have stated in prior testimony to this committee, infrastructure does in fact have a cost attached to it, and one way or another, those costs must be recovered. This is one way to effectuate that objective.

We also believe the legislation's new definition of Communications Service will serve the industry as a whole well and will alleviate today's confusion between the definitions of telecommunications services and information services.

Regarding the proper accounting of Universal Service Funds is language that has been necessary for more than a decade. This language will remove all questions as to what these funds are and how they should be treated in the future. Removing them from the clutches of the Federal budget and other Federal statutes such as the AntiDeficiency Act will serve the program and consumers well.

#### **Distributions from Universal Service**

This section amends section 214(e) of the Act that determines whether a carrier is eligible to receive universal service support, and what sort of deployment it will receive such cost recovery for. Overall we are supportive of the approach of this subtitle and think it will help bring a great deal of stability to the Universal Service Fund. We particularly agree with the vision of the underlying intent of this section which is to advance the idea that universal service should eventually be supporting the deployment of infrastructure that is broadband and advanced services capable.

Another very positive development is the language tightening the eligibility requirements for Eligible Communications Carriers. This is long overdue and we would only encourage the Committee to consider even stronger guidelines for what constitutes the public interest when determining whether or not multiple carriers are appropriate in given markets. This would be particularly responsive to the concerns of those that have suggested the bill needs additional language to control the future growth of the fund. Another element that could be added that would truly respond to this issue would be to include language specifically eliminating the identical support rule which provides support to competitors based upon incumbents' costs.

The primary line language is also very positive and will once and for all preclude the FCC from giving further consideration to this concept. Likewise the Phantom traffic language is a positive addition. This is a difficult issue to resolve, yet this language serves as a line in the sand sort of directive to the FCC that the efforts to resolve it must continue until such time a satisfactory outcome is identified.

Mr. Chairman, again, we are pleased with the comprehensive approach that you have taken with your legislation, we have many more detailed thoughts on the bill, some of which we have already outlined with your staff and others which will be provided to you directly in writing. Thank you again for this extraordinary opportunity to work with you and your colleagues in a joint effort to meet the challenges of today and anticipate the opportunities of the future.

The Coalition to Keep America Connected looks forward to working with this committee to ensure the best possible legislative outcome for consumers everywhere.

---

ON BEHALF OF THE NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

#### **Introduction**

Good morning. I am Shirley Bloomfield, Vice President of Government Affairs and Association Services for the National Telecommunications Cooperative Association. I am submitting testimony on behalf of NTCA's nearly 600 small, community-based communications providers across the nation. We thank you for the Committee's leadership on universal service issues that are so critical to rural America.

Generally, NTCA views the comprehensive nature of the "Communications, Consumer's Choice, and Broadband Deployment Act of 2006" very positively. The legislation includes many pro-consumer provisions and takes many positive steps to modernize, and ensure accountability within, the universal service program and its related funding mechanism.

#### **Summary/Overview**

Early on in the discussions about the potential Communications Act rewrite our organizations, like so many, set about identifying what we believed would be nec-

essary from a rural consumer and small business perspective to ensure the development of a successful rewrite package. Today's hi-tech revolution continues to yield unparalleled economic and policy pressures for the entire communications industry. Yet, as always the industry's rural sector persists in aggressively embracing and offering the exciting new technologies and services associated with this era.

Over time, it has become crystal clear that the deployment of advanced infrastructure is more and more important as Americans increasingly rely upon communications services to satisfy their commerce, security, and entertainment needs. It is our conclusion that the deployment of advanced infrastructure that is fully capable of offering such services should become the hallmark of our national universal service policy.

Likewise, we believe that industry responsibilities must accompany the opportunity for any communications provider to operate in a competitive deregulatory environment. Universal service and intercarrier compensation and the ability to effectively negotiate interconnection and access matters are major keys to the ability of rural communications providers to recover their costs. For us to retain and build upon a nationwide ubiquitous communications network, all providers must embrace these elements of our national communications policy.

Early on we identified the following specific issues as being those we should focus our attention on during the rewrite debate.

- Universal service should be strengthened by tightening the process for determining program eligibility, providing support based on a carrier's own costs, expanding the base of contributions, providing support for advanced systems, and removing the program from the Federal budgeting process.
- Intercarrier compensation arbitrage that is plaguing today's system must be limited, yet in a way with minimal consumer impact and with appropriate transitions for carriers and policymakers alike.
- Nondiscriminatory interconnection and access to infrastructure content, roaming, spectrum, rights-of-way, and financing at appropriate rates, terms, and conditions with government default rates should be required.
- Finally, we believe it is imperative that policymakers practice smart rather than absolute deregulation, which is the key to achieving the regulatory flexibility so many seek. Generally a more flexible approach, rather than rigid deregulation will best serve consumers—and particularly those in rural markets. Following this policy course will maintain and encourage the entrepreneurial spirit that has long ensured America's economic and technological superiority.

So, the question becomes, "how does S. 2686 stack up against this policy course outline that our rural organizations envision?" The short answer is that we believe the bill has hit the mark on virtually every point. Really, the suggestions offered in our submission today are merely to strengthen the already solid core that has already been built into S. 2686.

### **Universal Service**

Universal service has long served as the cornerstone of our Nation's communications policy. It ensures that all Americans enjoy the benefits of a nationwide integrated communications network. And it is clear that our economic and national security insists that this policy be preserved. Driven by a unique cost-recovery process, today's universal service system effectively ensures that all Americans, urban, suburban, and rural alike, have access to quality communications services that are comparable in price and scope. By emphasizes an assurance that necessary cost recovery is available to those that make the commitment to serve the Nation's most economically challenging markets, the policy concurrently ensures the highest level of communications connectivity among the public. Unfortunately, in many ways it could be argued that our national universal service policy has become the victim of its own success. Too often regulators and competitors alike have viewed the program as little more than a means of inciting artificial competition rather than serving as a cost recovery mechanism for those with a genuine commitment to high-cost markets. Policies must be crafted that will reestablish the value of this program for all consumers. In evaluating the universal service aspects of S. 2686 as well as other rewrite bills that are emerging both in the Senate and the House of Representatives we have been determining the degree to which they meet the following objectives:

- Removes the ambiguity that has evolved over the definitional differences between Information Services, Telecommunications Services, and Telecommunications.
- Alters the Contribution aspects of today's program to:

- Allow for the full assessment of intrastate in addition to interstate and international revenues, or at the very least looks at alternatives or hybrids involving any combination of revenues, numbers, connections or IP addresses that will best ensure no parties are able to escape contribution responsibilities.
- Expand the base of supporters to include all providers of 2-way communications regardless of the technology involved.
- Set the stage for supporting cost recovery of broadband capable infrastructure.
- Provide for the FCC to modify the scope of contributors in future.
- Alters the Distribution aspects of today's program to:
  - Clarify that support is for cost recovery of networks that benefit all consumers throughout a given market, and not just those that are the most economical or easy to serve.
  - Reject the concepts of providing support directly to consumers or states via vouchers, auctions and/or block grants.
  - Eliminate the Federal Communications Commission's (FCC's) identical support rule that allows competitors to receive universal service support based on the incumbents costs.
  - Eliminate the FCC's parent trap rule that forces carriers acquiring exchanges to receive support based on the level of support, if any, that the previous owner/carrier was receiving.
  - Prohibit regulators from using universal service to incite artificial competition through the development of a much stricter checklist to determine universal service eligibility (eligible telecommunications carrier (ETC) determinations).
  - Maintain non-rural and rural fund distinctions.
  - Eliminate the regulatory cap on fund the fund that has already deprived rural carriers of more than \$2 billion in cost recovery they otherwise qualified for under the program.

### **Video Issues**

Small video programming providers today continue to encounter many obstacles in their endeavors to secure and distribute video content. Their difficulties arise whether they employ traditional or emerging transport technologies and whether they are operating existing systems or entering new markets. Almost uniformly, these challenges are due to the unreasonable policies of video content providers, and in some cases municipalities or other governmental entities with various levels of oversight of such issues. Such practices are clearly inconsistent with the public interest. The most prevalent of these tactics are:

- Non-disclosure agreements/mandates that restrict the flow of information to preclude any semblance of what "market rates" may be.
- Automatic escalation clauses that force prices up a certain percentage annually for the term of the contract.
- Tying arrangements that require video programming providers to contract for additional networks/channels in order to secure a flagship station.
- Predatory pricing where a carrier will dramatically increase prices in a non-competitive market to be able to slash prices in a competitive market.
- Exclusive contracts where market power is used to secure exclusive agreements precluding competitors from accessing the same programming.
- Transport discrimination where content providers prohibit their material from being transported via IP-Transport or Telco TV, or where they require an analog cable provider to incur expensive upgrades to continue carrying their content.
- Shared head-end restrictions are beginning to close the door on joint ventures by small companies partnering to spread their costs by sharing such access.

Whether viewed individually or as a whole, these tactics are anticompetitive and lead to unnecessarily inflated consumer costs. Policymakers should take all appropriate steps to prohibit these practices. In some ways, S. 2686 gets at aspects of these issues.

### **Franchising Issues in General**

While Title III, Subtitle A of this legislation does not provide the FCC with the authority to grant a national franchise certificate to CATV or IPTV providers, it

does streamline the franchise process at the local level. We do have concerns with the language in that it is not inclusive enough and establishes too many regulatory silos that are not necessarily consistent. We would encourage policymakers to replace the entire section with language based on many of our filings with the FCC regarding how the local franchising authority (LFA) process should be modified as follows:

1. LFAs should not impose build-out requirements on new entrants seeking franchises in competitive local franchise areas.
2. LFAs should grant competitive providers an exemption from a public rights of way review if the provider already has permission to access public rights of way.
3. LFAs should refrain from imposing on new entrants any requirement not reasonably related to the provision of video service.
4. LFAs should limit the total amount of a new entrant's franchise application fee to not more than \$100.
5. LFAs should refrain from requiring a telecommunications provider to serve the entire franchise area, if the telecommunications carrier's service territory does not completely encompass the local franchise authority's service area.
6. LFAs should not be allowed to require new video entrants to first obtain a cable franchise agreement from the LFA before upgrading their network to offer IPTV video services.
7. LFAs should apply the new guidelines only to new entrant competitive LFA applications and should *not* apply to existing incumbent CATV local franchise agreements, unless the existing incumbent CATV opts to seek a new franchising certificate under the new guidelines.

#### **Municipality Specifics**

Individually as well as collectively, our organizations are absolutely opposed to providing municipal entities with the authority to provide video services as envisioned by Title III, Subtitle C of S. 2686. Though there are a few safeguards, it really sets the stage for the municipal operators to be the judge and jury with regard to the remainder of the industry that is engaged in these lines of business while enjoying the opportunity to operate competitive systems simultaneously. There are no checks and balances associated with this process and we believe it should be eliminated.

#### **Sports Freedom**

Again, we are concerned with the approach that is outlined in the bill which creates a series of silos of service that heavily favor large video programmers such as Time Warner and Verizon and would give rural ILECs virtually no additional relief in their efforts to obtain access to affordable video programming. This section would replace current section 628 of the Act and it intentionally removes "satellite cable programming vendors" from the provisions of the new law. The new law therefore would only apply to MVPD programming vendors that have an attributable interest in a CATV or IPTV provider, and satellite broadcast programming vendors. By deleting satellite cable programming vendors from current Section 628, the legislation creates a new loophole in the law.

#### **Municipal Broadband**

The language allowing municipal entry into the broadband arena contains some positive aspects such as recognizing that competing with private carriers is not in the best interest of anyone, and that partnerships should be encouraged with existing carriers and finally that existing carriers should be given the first right of refusal to serve a given market before a municipal offers service in such a market. Nevertheless, this language unravels a U.S. Supreme Court victory that our association and our industry were a party to which preserved the authority of state governments to limit municipal entry as it saw fit. We expended great amounts of time and capital on this case and thus cannot easily agree to language that will unravel a victory of this nature. Thus, we are opposed to the underlying premise of the provision that eliminates state authority to limit municipal entry into the broadband arena. However we are supportive of the manner in which the language sets the stage to effectuate this.

#### **Wireless Innovation Networks**

Title VI of this bill is right on target with regard to permitting the use of unlicensed wireless devices to make use of eligible broadcast television spectrum in a manner that protects the spectrum licensee (defined in Section 3(24)) from inter-

ference. We support this language, but might like to take the opportunity to also include language we have advocated with regard to licensed spectrum that would force license holders to either use or lose the associated spectrum.

America's rural communications providers have long demonstrated their commitment to providing wireless services to rural consumers by investing heavily in an array of such facilities. The vast majority of our members offer some form of wireless service, including both mobile and fixed voice, broadband data, and paging services. Yet doing so has never been easy, and even today they face significant entry barriers.

There are a number of reasons for this. First, despite clear statutory directives to the contrary, policymakers continue to advocate the sort of nationwide spectrum licensing that has led to unprecedented consolidation within the wireless industry. A lack of ownership limitations, inadequate build out requirements, and a failed Designated Entity (DE) program have all led to unimaginable concentration within the wireless industry. Today, the Nation's top five wireless carriers serve 89 percent of the Nation's wireless subscribers compared to only 50 percent in 1995. Meanwhile, rural carriers are unable to obtain the spectrum necessary to serve their markets.

We believe the FCC's weak population oriented build-out requirements must be strengthened to include a geographic orientation as well. Furthermore, they should be updated to apply to digital build-out to ensure analog systems and their consumers are not abandoned. The DE program should be strengthened to ensure that a base percentage of licenses in any auction are prohibited from any affiliation with the Nation's largest carriers. In addition, the bidding credit criteria should be strengthened to provide their users with more flexibility to compete in the bidding process. Finally, steps should be taken to ensure financing options are available to carriers willing to serve the Nation's more remote regions.

#### **Internet Neutrality**

This section of the legislation presumes to give guidance to the FCC regarding future regulation of the Internet yet we are concerned that it may in fact limit the FCC's ability to act in this regard at all. We are particularly concerned with the market power large conglomerate do or will have over pricing of special access transport to the Internet Backbone and the price of Internet Backbone bandwidth. This language should be modified to provide the FCC with the authority to regulate the prices, terms and conditions concerning special access and Internet backbone facilities. We would ask the drafters to consider incorporating the following principles into this section of the bill:

1. Telecommunications, cable, wireless, satellite, electric and other companies are required to provide consumers with non-discriminatory access to any lawful content or services on the public Internet through their Internet connection and allow consumers to attach any lawful equipment to their Internet connection.

2. Telecommunications, cable, wireless, satellite, electric and other companies are allowed to offer tiered/priority private services to providers of IP-enabled services who seek to guarantee the quality of their services to the telecommunications, cable, wireless, satellite, electric and other provider's end-user customers, independent of the public Internet.

3. Internet backbone providers are required to provide all telecommunications, cable, wireless, satellite, electric and other companies with non-discriminatory access to the Internet backbone, including special access transport needed to reach the Internet backbone.

4. Internet backbone providers are required to price their Internet backbone service, including special access transport needed to reach the Internet backbone, based on their cost to provide the service.

5. Internet backbone providers are required to provide non-affiliated telecommunications, cable, wireless, satellite, electric and other companies the same terms, conditions, and prices that the Internet backbone providers charge their affiliated companies for access to the Internet backbone, including special access transport needed to reach the Internet backbone.

6. Internet backbone providers are required to make publicly available all of the terms, conditions and prices for their Internet backbone services, including special access transport needed to reach the Internet backbone.

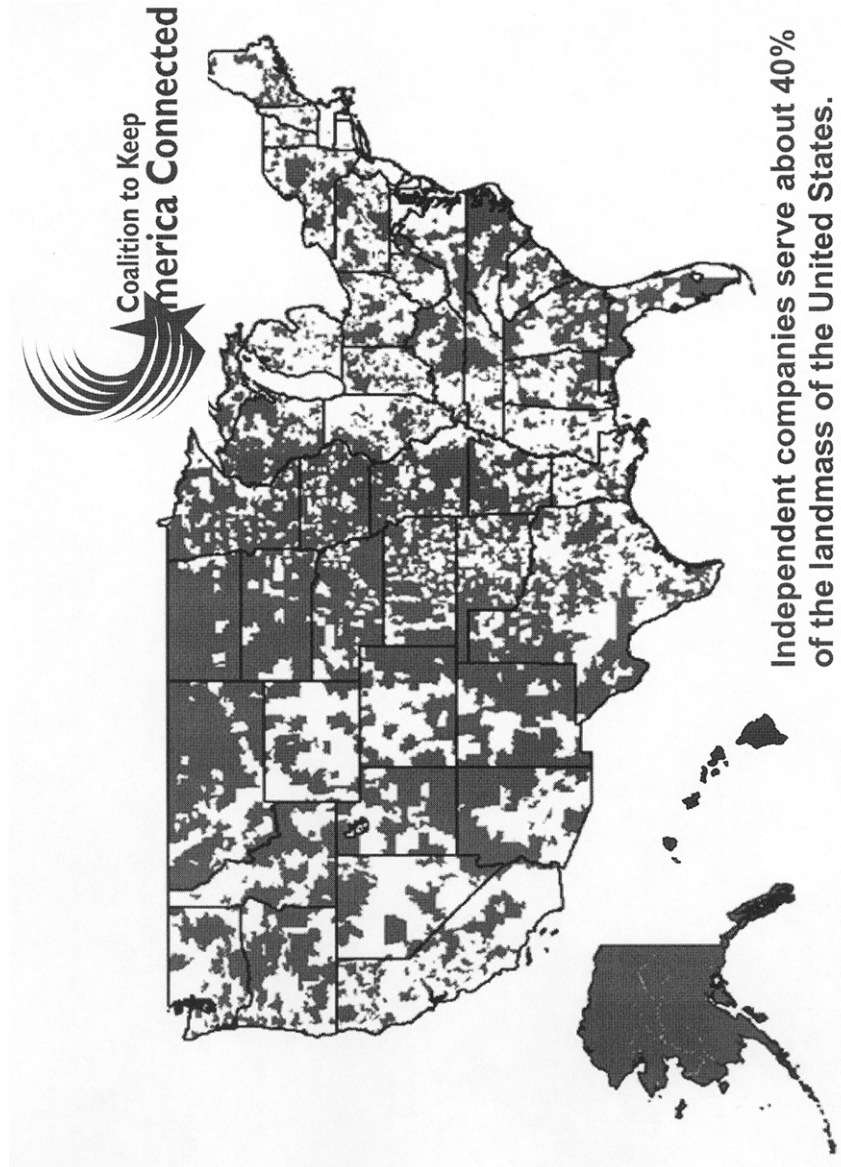
7. To achieve and maintain the goal of universal affordable broadband service for all Americans, the FCC shall regulate the terms, conditions and prices of Internet backbone services, including special access transport need to reach the Internet backbone, to prevent large vertically integrated Internet backbone providers from abusing their market power by imposing unfair and discriminatory pricing on small,



rural communications carriers providing retail high-speed Internet access service in rural, insular and high-cost areas of the United States.

These net neutrality positions attempt to accomplish the following: (1) maintain the current level of consumer freedom on the public Internet; (2) allow small rural communications providers the opportunity to pursue future revenues streams from IP-enabled service providers through tiered/priority pricing of private services; and (3) protect small rural communications providers from large vertically integrated Internet backbone providers that will abuse their monopoly or oligopoly market power in rural areas through unfair and discriminatory pricing of Internet backbone services.

NTCA looks forward to working with this committee to ensure the best possible legislative outcome for consumers everywhere.



The CHAIRMAN. Well, thank you very much, Ms. Bloomfield, for speaking on behalf of the National Telecommunications Cooperative Association.

We'll now turn to Mr. McSparrow again, with the National Cable & Telecommunications Association.

Mr. McSLARROW. Mr. Chairman and Mr. Co-Chairman, thank you.

First, at the outset, let me just say that we support the goals of the Universal Service Fund. And, in fact, all of our circuit-switched phone services pay into the fund exactly as an incumbent telephone company does, and our newer digital voice offering, so-called VoIP phone, we voluntarily pay into the fund, and we agree with what is in the bill, which is that that should be something that should be put into law.

As we see it, there are really three main issues, at least for our industry. I know there are a lot of other issues surrounding USF.

The first is on the contribution methodology. If we're trying to make this a stable, predictable, and, I would argue, simple methodology, we would submit for your consideration that we not allow the FCC a range of options, that we should just make it simple, right at the outset, and that we use telephone numbers as the basis for a contribution scheme.

Right now, I think, last year, the disbursements out of the fund were about \$6.5 billion. The average household in America pays, I think, about \$2.70 a month into USF. There are two and a half telephones per household, so if you just chose a dollar per telephone number, you would—the average household would pay about the same, and you would raise \$6.7 billion, and it would be the cleanest, most technology-neutral methodology that we could come up with.

The second issue really goes to eligibility. And here, I think the bill really does need some more work. ETCs, under the current regime and really carried over into the bill, are really looked at through the prism of the incumbent telephone company. So, there are all kinds of requirements that, frankly, just don't make any sense in an age where you've got a lot of new telephone competition, particularly for VoIP providers. And I think a very simple principle ought to be applied throughout the disbursement scheme, and that is, if you pay into the fund, you should be eligible, and the rules should not be too centered on what the incumbents have to do. The most obvious example of that really goes to—just as the telephone companies argue that their telephone footprint should define their video service territory, we would argue the same should apply for another provider of service when it comes to telephone.

The third, and very large, issue really deals with broadband. And, Mr. Chairman, I realize I'm probably leaning into the wind a little bit here, but I think the focus on broadband, when it comes to the USF, should really be focused on unserved areas. And I commend you and—for putting, in the bill, the account for—the broadband account for unserved areas. We think that is the right way to target funding to areas that don't currently have any kind of broadband service.

What we're concerned about is a tax on broadband, either because the contribution methodology allows us to tax broadband—and, as we read the bill right now, arguably the FCC could go down that road—or because USF funds are used to subsidize competition against private-sector actors who, themselves, are putting capital at risk to deploy broadband.

And, finally, just highlighting the same point we've already discussed on the last panel, if you want to deploy broadband, we think this is about the investment decisions and how you incent investment. And the No. 1 thing I think you could do, in addition to not taxing broadband in the USF, is not to add Net neutrality to this bill.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Our next witness is, again, Walter McCormick, president and chief executive officer of USTelecom.

Mr. MCCORMICK. Mr. Chairman, thank you.

We absolutely applaud the importance that you place on universal service in this bill. And I strongly agree with Mr. McSarrow that net neutrality would be devastating to rural companies.

Access to affordable, high-quality telecommunications in all parts of our country by all Americans is perhaps the single most important objective in today's 21st-century information economy. It's a more important objective today than it was when universal service was established, more than 70 years ago.

So our members, who have a history of providing service to all corners of the country, strongly support your efforts to reform universal service. We've grown increasingly concerned with the precarious revenue base and the rising expenditures. We appreciate your efforts to broaden the base to include interstate, intrastate, and international calls, as well as other voice communications using alternative technologies.

We support your efforts to expand the rural exemption, to wall off universal service revenues from the Anti-Deficiency Act, to prevent a primary line mandate by the FCC, and to address the growing problem of phantom traffic.

Mr. Chairman, if we have a concern, the concern that we do have in Title II is the extensive interconnection rights that are granted to voice-over-Internet providers, providers that have no facilities of their own. Although we respect the Committee's desire to promote competition, we believe that the provision currently in the bill goes too far. As written, the bill would give these kinds of non-facilities-based carriers an abundance of rights and privileges, but few of the duties and obligations that fall to facilities-based providers who are making the infrastructure investments. I am not talking here about economic regulation, I am talking about social obligations, such as providing 9-1-1 emergency services, complying with CPNI requirements, law enforcement obligations, and payment of appropriate intercarrier compensation when connecting to the public network.

So, we believe that this language does need to be changed, and we believe the interconnection language should be clarified to ensure that the rural exemption is, in no way, adversely affected. We'd like to continue to work with the Committee on these matters, but we want to do so in the context of getting this bill done

quickly, expeditiously. Your legislation is important legislation, important for our national competitiveness, important for our communities, important for consumers. So, again, we commit ourselves to supporting you and moving to enactment this year.

The CHAIRMAN. Thank you very much.

Our next witness is Steve Largent, Chief Executive Officer of The Wireless Association.  
Steve?

**STATEMENT OF HON. STEVE LARGENT, PRESIDENT/CHIEF EXECUTIVE OFFICER, CTIA—THE WIRELESS ASSOCIATION®**

Mr. LARGENT. Thank you, Chairman Stevens and Co-Chairman Inouye. It's a pleasure to be with you here this morning—or this afternoon. And I thank you for the opportunity to appear before you this morning to discuss updating our Nation's communications laws—specifically, universal service reform.

I think it's fair to say that the advent of growth and innovation associated with the U.S. wireless industry over the last 20 years has been a remarkable success story. However, it pales in comparison to the growth of wireless which is taking place in countries such as China and India.

An article entitled "Spending Spree," in May—in the May 5th issue of *U.S. News & World Report* cites that there 400 million cell-phone users in China. The U.S., by comparison, has 212 million. And, on average, they replace their phones every 3 to 6 months. Consumers in China can choose from something like 900 different models, compared with only 80 or so in the United States. Companies like Samsung offer a new handset model in China as often as once a week. In India, mobile-phone subscriptions are growing at a rate of 4 million new subscribers a month. Clearly, the wireless wave is a global phenomenon.

I know I've mentioned it before to this Committee, but it bears repeating. The wireless Magna Carta that spawned the growth of the U.S. wireless industry was the 1993 Budget Act. Thirteen years ago, Congress had the foresight to create an environment of regulatory restraint that rewards efficiency and innovation. As a result, the American consumer has been the beneficiary of a variety of carriers to choose from, lower monthly bills, cheaper minutes, and new and innovative service offerings.

Ironically, over the last couple of years, the industry has become a victim of its own success. Last year alone, there were over 1,000 bills introduced in State legislatures across the country intended to regulate and micromanage the wireless industry. As a result, the industry is threatened by a patchwork quilt of regulations that seeks to undermine the foresight that this committee exercised back in 1993.

I believe—and the companies I represent share the view—that the legislation we're discussing today, S. 2686, is the appropriate legislative vehicle for Congress to reiterate the deregulatory national framework which offers consistency across 50 State jurisdictions. A national wireless framework will eliminate confusion for consumers, provide a uniform set of rules for carriers to operate in a more efficient manner, which, in turn, will allow an industry—

our industry—to promote access to innovative and convenient wireless devices and services to over 200 million wireless consumers.

If the past is prologue, I don't think it's much of a leap of faith to predict that if this Committee adopts a wireless national framework, the next wireless renaissance will ensue. Just consider what has taken place since 1993. Today there are three things you make sure you have before leaving home: your wallet, your key, and your wireless device.

Earlier, I mentioned that there are 400 million cell-phone users in China and India, mobile-phone subscriptions are growing at a rate of 4 million new subscribers a month. These are two very populous nations that, until recently, did not have a ubiquitous telecommunications infrastructure. How have China and India decided to create a national telecommunications infrastructure? Wirelessly.

I raise this fact to address the wireless industry's position on universal service reform. Wireless is the solution, not the problem, to providing voice and advanced communications throughout the country in a cost-efficient manner. As a significant net payor into the universal service system, the wireless industry is uniquely positioned to comment on the proposals to reform the universal service system. Wireless carriers, collectively, are responsible for approximately 32 percent of the contributions to the universal service, while receiving roughly 13 percent of payments. Wireless carriers have strong incentives to ensure that the Universal Service Fund is no larger than necessary, while ensuring that support is available to committed eligible telecommunications carriers on a non-discriminatory basis.

In general, CTIA supports reforms that will ensure both incumbents and competitors receive no more support than is necessary to achieve the goals of universal service. As Congress considers reforms to the universal service system, wireless services must be part of the equation. The 200 million wireless subscribers, or, more importantly, those consumers yet to receive wireless services, deserve as much.

Consumers, the only intended beneficiaries of universal service, must be the central focus of USF reform. So, what do consumers want? If subscribership is any indication, there can be little doubt that consumers want access to mobile wireless services. While there obviously are many examples of universal service support being used by both incumbents and competitors to improve coverage and quality of service to consumers, there is also significant waste in the universal service system.

If the experience of the wireless industry can be any guide, simplified regulations that encourage and reward efficiency will best benefit consumers by ensuring that USF support is targeted only to where it is most needed and demands accountability by fund recipients.

Importantly, universal service policies must put power in the hands of consumers, and, therefore, must not discriminate against wireless carriers. CTIA has long supported market-driven efforts to curb demand for universal service subsidies. Under CTIA's proposal, both incumbents and competitors would receive less support. In short, USF's 21st-century problem needs 21st-century solutions.

Again, thank you for the opportunity to present the wireless industry's views on this important legislation, and I look forward to answering any questions you might have, Mr. Chairman.

[The prepared statement of Mr. Largent follows:]

PREPARED STATEMENT OF HON. STEVE LARGENT, PRESIDENT/CHIEF EXECUTIVE OFFICER, CTIA—THE WIRELESS ASSOCIATION®

Chairman Stevens, Co-Chairman Inouye and members of the Committee, thank you for the opportunity to appear before you and discuss issues relating to rewriting U.S. telecommunications laws generally, and revisions to the universal service program in particular. As Congress considers the important question of how to reform the universal service system, we believe there are important lessons that can be learned from the wireless industry's last 13 years of delivering enormous benefits to American consumers, rural and urban, rich and poor, young and old. Thanks in part to the national, deregulatory framework Congress established in 1993, the wireless industry has been able to deliver to more than 200 million American consumers more choices, faster, than any other segment of the telecommunications industry. Wireless offers consumers choices among providers, service plans, devices, and most significantly, the choice to reach and be reached whenever and wherever—the ability to be mobile. As I will discuss today, the wireless industry's proven record of success for U.S. consumers and the U.S. economy is under siege. The successful framework you established in 1993 is being threatened by a growing tide of anti-competitive, command-and-control regulations at the federal, state, and local levels. We are asking for Federal legislation to ensure that the wireless industry remains free from unnecessary, short-sighted regulatory constraints so that U.S. consumers can continue to receive the best wireless services, applications and devices that the industry can produce, at rates the consumer can afford.

The significant growth and expansion of the competitive mobile wireless industry has had a profound impact on the U.S. economy. In 2004, approximately 3.6 million jobs were directly and indirectly dependent on the U.S. wireless telecommunications industry. In that same year, the wireless industry generated \$118 billion in revenues and contributed \$92 billion to the U.S. Gross Domestic Product. The wireless industry has continued its ongoing investments in the networks and other facilities needed to deliver increasingly sophisticated wireless services—with almost \$200 billion in cumulative capital investment as of year-end 2005. Over the past five years, the wireless industry invested on average more than \$20 billion annually in new facilities. In addition, carriers have bid in excess of \$20 billion in winning spectrum licenses from the FCC.

Wireless carriers have been successful, in part, because Congress created an environment of regulatory restraint that focuses on efficiency, innovation, competition and empowers the consumer to be the regulator. The FCC most recently reported to Congress that 97 percent of the U.S. population lives in counties with access to three or more different operators offering mobile telephone service, up from 88 percent in 2000. This competition has resulted in lower monthly bills, cheaper minutes, and new and innovative service offerings. In June 1992, before Congress enacted the Omnibus Budget Reconciliation Act of 1993, the average wireless bill was \$68.51 per month. As of December 2005, the average wireless bill was less than \$50 per month. For many customers, nationwide bucket of minute plans have made wireless the service of choice for making long-distance calls. In 1995, the average wireless customer used about 115 minutes of service per month. In 2005, the average wireless customer used almost 700 minutes of service per month. In 1995, there were 37 billion minutes of use on wireless networks. In 2005, wireless customers used almost 1.5 trillion wireless minutes of service. Now, wireless carriers are in the midst of rolling out mobile broadband services.

As we enter our third decade, the wireless industry is poised to enter a Wireless Renaissance, bringing advanced services like wireless Internet, to more than 200 million mobile Americans. We are at a critical juncture in our evolution and need your leadership to make this Renaissance a reality for consumers. American consumers—rural and urban, rich and poor—have benefited enormously from your decision in 1993 to limit regulation of the wireless industry; however, a patchwork quilt of state-by-state regulations threatens to undermine the principles of the 1993 Act and thereby undercut the ability of wireless carriers, suppliers, and developers to collectively bring newer and faster and more personal services to wireless consumers and business users across the country. Shoring up the national, deregulatory framework you created in 1993 is the best way to empower consumers and protect their

rights and access to innovative, convenient and affordable wireless devices and services.

The wireless industry has developed guidelines that ensure customer billing information is clear and non-misleading, while simultaneously enabling carriers the flexibility to differentiate themselves in the market by competing on customer service features. State-specific wireless laws would undermine these market-oriented, consumer-focused solutions and hinder the industry's ability to compete in the converging telecommunications marketplace. State-by-state wireless specific regulation undermines the very purpose of a national, deregulatory framework and threatens to undermine the very nationwide and regional calling plans that are now so popular with consumers. Consumers in rural areas, where the cost of providing service tends to be higher, are particularly threatened by regulations that could put an end to uniform nationwide calling plans. Wireless consumers need your help to stem the growing tide of state regulation before this regulatory onslaught washes away the benefits they currently enjoy. We believe the best way to do this is to legislate a national framework for wireless carrier practices and allow the FCC to regulate only in instances necessary for public health and safety or demonstrated market failure.

The industry has proven itself a responsible steward of the wireless consumer. Carriers have reduced the number and complexity of pricing plans, reduced or eliminated additional charges for roaming, peak/off-peak, and long distance calling. Wireless carriers have also made enormous improvements in how consumers are informed about, acquire, and manage their wireless services. Website and in-store literature provide details on price, plans, and other options. Wireless carriers have also developed sophisticated on-line tools to provide more efficient and user-friendly self-care options—from checking minute usage to signing up for new services to paying bills via the Internet and via the mobile phone itself. Wireless companies now list on their bills contact information not only for their own customer service departments, but also for state and Federal regulatory agencies, including TTY contact information. More than 200,000 E-911 calls are made with wireless devices each day. This year, the U.S. Attorney General officially commended the industry on its voluntary, national Wireless AMBER Alerts Initiative. These are just a few of the characteristics that mark a highly competitive, responsible industry like the U.S. wireless industry.

Recently, a concept called "Net Neutrality" has generated intense debate within the context of broader reforms of our telecommunications laws. The wireless industry is very concerned that the proposed Net Neutrality regulations being contemplated will drive away the investment the industry needs to continue building the infrastructure, design the devices and operate the evolving networks needed to sustain consumer demand for more advanced mobile services. The industry is also concerned that many of the unintended consequences that would flow from some of the Net Neutrality regulations being considered would have a particularly negative impact on wireless consumers. CTIA believes the Internet has derived its strength and contributed to the economy by virtue of its freedom from regulation and therefore believes the net neutrality provisions of the Communications, Consumer's Choice, and Broadband Deployment Act of 2006, which calls for a review of the current system, in lieu of regulation, is appropriate absent market failure.

The industry agrees with FCC Chairman Martin that the FCC already has the jurisdiction and ability to address any problems in this area and urges you to carefully consider the unintended, negative consequences that could befall the U.S. wireless consumer if anticipatory regulations are enacted. The Internet, like the wireless industry, has never stopped growing and evolving. There is no reason to restrict the growth or evolution of either, unless and until a real marketplace failure is identified.

#### **Universal Service Reform**

As a significant net payer in to the universal service system, the wireless industry is uniquely positioned to comment on proposals to reform the universal service system. When it comes to universal service, the wireless industry writes more checks than it cashes. Wireless carriers collectively are responsible for approximately 32 percent of contributions to universal service, while receiving only approximately 13 percent of payments. Wireless carriers have strong incentives to ensure that universal service contributions are collected from as wide a base of contributors as possible, while ensuring that both incumbent and competitive eligible telecommunications carriers (ETCs) receive no more support than is necessary to achieve the goals of universal service. As I will discuss, both the contribution and distribution sides of the universal service equation are in urgent need of reform.

*Universal Service Contributions.* On February 28, 2006, CTIA appeared before this Committee to present its views on reforming the universal service contribution

methodology. At that hearing, CTIA described its proposal for the FCC to transition from the current revenue-based system to a numbers- and capacity-based system. Under CTIA's proposal, all switched connections would be assessed based on working telephone numbers and non-switched connections would be assessed based on capacity. CTIA believes that a numbers- and capacity-based contribution system will best adapt to the evolving multi-dimensional communications market in which we now operate. The current revenue-based system simply is no longer sustainable and must be scrapped.

CTIA has designed its proposal to ensure that no consumer groups will be unfairly disadvantaged as a result of the transition to a numbers- and capacity-based system. Under CTIA's proposal before the FCC, the typical household would pay about the same universal service costs as it does today. CTIA has achieved that result by providing safe harbors for certain broad customer categories—for example, exempting low-income Lifeline and Link-Up customer numbers from contribution obligations. CTIA's proposal also provides safe harbors for wireless family plan and wireless prepaid customers. We welcome legislation under consideration that would give the FCC flexibility to transition to a numbers-based system that addresses the critical needs of residential customers.

*Universal Service Distributions.* Let me turn now to the distribution side of the universal service equation. The wireless industry shares Congress's concerns about growth in the size of the Universal Service Fund. Since 1997, wireless carriers and their customers have paid almost \$7 billion into the Universal Service Fund. The wireless industry's contribution to universal service is significant and growing. At the same time, wireless carriers continue to receive less than 20 percent of high-cost universal service support and about 13 percent of universal service support overall. Since 1997, of the \$22 billion spent on high-cost universal service subsidies, \$ 20.9 billion has gone to incumbent LECs and only \$ 1.1 billion has gone to wireless carriers. Simply put, wireless carriers and their customers pay too much into the Universal Service Fund and receive too little in return. CTIA, therefore, is calling for commonsense, market-oriented reforms to the universal service system. More of the same is not acceptable.

Although most of the wireless industry's growth has occurred without the benefit of universal service subsidies, universal service can and does play a critical role in improving access to wireless services in high-cost, rural areas. Wireless deployment in some rural areas has occurred because of wireless carrier access to universal service support. In a few short years, wireless ETCs have achieved a great deal. For example, Cellular South serves 380,000 square miles of rural territory in Mississippi and is using high-cost support to significantly expand its network capacity. Centennial Wireless has brought mobile wireless services to communities, such as Shaw and Blackhawk, Louisiana, that previously had no telephone service at all, wireline or wireless. On the Pine Ridge Indian Reservation in South Dakota, Alltel has used universal service to increase telephone penetration rates from 27 percent to 92 percent in only five years. These are areas where the incumbent carrier—the "carrier of last resort"—was unwilling or unable to serve all customers. There are numerous other examples.

Any universal service reform that discriminates against wireless carriers will disadvantage consumers and must be rejected. CTIA has supported proposals to ensure that universal service support is used only for its intended purposes. CTIA supports stringent guidelines adopted by the FCC requiring both incumbent and competitive ETCs to use high-cost universal service support to provide supported services to requesting customers throughout a designated service area (in essence, a "carrier of last resort" obligation). CTIA welcomes this Committee's focus on universal service accountability, but that accountability should apply to both incumbent ETCs and new entrants.

CTIA strongly opposes any anti-competitive proposals to discriminate against wireless carriers in the name of accountability. For example, CTIA opposes proposals to require competitive ETCs to serve an entire incumbent LEC service area in order to receive universal service support. Wireless licensed service areas often do not match incumbent LEC service areas. Wireless licensed service areas are determined by the FCC, not wireless carriers. Denying wireless carriers designations under such a scenario would in some cases prevent wireless carriers from bringing wireless service to remote underserved areas.

In addition, CTIA opposes proposals to require wireless carriers to become like wireline carriers in order to receive high-cost universal service funding—something that contradicts the expectations of consumers. Just as wireline ETCs should not be required to offer mobility, wireless ETCs should not be required to offer local usage and other wireline service packages that are comparable to that offered by the relevant incumbent carrier. CTIA believes that consumers, not regulators,



should decide whether they would rather pay one amount for unlimited local usage in a small incumbent LEC local calling area, or a different amount for a certain number of minutes in a much larger (perhaps even national) wireless local calling area. There is no rational basis to determine whether two plans are “comparable” other than consumer choice. Likewise, CTIA opposes proposals to require wireless carriers to offer equal access, something wireless consumers clearly do not want. CTIA does not believe it is appropriate for government to second guess consumers.

CTIA is particularly troubled by proposals to calculate competitive ETC support based on companies’ embedded or “actual” costs. Such proposals threaten the efficiency and innovation that has been a hallmark of the wireless industry’s incredible success over the last decade. The embedded cost system has produced increasing demand for subsidies by incumbent LECs. This trend—reflecting incentives for inefficiency inherent in any “actual” cost system—should not be replicated for competitive carriers. Neither the incumbent nor the competitor should receive high-cost support based on their “actual” costs. Rather, as discussed below, both incumbents and competitors should receive equal “per-line” support based on the costs of the most efficient technology for a given geographic area. We welcome the Stevens/Inouye bill to the extent it does not include an “actual” cost requirement.

If you do not address Universal Service Fund growth by discriminating against competitors, what should be done? The best way to answer that question is to first look at all that is wrong with the current high-cost universal service mechanisms—which represent an increasing majority of the overall Universal Service Fund. There are numerous problems with the high-cost mechanisms, such as: (1) incentives for inefficiency; (2) enrichment of incumbent LEC profits; and (3) impenetrable administrative complexity. Taken together, these problems result in a bloated fund that does not effectively target the appropriate levels of support to different high-cost areas. As a result, the high-cost support mechanisms do a poor job of ensuring that all Americans have access to high-quality, affordable telecommunications and information services. Moreover, the high-cost support mechanisms undermine the efficient development of competition as envisioned by the Act. All of these problems illustrate the need for reform.

As mentioned earlier, efficiency and innovation have been hallmarks of the wireless industry. We think universal service policies should replicate those values as much as possible. CTIA has long supported market-driven efforts to curb demand for universal service subsidies. Under CTIA’s proposals, both incumbents and competitors would receive less support.

At the FCC, CTIA has proposed combining the current five high-cost universal service mechanisms into one mechanism that calculates support based on the most efficient technology—whether wireline or wireless—in a small geographic area. CTIA is open to other market-driven proposals (such as reverse auctions) that would encourage carriers to bid down the price of universal service. CTIA also has proposed shorter term reforms within the context of the current embedded cost mechanisms. For example, CTIA has supported:

1. Eliminating profit guarantees in the high cost mechanisms (We think carriers should get their profits from their own customers, not through the universal service mechanisms);
2. Requiring carriers to combine study areas in a given state (The current rules allow large, low-cost incumbents to appear small and high-cost by balkanizing their operations within a state); and
3. Transitioning larger rural incumbent LECs to the non-rural high-cost mechanisms.

We are open to other proposals and look forward to a continuing dialogue with this Committee and Congress on these important issues.

The CHAIRMAN. Well, thank you very much.

Our next witness is Joslyn Read, Chairman of the board of the Satellite Industry Association.

**STATEMENT OF JOSLYN READ, CHAIRMAN OF THE BOARD,  
SATELLITE INDUSTRY ASSOCIATION (SIA)**

Ms. READ. Thank you, Mr. Chairman and Co-Chairman Inouye and distinguished Members of the Committee.

I'm head of regulatory affairs for Hughes Network Systems, and I am Chairman of the Board of the Satellite Industry Association, and will be speaking today in my role as the chair of the SIA.

On behalf of SIA, we would like to thank you again for recognizing the critical role that satellite communications play in meeting the important broadband needs of customers and businesses throughout the United States and the vital communication needs of our Nation's first-responders.

As the Committee Members know all too well, in rural areas, where terrestrial-based communications solutions do not reach all residents, satellite broadband, satellite television and radio, and many other satellite services provider consumers and businesses with a wealth of voice, video, data, and other applications they otherwise would not have access to from terrestrial providers.

Furthermore, in areas where terrestrial services are available, satellite services give consumers all the benefits of competition, including greater diversity of service offerings, incentives for improving service quality, and downward pressure on pricing.

On behalf of the SIA, I would like to offer our support today for two specific provisions in S. 2686.

First, I'd like to focus on section 252 and the role that satellites have played, and will continue to play, in America's broadband roll-out. In a recent report to this committee, the GAO reported that 17 percent of rural households subscribe to broadband service, while 28 percent of suburban, and 29 percent of urban, households subscribe to broadband service. The economics are simply that fewer rural households will ever be served by DSL or cable modem service than is ever the case in our cities and suburbs.

Satellite-based broadband is ideal for addressing this digital deficit. Satellite service providers today provide broadband to more than 330,000 American consumers and small businesses, and we can serve more. However, until now, most satellite broadband providers have been ineligible to participate in many of the USF distribution programs, for two reasons. First, because satellite operators typically conduct their business as noncommon carriers, and, therefore, cannot qualify for U.S. distributions earmarked for common carriers. And, second, because the nature of satellite communications requires that our network infrastructure be constructed and launched before even the first customer can be served.

This has resulted in a situation where terrestrial network providers can potentially build out broadband-capable networks with financial assistance from the Universal Service Fund, while many satellite service providers cannot apply for like assistance. The result is a competitively skewed marketplace.

Satellite networks have no fiber to lay, and no wireless towers to construct to extend our networks to reach new users. The "last mile" for satellite broadband service is, instead, the deployment and activation of satellite customer premises equipment.

S. 2686 is the first legislation that recognizes that satellite broadband customers should benefit from the Federal incentives that have long been available for rural broadband customers using other technologies. By making satellite customer premises equipment eligible as a USF project, this legislation establishes a com-

petitively level playing field on par with our wireline, and wireless competitors. Thank you for your leadership in this area.

Second, Mr. Chairman, I would like to focus for a moment on Section 151, the Strategic Technology Reserve portion of the bill, which proposes additional funding for Federal, State, and local public safety and first-responders to preposition communications equipment, including satellite equipment of all kinds, to help prepare for future emergencies.

As we all know, satellite communications has played a critical role during the response to each of the natural and manmade disasters in recent years. Following the terrorist attacks of September 11, when New York City's terrestrial communications networks were damaged and overloaded, satellite communications services easily maintained connectivity, and satellite equipment was quickly deployed to meet urgent needs.

In 2005, satellite communications provided a lifeline for aid workers and victims in the remote islands of the Indian Ocean and in the earthquake desolated towns and villages of Pakistan.

Again in 2005, satellite communications proved their essential when all other forms of communication were wiped out in the Nation's Gulf region following the devastation caused by Hurricanes Katrina, Rita, and Wilma.

Had satellite equipment been more effectively pre-positioned and integrated into our emergency communications network, many of the communications problems that occurred along our Gulf Coast in 2005 and in New York City in 2001 would have been substantially mitigated.

Therefore, we thank the Chairman, the Co-Chairman, and the Members of the Committee for creating the Strategic Technology Reserve Initiative. This will provide our Nation's first-responders with the communications equipment that they need.

In sum, the Satellite Industry Association would like to commend the Chairman and the Co-Chairman on S. 2686, for the proposed reforms to the Universal Service Fund system, and for its improvement to public safety communications. SIA looks forward to working with you and the rest of the Committee members and their staffs on this important legislation.

Thank you.

[The prepared statement of Ms. Read follows:]

PREPARED STATEMENT OF JOSLYN READ, CHAIRMAN OF THE BOARD,  
SATELLITE INDUSTRY ASSOCIATION (SIA)

Mr. Chairman, Co-Chairman Inouye, and other distinguished members of the Committee, I would like to thank you for holding this hearing today on S. 2686 the "Communications, Consumer's Choice, and Broadband Deployment Act of 2006." Our telecom laws, while not broken, are clearly in need of updating. I commend you on your leadership in undertaking that difficult task.

I am here today in my role as Chair of the Satellite Industry Association (SIA).<sup>1</sup> On behalf of the satellite industry, we would like to thank you for again recognizing

<sup>1</sup> SIA is a U.S.-based trade association providing worldwide representation of the leading satellite operators, service providers, manufacturers, launch services providers, and ground equipment suppliers. SIA is the unified voice of the U.S. satellite industry on policy, regulatory, and legislative issues affecting the satellite business. Additional information can be found at [www.sia.org](http://www.sia.org).

SIA Executive Members include: Artel Inc.; The Boeing Company; The DirecTV Group;  
Continued

the critical role satellite communications play in meeting the important broadband needs of consumers and businesses throughout the United States, and the vital communications needs of our Nation's first responders.

Mr. Chairman, as you and Co-Chairman Inouye know all too well, in your home states of Alaska and Hawaii—and in other rural areas where terrestrial based communications solutions do not reach all residents—satellite broadband, satellite television, satellite radio, and a host of other satellite services provide consumers and businesses alike with a wealth of voice, video, and data services and applications they otherwise would not have access to from terrestrial providers.

Furthermore, in areas where terrestrial services are available, satellite services give consumers all the benefits of competition, including greater diversity of service offerings, incentives for improving service quality, and downward pressure on pricing.

On behalf of the SIA, I would like to offer our support today for two specific provisions in S. 2686:

- Section 252—the *Establishment of a Broadband for Unserved Areas Account* which would designate both satellite service providers and satellite broadband consumer premises equipment eligible for funding from the USF Account.
- Section 151—the Strategic Technology Reserve Initiative which proposes additional funding for federal, state, and local public safety and first responders to pre-position or purchase communications equipment, including satellite equipment, in advance to help prepare for future emergencies.

#### Section 252

First, I would like to focus on Section 252 and the role that satellites have played, and will continue to play in America's broadband rollout.

In a recent report to this Committee, the GAO found that “households residing in rural areas were less likely to subscribe to broadband service than were households residing in suburban and urban areas. Seventeen percent of rural households subscribe to broadband service, while 28 percent of suburban and 29 percent of urban households subscribe to broadband service.”<sup>2</sup> While this does not represent discrimination on the part of wireline providers, the economics are such that fewer rural households will ever be served by DSL or cable modem service, than is the case in our cities and their suburbs.

Satellite-based broadband is ideal for addressing this digital deficit. The GAO noted that “satellite could be a cost-effective mechanism to provide broadband infrastructure into rural areas.”<sup>3</sup> Satellite service providers today provide broadband service to more than 330,000 American consumers and small businesses—and we could do more.

Whether as providers of satellite voice communications or of other types of satellite-based telecommunications services, satellite service providers are part of the Universal Service Fund contribution system—we have been contributing to the USF for years. However, the USF provisions currently in the Act and the Commission's rules have in practice precluded satellite-based services from participating in many USF distribution programs.

This inefficiency has resulted in a situation where terrestrial network providers can potentially build out broadband-capable networks, with financial assistance from the Universal Service Fund, while many satellite service providers cannot apply for like assistance. The result is a competitively skewed marketplace.

For the first time ever, this legislation, S. 2686, the *Communications, Consumer's Choice, and Broadband Deployment Act of 2006*,<sup>4</sup> recognizes that satellite service providers facilitate Internet connectivity to America's rural and remote communities, and that these satellite service providers should be eligible to participate in universal service distribution programs on the same basis as their terrestrial competitors.

Until now, most satellite broadband providers have been ineligible to participate in many USF distribution programs for two reasons: (1) because satellite operators

Globalstar LLC; Hughes Network Systems LLC.; ICO Global Communications; Integral Systems, Inc.; Intelsat Ltd.; Iridium Satellite LLC; Lockheed Martin Corp.; Loral Space & Communications Ltd.; Mobile Satellite Ventures LP; Northrop Grumman Corporation; PanAmSat Corporation; SES Americom, Inc.; and TerreStar Networks Inc.; and Associate Members; ATK Inc.; EMC Inc.; Eutelsat Inc.; Inmarsat Ltd.; IOT Systems; Marshall Communications Corp.; New Skies Satellites Inc.; Spacecom Corp.; Stratos Global Corp.

<sup>2</sup>Broadband Deployment Is Extensive throughout the United States, but It Is Difficult to Assess the Extent of Deployment Gaps in Rural Areas (hereinafter “GAO Broadband Report”), GAO-06-426, May 2006, at 12.

<sup>3</sup>GAO Broadband Report, Page 35.

typically conduct their business as non-common carriers, and therefore cannot qualify for USF distributions earmarked for common carrier services, and (2) because the nature of satellite communications requires that all network infrastructure be constructed and launched before even the first customer can be served.

We have no fiber to lay and no wireless towers to construct to extend our networks to reach new users. The “last mile” for satellite broadband service is instead the deployment and activation of satellite customer premises equipment. S. 2686 is the first legislation that recognizes that satellite broadband customers should benefit from the Federal incentives that have long been available for broadband services using other technologies.

Importantly, many of these satellite customers are in rural and remote parts of the United States. By making customer premises equipment eligible as a USF “project,” your legislation significantly enhances satellite’s capability to compete throughout rural America in a technologically neutral fashion and on a level playing field with our wireline competitors. Thank you for your leadership in this area.

With regard to other elements in the universal service section of the bill, we endorse the freedom that S. 2686 would grant the FCC to revise existing policies and construct a well-balanced universal service contribution and distribution system. In designing such an even-handed system, the unique features of different broadband technologies, including satellite, must be taken into account.

#### **Section 151**

Second, Mr. Chairman, I would also like to focus for a few moments on Section 151, the *Strategic Technology Reserve* portion of the Bill which proposes additional funding for federal, state, and local public safety and first responders to pre-position communications equipment, including satellite equipment of all kinds, to help prepare for future emergencies.

As we all know, satellite communications have played a critical role during the response to each of the natural and man-made disasters in recent years. Following the terrorist attacks of September 11, 2001, when New York City’s terrestrial communications networks were damaged and overloaded, satellite communications services easily maintained connectivity and satellite equipment was quickly deployed to meet urgent needs. In 2005, satellite communications provided a lifeline for aid workers and victims in the remote islands of the Indian Ocean and in the earthquake-desolated towns and villages of Pakistan. And most recently during last year’s hurricane season, satellite communications once again proved their essential value when all other forms of communication were wiped out in the Nation’s Gulf region following the devastation caused by Hurricanes Katrina, Rita and Wilma.

Quite simply Mr. Chairman, while the outages on terrestrial networks surged in the days following these events, satellite service providers stepped in to seamlessly handle a corresponding surge in demand for capacity and service.

When the terrestrial telephone and broadcast networks went down, satellite networks maintained service. Satellites connected emergency personnel and first responders. Satellites reconnected communities. And satellites enabled the world to witness the devastation of these disasters and also the many acts of heroism.

In addition to the “mobile satellite” service providers, the “fixed satellite” service providers and their resellers stepped in immediately to provide instant infrastructure and emergency voice, video, and data communications in these hard-hit areas. Satellite companies offered a wide range of services, from transportable ATM machines to high-speed Internet access for families to stay connected, to dozens of organizations, including Federal, State, and local government agencies to schools, churches, and local relief organizations.

Small businesses such as retail gas stations and convenience stores, and larger businesses such as insurance companies, banks, and news organizations also used satellite capacity. For example, one satellite provider re-established Wal-Mart’s satellite communications network, helping Wal-Mart become one of the ‘life-support systems’ for local communities during their recovery.

Satellite operators also reconfigured capacity and service to help cellular providers such as Cingular and Sprint Nextel, and long distance carriers MCI and AT&T re-establish their networks and provided connectivity to mobile vans for relief agencies.

The satellite television broadcast community also played a key role, by helping to ensure there was an efficient method of communicating critical information to first responders and the general population within the areas affected by Hurricanes Katrina and Rita. For instance, a 24/7 dedicated broadcast station was made available to FEMA and the Red Cross for disseminating hurricane-related information.

In addition, over 20,000 satellite phones and terminals were deployed to the region in the days immediately following landfall. First responders, relief workers, government officials, reporters and others quickly demanded additional phones, and

despite the impressive statistic that I just cited, for each phone and terminal provided, countless requests were unmet because equipment supplies were soon exhausted.

Though the performance of satellite networks and equipment were impressive, their use was limited by a lack of preparation and training. Had satellite equipment been more effectively pre-positioned and integrated into our emergency communications network, many of the communications problems that occurred in Alabama, Louisiana, and Mississippi recently, and in New York City after 9/11 would have been substantially mitigated.

Until recently, satellite communications was only considered as a last resort option when terrestrial facilities failed. Until recently, the availability of satellite equipment for emergency response had been handled largely by relying on whatever excess capacity exists *after* the event. The 2005 hurricane season demonstrated that this type of reliance is flawed and ultimately dangerous. Given the advance warnings for Hurricanes Katrina, Rita and Wilma, satellite handsets, mobile terminals, and small transportable satellite antennas could have been better pre-positioned in the region prior to landfall and available for immediate deployment in the aftermath.

Therefore, we commend the Chairman and the members of the Committee for learning from these recent disasters and creating the Strategic Technology Reserve Initiative which will allocate funding for Federal, State, and local first responders and enable them to think strategically about the satellite communications equipment, including but not limited to satellite telephones, that they will need to adequately respond to a disaster, *before* such an event occurs.

Satellite products work today. They provide redundancy today. They work with other communications systems today. As such, the Government needs to facilitate a wider pre-positioned deployment of these assets today by ensuring that satellite capacity and equipment become part of the comprehensive redundant communications solutions for first responders at the planning stages, rather than at the last minute.

In recent months, there have been calls for a new interoperable communications network for federal, state, and local first responders and funding for new technologies and networks that can withstand such disasters. The satellite industry has heeded those calls. Several satellite companies are moving toward deploying hybrid satellite-terrestrial networks that will provide greater redundancy and interoperability than any previous communications medium. Others are enhancing their service provision to configure needed services on a moment's notice.

The satellite industry is working hard to maximize utilization of the highly survivable, redundant, and ubiquitous services that are uniquely available via space communications today. Interoperability is an important goal, but you must ensure *operability* following a disaster before you can benefit from *interoperability*. Mr. Chairman and Mr. Co-Chairman, we submit to you today that satellite communications provide that vital *operability* when terrestrial networks have been damaged or destroyed.

### **Closing**

In sum, the Satellite Industry Association would like to commend the Chairman and the Committee on S. 2686—for the proposed reforms to the Universal Service Fund system and for its improvement to public safety communications in preparation for the next natural disaster or national emergency. SIA looks forward to working with you and the rest of the Committee Members and their staffs on this important legislation.

Thank you.

The CHAIRMAN. Thank you very much.

Our last witness is Mr. Philip McClelland, senior assistant consumer advocate for the Office of Consumer Advocate, Harrisburg, Pennsylvania.

Mr. McClelland?

**STATEMENT OF PHILIP McCLELLAND, SENIOR ASSISTANT  
CONSUMER ADVOCATE, OFFICE OF CONSUMER ADVOCATE;  
ON BEHALF OF THE NATIONAL ASSOCIATION OF STATE  
UTILITY CONSUMER ADVOCATES (NASUCA)**

Mr. McCLELLAND. Thank you. And I appreciate the opportunity to speak with you today.

As mentioned, I am from the Pennsylvania OCA. I also serve as the State staff chair on the Universal Service Joint Board. Today, I represent our National Association of State Utility Consumer Advocates. We appreciate the opportunity to testify on this reform of universal service with S. 2686 and for continuing to consult with the consumers on these important issues.

Of course, everybody's mentioned that we've had universal service under the 1996 Act for 10 years, and the USF has grown from about 1.8 billion to 6.9 billion. State and Federal programs are paid for by the consumers that we represent, and are intended to benefit them, as well. I've attached some charts to the testimony, showing the outlays of the Federal fund.

S. 2686 does respond well to some of the issues that we've developed in the last 10 years. As you know, for example, it's been harder to assess interstate-only revenues over the years. The debates over telecom information and VoIP services have tended to shrink the revenue base. Growing payments to wireless carriers were also a surprise, and they now take about 16 percent of the Federal high-cost payments. Broadband, of course, has grown in importance. And, 10 years out, it's important and useful to go back and take another look at the Act and all the universal service provisions.

NASUCA generally supports the changes proposed by S. 2686. We have a few suggestions of ways to further strengthen the bill.

It's important to expand the revenue base. The contribution factor has now increased to about 10.9 percent. Of course, with the expansion, that should fall. Particularly, we appreciate the language limiting the contribution from residentials, family plans, and lifeline customers. Low-income customers have often been exempted from such assessments. And NASUCA has been concerned about equal assessments on phone numbers, regardless of usage, as potentially being unfair to some customers. And language is included to address these issues.

We also recognize that the bill would allow Federal USF assessments to be applied to both intrastate and interstate revenues. And that's good. That should resolve some of the issues. We also suggest, if this change is going to be made, that State Universal Service Funds should also be offered the opportunity to assess both intra- and interstate revenues. They have had the same limitation on intrastate-only. It has conflicted with their ability to sustain their programs, as well.

On the broadband support, one of the principal concerns with past issues of broadband expansion of the USF has been the potential open-ended cost. Establishing a \$500 million fund limits those concerns and does appear to be a positive way to approach this issue.

It's also important that all carriers receiving USF should offer broadband. Most do. But sometimes the most rural customers are left out. It was not entirely clear, from our reading, that the bill

was intended for those supported carriers, that all lines would receive broadband. We would suggest that that should be made clear. And we think that's the intention of the bill.

For eligible telecom carriers, there are some new restrictions proposed. We think those are good ones. As mentioned in our testimony, right now a competitive ETC receives the same support as an incumbent ETC. Receiving the same support with multiple supported carriers for multiple lines in one place can create great amounts of support, both in that area and then for the fund, in general. We appreciate the effort to contain those. We do feel that, in the future—and it's awful hard to predict how the fund might grow and what might come next—that the FCC should have a full toolbox of potential remedies to restrict the size of the fund, even as we broaden its base and lower the contribution factor.

Two final issues. We recognize the importance of broadband. We think network neutrality, particularly as we are—would now be supporting broadband, remains an important issue. We think supported services certainly should have that opportunity. We also appreciate, in this bill, the lack of State pre-emption on consumer protections. We have asserted, in our February hearing, for example, that it was not appropriate to penalize consumers by having any special exemptions on State consumer protection laws. We're happy to see that not included.

Thank you.

[The prepared statement of Mr. McClelland follows:]

PREPARED STATEMENT OF PHILIP MCCLELLAND, SENIOR ASSISTANT CONSUMER ADVOCATE, OFFICE OF CONSUMER ADVOCATE; ON BEHALF OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES (NASUCA)

My name is Philip McClelland and I am a Senior Assistant Consumer Advocate with the Pennsylvania Office of Consumer Advocate. I also serve as the State Staff Chair on the Universal Service Joint Board. The Pennsylvania Office of Consumer Advocate is charged with the responsibility of representing Pennsylvania consumers in state and Federal proceedings which may affect rates and service for electricity, gas, telephone and water service. My office is also a member of the National Association of State Utility Consumer Advocates (NASUCA), an organization of 44 state utility consumer advocate offices from 42 states and the District of Columbia, charged by their respective state statutes with representing utility consumers before state and Federal utility commissions and before state and Federal courts. I greatly appreciate the opportunity to testify at this legislative hearing on the prospects for reform of universal service in light of the provisions of The Communications, Consumer's Choice and Broadband Deployment Act of 2006.

### **I. Introduction**

First, I would like to commend Chairman Stevens and Senator Inouye, the members of the Committee, and your staffs for continuing discussions on these issues which have lead to the introduction of S. 2686 which takes on a number of important issues concerning universal service. I and other members of NASUCA truly appreciate your continuing efforts to seek the views of consumers on these important issues. We look forward to continuing to work with you in developing telecommunications policies and legislation that benefit all consumers and the Nation as a whole. I am testifying today on behalf of NASUCA.

### **II. Background**

The universal service provisions of the Telecommunications Act of 1996 have been in effect for more than 10 years. The Federal and state universal service funds have brought a number of benefits to consumers. NASUCA and its members represent the consumers who pay for the USF and who are intended to receive the benefits as well. Federal USF outlays have now grown from \$1.8 Billion in 1997 to \$6.9 Bil-



lion in 2005.<sup>1</sup> We are mindful of balancing the benefits to consumers with the costs that these programs impose.

During the course of these 10 years, issues have developed that were difficult to anticipate when the 1996 Act was passed. Notably, it has become increasingly difficult to segregate revenues by jurisdiction. This has caused problems in accurately assessing Federal USF fees—and for consumers to understand how their USF surcharge was calculated on the bill. There has been a general concern that assessing only interstate telecommunications services will make it more difficult to sustain the operation of the fund.

Adding to this problem has been a complicated debate concerning what services are telecommunications services and what services are information services. This definitional discussion has limited what revenues can be assessed and what services can be supported. It has been difficult to determine what role the growing market for Voice over Internet Protocol (VoIP) and other software-defined services should play related to the USF.

Further complicating the management of the USF was the decision that it should be subject to the Anti-Deficiency Act. If applied, this would effectively restrict the ability of the Universal Service Administrative Company (USAC) to fund completely the demands upon the USF based upon incoming revenues.

Particularly important, and relatively unexpected, is the growing payments to wireless carriers as Competitive Eligible Telecommunications Carriers (CETCs).<sup>2</sup> Wireless carriers received \$0.5 Million in High Cost Support in 1999 and \$637 Million in such support in 2005. The wireless industry has grown dramatically in high cost areas and now receives 16 percent of all Federal USF high cost payments disbursed.

It is not surprising that 10 years out it is time to reexamine the statutory rules for universal service. It speaks well of the ambitious program that was passed in 1996 that it needs relatively minor repair in 2006.

NASUCA generally supports the changes proposed by S. 2686 in universal service. It is important that many of these changes, which have been long debated, be passed into law in the near future. The Bill reflects a careful consideration of many universal service issues and maintains the successful features of universal service that have served the country well over many years. NASUCA will also suggest ways in which S. 2686 may be modified to further strengthen its usefulness.

### III. The Funding Base

As I mentioned earlier, it is important to recognize the growth in the telecommunications network that has taken place in the past 10 years. NASUCA has long called for an expansion of the base upon which USF funding is calculated. S. 2686 achieves that goal by drawing in all telecommunications, broadband and VoIP revenue to the funding base.

The current contribution factor announced by the FCC is 10.9 percent on interstate revenues. This has grown from 5.7 percent in the fourth quarter of 2000. Such an increase in the factor may drive consumers from the assessed base of interstate telecommunications services toward other services. Broadening the base will ensure that all sectors of the telecommunications industry contribute to the support of universal service, and will certainly serve to limit the size of such a factor in the future.

NASUCA also recognizes and supports the provision that the FCC should adjust the contribution requirements related to low volume residential customers, family plans, and lifeline services. NASUCA is concerned that, if we migrate from the current revenue-based system to some other basis for contributions, the residential customer—particularly the low-use residential customer—may pay an unreasonable share of USF costs. For example, assessing contributions based on telephone numbers may assess two telephone lines equally, even though a business line takes a thousand calls a day, while a residential line is rarely used. We appreciate the effort to achieve fairness on these issues.

Exempting Lifeline customers from the USF assessment is a particularly important provision. Lifeline customers receive a reduction in their telephone bill so they may continue to afford service. Such customers have often been exempted from other assessments in order to maintain their service.

NASUCA recognizes that S. 2686 would allow the Federal USF assessment to be applied to both intrastate and interstate revenue. We also recognize in the Bill the effort to maintain state universal service funds as well. NASUCA suggests that, if

<sup>1</sup>Attached are various graphs and charts indicating outlays on a national and state basis as Appendices A and B.

<sup>2</sup>S. 2686 appears to change the designation of Eligible Telecommunications Carriers to Eligible Communications Carriers. I will use the term ECC in the remainder of this testimony.

the law is changed so that the Federal USF can be assessed against intrastate and interstate revenues, it would also be equitable to allow state universal service funds to enjoy the same funding base. Continuing to restrict state universal service funds to assessing only intrastate revenues will continue the jurisdictional and definitional problems I mentioned earlier, and will complicate the ability of states to sustain their important universal service programs.

#### **IV. Broadband Support**

NASUCA recognizes that S. 2686 also establishes support mechanisms related to broadband service. In this manner, the assessment against broadband revenues is balanced with support for broadband service as well. A \$500 Million fund is created to support broadband in unserved areas and a separate requirement is created that would require carriers receiving USF funds to offer broadband services within five years of enactment, subject to waiver.

Many parties have carefully considered whether the USF should be expanded to support broadband services. One of the principal concerns with such expansion of the USF has been cost. A broad determination that broadband services should be supported under existing law would trigger financial consequences that could not be easily predicted. Establishing a set \$500 million fund avoids these concerns and is a positive way to approach this problem.

NASUCA also recognizes the importance of requiring all carriers receiving USF funding to offer broadband services as well. DSL-based services are now deployed on a widespread basis by wireline carriers, and wireless broadband service is beginning to be rolled out. Even so, it is appropriate to encourage telecommunications carriers to offer such services throughout their service areas within five years. Often it has been a problem that when carriers begin offering broadband services in a particular service territory, it may be many years until customers located in more remote locations receive these same services, if ever.

It is not entirely clear whether S. 2686 requires all or only some portion of the carrier's customers to have access to broadband services within any period of time. NASUCA suggests that S. 2686 should be very clear that all carriers receiving USF support have an obligation to provide broadband service throughout their designated service area within a set time period.

#### **V. Anti-Deficiency Act Exemption**

Another important part of S. 2686 is the clear exemption from the Anti-Deficiency Act provisions. NASUCA has also consistently supported taking such a step.

NASUCA is concerned that the application of such restrictions would substantially interfere with USF recipients receiving the funding that they require. Various recipients of USF funds have a number of obligations that they must meet and the application of the Anti-Deficiency Act would create a hardship in this matter. Application of the Anti-Deficiency Act also increases the amounts that must be collected from consumers to support the USF. S. 2686 appropriately resolves these issues by exempting the USF from the requirements of the Anti-Deficiency Act.

#### **VI. Eligible Communications Carrier Restrictions**

NASUCA also recognizes that S. 2686 contains requirements that would apply to new ECCs. NASUCA, as noted above, has been concerned with the growing size of the USF. NASUCA supports the new conditions to be applied to ECCs through S. 2686.

Presently, any ECC operating in a high cost area is able to receive the same per line support as the incumbent ECC in that same area. Multiple ECCs may be designated in an area and receive the same level of support as the incumbent. The cost of universal service in that area and the overall size of the USF will increase accordingly. This is the effect of having multiple supported ECCs in high cost areas.

NASUCA recognizes that competition is good for consumers. However, NASUCA is concerned about the level of competition subsidy that should be applied in high cost areas. Having multiple ECCs in any area competing for consumer business—all supported by the USF—creates an advantage for consumers in that area, but creates a huge burden on the overall fund which must be paid for by all consumers in the nation. NASUCA cautions that USF support to multiple networks and lines within a high cost area may not be a wise use of USF resources. Adding the statutory ECC conditions listed in S. 2686 will be helpful, but NASUCA suggests that it may be necessary to safeguard the USF through other limitations on high cost support as well.

S. 2686 has broadened the base from which contributions will now be recovered. It may also be helpful to recognize the need for other methods to be applied on the distribution side as well. Throughout the 10 years of the USF various changes have occurred that have increased the size of the fund. In order to anticipate the needs

of the future, it may be necessary to facilitate other regulatory actions to limit the size of the USF as well. Accordingly, S.2686 should not limit the tools available to the FCC and Joint Board in fashioning appropriate responses to future distribution challenges faced by the USF.

#### VII. Broadband Support and Network Neutrality

As indicated above, NASUCA recognizes the importance of offering broadband to consumers. The broadband support requirements in S. 2686 are reasonable methods for encouraging the deployment of broadband to all consumers in the United States.

In order to realize the full benefit of broadband networks, NASUCA believes it is important that consumers maintain the right to use broadband services in a network that is open and neutral to consumers and content providers. It would be unfortunate if the broadband deployment supported by the bill, and broadband services in general, were restricted in a manner that would lessen the great benefit the Internet has brought to consumers. While the broad topic of network neutrality may be best left to another hearing, NASUCA wishes to raise this issue in the context of Universal Service as well.

#### Federal Universal Service Support Per Line Support in Each State 2005 Disbursements

State	High Cost Support (\$ in millions)	Low Income Support (\$ in millions)	Rural Health Support (\$ in millions)	Schools & Libraries Support (\$ in millions)	Total Support (\$ in millions)	Total Lines	Monthly Support Per Line
1. Alabama	\$109.3	\$3.2	\$0.0	\$28.0	\$140.5	2,275,897	\$5.14
2. Alaska	\$120.3	\$7.4	\$14.9	\$15.9	\$158.5	414,396	\$31.87
3. American Samoa	\$2.3	\$0.1	\$0.0	\$2.4	\$4.8	10,872	\$36.79
4. Arizona	\$74.6	\$20.3	\$0.7	\$36.0	\$131.6	2,577,209	\$4.26
5. Arkansas	\$141.0	\$2.4	\$0.1	\$15.7	\$159.2	1,371,860	\$9.67
6. California	\$98.9	\$304.7	\$0.5	\$220.8	\$624.9	21,285,036	\$2.45
7. Colorado	\$79.3	\$3.5	\$0.1	\$11.3	\$94.2	2,606,818	\$3.01
8. Connecticut	\$2.2	\$5.3	\$0.0	\$19.3	\$26.8	2,135,021	\$1.05
9. D.C.	\$0.0	\$0.9	\$0.0	\$10.8	\$11.7	791,292	\$1.23
10. Delaware	\$0.3	\$0.3	\$0.0	\$0.4	\$1.0	546,439	\$0.15
11. Florida	\$91.5	\$17.8	\$0.1	\$53.4	\$162.8	10,356,878	\$1.31
12. Georgia	\$111.7	\$8.3	\$0.1	\$50.1	\$170.2	4,611,880	\$3.08
13. Guam	\$19.2	\$0.4	\$0.0	\$3.1	\$22.7	67,059	\$28.21
14. Hawaii	\$29.5	\$0.7	\$0.3	\$1.8	\$32.3	665,486	\$4.04
15. Idaho	\$55.1	\$3.9	\$0.2	\$2.8	\$62.0	714,999	\$7.23
16. Illinois	\$63.5	\$9.3	\$0.2	\$73.4	\$146.4	7,323,440	\$1.67
17. Indiana	\$56.6	\$5.7	\$0.1	\$12.5	\$74.9	3,492,042	\$1.79
18. Iowa	\$90.3	\$6.2	\$0.2	\$10.1	\$106.8	1,540,622	\$5.78
19. Kansas	\$178.7	\$3.1	\$0.3	\$10.6	\$192.7	1,380,168	\$11.64
20. Kentucky	\$83.6	\$7.5	\$0.7	\$26.5	\$118.3	2,003,264	\$4.92
21. Louisiana	\$111.2	\$2.4	\$0.0	\$41.5	\$155.1	2,268,720	\$5.70
22. Maine	\$28.8	\$8.8	\$0.1	\$9.1	\$46.8	808,894	\$4.82
23. Maryland	\$4.3	\$0.5	\$0.0	\$12.7	\$17.5	3,606,266	\$0.40
24. Massachusetts	\$3.6	\$14.3	\$0.0	\$21.0	\$38.9	3,779,199	\$0.86
25. Michigan	\$53.6	\$11.4	\$0.7	\$34.7	\$100.4	5,688,091	\$1.47
26. Minnesota	\$113.4	\$6.0	\$0.8	\$19.9	\$140.1	2,703,043	\$4.32
27. Mississippi	\$209.3	\$3.6	\$0.1	\$29.4	\$242.4	1,328,966	\$15.20
28. Missouri	\$85.2	\$5.4	\$0.1	\$36.3	\$127.0	3,247,315	\$3.26
29. Montana	\$76.7	\$2.6	\$0.5	\$3.8	\$83.6	506,462	\$13.76
30. N. Mariana Is.	\$0.7	\$0.1	\$0.0	\$1.4	\$2.2	24,480	\$7.49
31. Nebraska	\$55.9	\$2.4	\$0.7	\$6.3	\$65.3	815,003	\$6.68
32. Nevada	\$29.6	\$4.1	\$0.0	\$3.2	\$36.9	1,267,684	\$2.43
33. New Hampshire	\$8.7	\$0.6	\$0.0	\$1.7	\$11.0	754,305	\$1.22
34. New Jersey	\$1.3	\$14.5	\$0.0	\$39.4	\$55.2	5,983,090	\$0.77
35. New Mexico	\$58.5	\$10.7	\$0.3	\$17.8	\$87.3	940,723	\$7.73
36. New York	\$51.8	\$52.5	\$0.0	\$298.3	\$402.6	11,284,257	\$2.97
37. North Carolina	\$80.2	\$14.5	\$0.2	\$37.0	\$131.9	4,596,547	\$2.39
38. North Dakota	\$62.7	\$3.8	\$0.5	\$3.0	\$70.0	347,899	\$16.77
39. Ohio	\$37.8	\$35.0	\$0.0	\$57.4	\$130.2	6,372,077	\$1.70
40. Oklahoma	\$120.2	\$32.4	\$0.1	\$44.0	\$196.7	1,732,719	\$9.46
41. Oregon	\$68.5	\$7.3	\$0.0	\$11.4	\$87.2	1,933,674	\$3.76

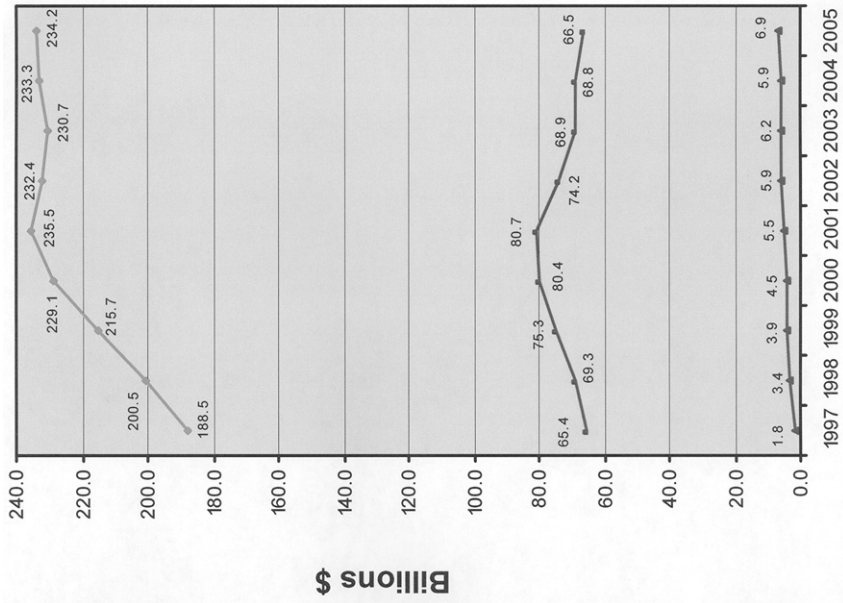
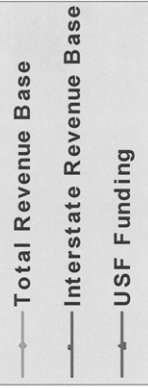
Federal Universal Service Support Per Line Support in Each State 2005  
Disbursements—Continued

State	High Cost Support (\$ in millions)	Low Income Support (\$ in millions)	Rural Health Support (\$ in millions)	Schools & Libraries Support (\$ in millions)	Total Support (\$ in millions)	Total Lines	Monthly Support Per Line
42. Pennsylvania	\$65.5	\$19.2	\$0.1	\$67.1	\$151.9	7,345,084	\$1.72
43. Puerto Rico	\$133.8	\$13.3	\$0.0	\$3.0	\$150.1	1,180,127	\$10.60
44. Rhode Island	\$0.0	\$4.6	\$0.0	\$6.9	\$11.5	491,107	\$1.95
45. South Carolina	\$76.3	\$2.9	\$0.0	\$27.6	\$106.8	2,174,893	\$4.09
46. South Dakota	\$77.8	\$7.3	\$0.5	\$5.4	\$91.0	348,183	\$21.78
47. Tennessee	\$54.7	\$6.1	\$0.1	\$59.5	\$120.4	3,085,923	\$3.25
48. Texas	\$230.0	\$72.3	\$0.1	\$274.2	\$576.6	11,590,562	\$4.15
49. Utah	\$23.6	\$2.9	\$0.4	\$7.5	\$34.4	1,056,543	\$2.71
50. Vermont	\$35.2	\$2.8	\$0.0	\$1.2	\$39.2	407,202	\$8.02
51. Virgin Islands	\$22.6	\$0.2	\$0.1	\$3.9	\$26.8	69,425	\$32.17
52. Virginia	\$87.3	\$2.3	\$0.3	\$25.2	\$115.1	4,290,319	\$2.24
53. Washington	\$94.4	\$19.8	\$0.1	\$16.7	\$131.0	3,419,234	\$3.19
54. West Virginia	\$66.3	\$0.7	\$0.1	\$7.7	\$74.8	980,333	\$6.36
55. Wisconsin	\$130.2	\$8.8	\$1.0	\$21.0	\$161.0	3,089,638	\$4.34
56. Wyoming	\$56.6	\$1.4	\$0.1	\$0.7	\$58.8	289,052	\$16.95
<b>TOTAL</b>	<b>\$3,824.2</b>	<b>\$808.5</b>	<b>\$25.5</b>	<b>\$1,861.8</b>	<b>\$6,520.0</b>	<b>165,977,717</b>	<b>\$3.27</b>

Note: Numbers may not add due to rounding. Annual support amounts less than \$50,000 show as \$0 due to rounding. Support amounts shown are actual amounts disbursed. Amounts assessed and collected may be higher.

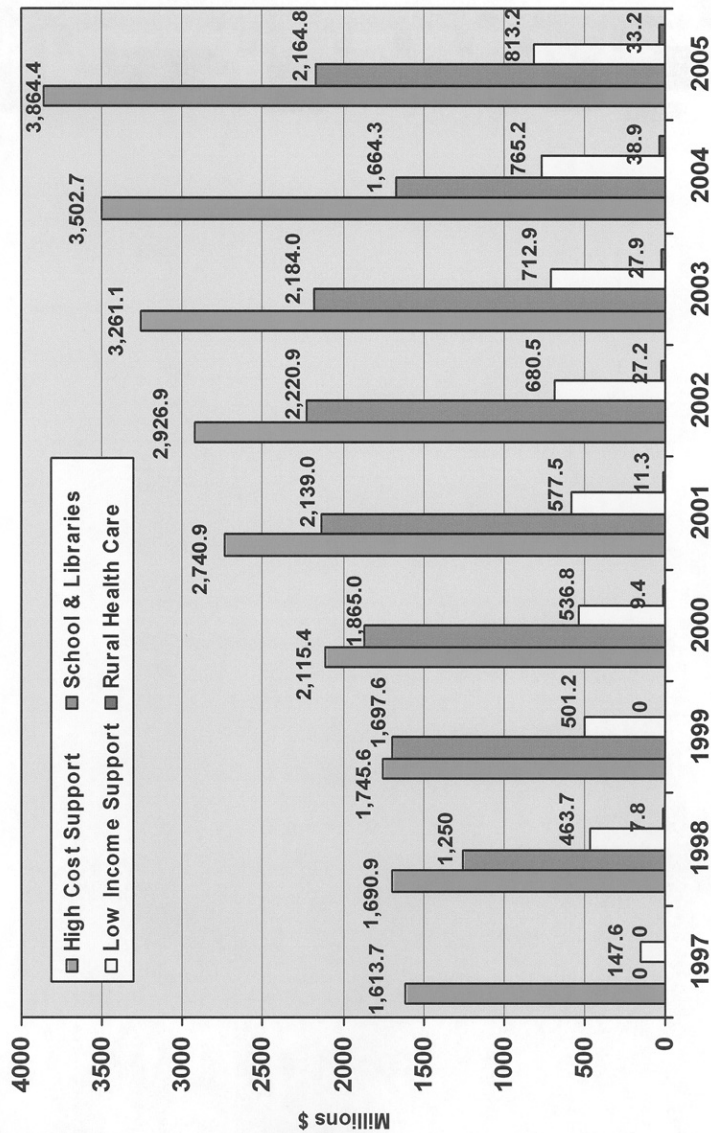
Source: USAC 2005 Annual Report; NECA 2005 Annual USF Filing.

### CHANGES IN USF FUNDING AND TELECOM REVENUES 1997-2005

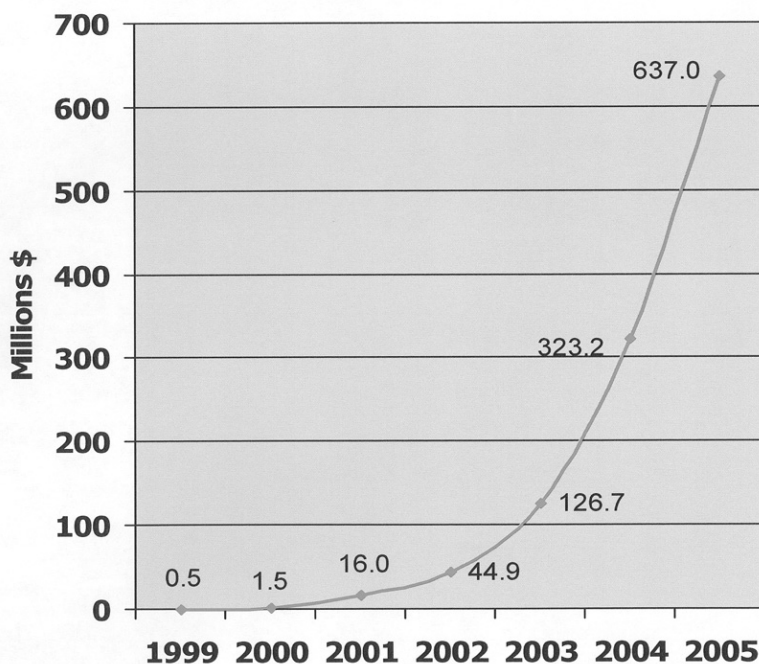


# CHANGE IN USF FUNDING

1997 – 2005



## GROWTH IN HIGH COST SUPPORT FOR WIRELESS CARRIERS 1999-2005



The CHAIRMAN. Thank you very much. And thank you all.

Do you have any questions, Senator Inouye?

Senator INOUE. We have been advised that they'll be voting soon, but, Mr. McClellan, if the FCC adopts this number-based contribution methodology, would it be fair to the low-income/low-user people?

Mr. MCCLELLAND. Well, Senator, we think not. And particularly—and, as you know—we have a revenue-based system. The more you use, the more you consume, the more you pay. Going to lines-only, assuming roughly equal numbers, of course, falls heavier regardless of usage and regardless of revenue.

Our association has suggested, if there's going to be a number assessment, it should probably be added to some other broader assessments that are more sensitive to usage. So, yes, we are concerned about the low-income small-user.

Senator INOUE. Thank you very much.

Ms. Bloomfield, you support that carriers ineligible to receive broadband support unless they have deployed broadband service within a service area within 5 years. Without that provision here, what would be the impact?

Ms. BLOOMFIELD. Well, broadband deployment in these rural markets, Senator, are very difficult. We've heard a lot of numbers,

kind of, being bantered around today. We've got—our companies deploy broadband to about 93 percent of their markets. I think what the Committee was trying to do with the draft is really get out to how do you hit that last 7 percent, which is our—obviously, your highest-cost market areas. I applaud the effort of looking at tying broadband to universal service and making some requirements so that you see the technology evolve forward. We also are very big fans of whatever technology may work. It may be fiber, it may be DSL, it may be copper, it may be some use of satellite and wireless. I think all of the rural markets of all the members of this committee are so varied. So, I think that challenges that last 7 percent. I do think that having broadband and universal service be tied together actually makes sense if it really is the commitment of Congress to ensure that all Americans have access to broadband services.

Senator INOUE. Thank you very much.

Mr. Largent, your association supports the proposal on contribution based on numbers. Is that fair?

Mr. LARGENT. Well, Senator Inouye, we believe it is. We think that, on the contribution side, you need as wide a base as possible. And our suggestion allows for that. Our proposal also has a number of consumer benefits in the form of exemptions for, and safe harbors for, low-income and low-revenue consumers. So, we allow those exemptions.

Under a number-based system, customers in rural areas will no longer be penalized when they call beyond their own areas. And the average residential customer is still only going to be paying roughly the same amount that they're paying today under a number-based system.

Senator INOUE. Ms. Read—thank you very much, Mr. Largent—how costly is consumer equipment necessary to receive broadband over satellite? Is that an expensive thing?

Ms. READ. Satellite equipment for customers for broadband varies by the different satellite system that provides it. Broadband can be provided over mobile satellite terminals, mobile satellite handsets, and over fixed satellite dishes, if you like. So, the answer really needs to come from the different types of mobile-satellite and fixed-satellite environments.

Senator INOUE. But you think it's within the reach of consumers?

Ms. READ. I would say certainly, speaking on behalf of Hughes, which is a major provider of satellite broadband throughout the United States and in rural areas, we do believe it's within reach. As the association has said in its statement, we believe that, even though satellite broadband providers have distributed their services and there has been reasonably good take-up, we believe that we are competitively disadvantaged with regard to the financial assistance to the USF system. As the gentleman from CTIA mentioned, the satellite industry is a net payor and not a net receiver in the system.

Senator INOUE. Thank you very much.

Mr. McCormick, what effect will the growth of Voice over Internet Protocol have on the Universal Service Fund if no action is taken?



Mr. MCCORMICK. Senator Inouye, it's imperative that Congress undertake legislation to capture contributions from all who provide these kinds of services. Should Voice over Internet Protocol traffic be able to ride free, not having to contribute to the Universal Service Fund, of course, it would then be artificially priced lower than other services, and the marketplace might well gravitate to that, and you would see a collapse in the Universal Service Fund.

So, it's imperative that Congress make sure that all services contribute to universal service.

Senator INOUE. Mr. McSlarrow, that would affect you. What's your position on that?

Mr. MCSLAWROW. Our position is that anything with a telephone number should pay into the fund, so it doesn't matter if it's traditional circuit-switched telephone, which we also offer, or VoIP, as Mr. McCormick just discussed; they all should contribute into the fund. So, we do it now, voluntarily, but we agree that it should be placed into law, as this bill does.

Senator INOUE. May I submit my questions?

The CHAIRMAN. Yes. Senator Inouye will submit the balance of the questions. We may submit some to you, also.

The vote has already started, so let me just make this statement. The two of us that are left here at the table, we're the two that started the Universal Service Fund, you'll recall. And, over the years, we've watched it expand. I think the interesting thing about today's hearing is there's no one at the table that says there should be no Universal Service Fund. And we have—I can tell you, we have no such call—there is no such call anymore from the Members of this Committee. There were, 2 years ago. So, I think that the hearings we've been through, the meetings we've been through, the listening sessions we've been through have all brought us to the same conclusion: there must be some mechanism to satisfy the demand of the public, that access to modern communications is now an American right. And we intend to see that this bill preserves that right.

And we appreciate all that you've done to prepare your statements. We'll go over them, as I indicated.

But, very clearly, you know, the task now is a different one than when we started. When I think of some of the things that I used to worry about, one of my daughters having a flat tire on an interstate freeway and having to walk miles to the telephone to call, or ask some passing automobile to take her to the phone, the dangers of areas that we live in, in terms of snow machining. I've told—you all know the story, I'm sure, about the snow machine that dropped into a crevasse right in the Mount McKinley area, and suddenly, as his machine wedged in the crevasse, he remembered that he had a cell phone, dialed 9-1-1, and a satellite picked it up, and he was picked out of the crevasse in about 30 minutes. You know, the world has changed, and that's the safety factor now in communications that is assured by Universal Service Funds and that is an accepted position for the American people. And I think it will survive, in terms of the consideration of this bill.

So, we do thank you very much. We're going to review this. We have given out, to the press, and will make available to you, also, the revised schedule for our hearings. But we intend to postpone

them just 1 week, really, that is the net result of our conversation here today.

But, thank you very much for your being with us and for waiting so long. I appreciate it.

[Whereupon, at 1 p.m., the hearing was adjourned.]

## A P P E N D I X

‘ŌLELO COMMUNITY TELEVISION  
HONOLULU, HI, MAY 18, 2006

Hon. DANIEL K. INOUE,  
Co-Chairman,  
Senate Committee on Commerce, Science, and Transportation,  
Washington, DC.

Aloha Senator Inouye,

Thank you again for attending the Youth Xchange Awards Banquet last month, we were honored to have you there.

I am writing in support of the Alliance for Community Media’s position (testimony attached) regarding S. 2686, the Communications, Consumer’s Choice, and Broadband Deployment Act of 2006.

‘Ōlelo is in a very fortunate position in that we are able to serve Public, Education and Government (PEG) sectors on Oahu and in many cases, expand our services beyond traditional PEG Access models. We currently manage six community media centers on Oahu and six channels dedicated to Public, Educational and Government programs. Two of these channels are dedicated to educational programs. As you may know, our early work with Searider Productions helped them to grow into one of the most respected media education programs in the state. We are actively partnering with other schools on Oahu to replicate the successes of Searider Productions. Every election year, we offer an avenue for candidates to produce messages to inform the electorate. We provide production resources for the cablecast of Legislative and City Council programs and are seeking to expand those services via Internet archiving. We facilitate productions for non-profit organizations and other groups and agencies, such as the local office of HUD, to ensure their messages are heard. We reach out to the under served in our community and offer training and channel time to all, regardless of resources or standing.

This is a brief sampling of our efforts that have contributed to the creation of a stronger, more informed community. We are concerned that the similar efforts of many PEG Access centers throughout the country will be severely affected if this legislation is passed in its current form. Thank you for the opportunity to comment.

Sincerely,

KEALI ‘I S. LÓPEZ,  
*President and CEO.*

---

PREPARED STATEMENT OF SUZANNE ST. JOHN-CRANE, EXECUTIVE DIRECTOR,  
COMMUNITY MEDIA ACCESS PARTNERSHIP (CMAP); ON BEHALF OF THE ALLIANCE  
FOR COMMUNITY MEDIA

Good morning, Chairman Stevens, Senator Inouye and Members of the Committee. I am Suzanne St. John-Crane, Executive Director of CMAP, which provides complete Public Educational and Government Access services for Gilroy of Santa Clara County, and Hollister and San Juan Bautista of San Benito County, California. I have been a member of the National Board of Directors of the Alliance for Community Media for the past two years.

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) Access television centers across the nation. Those centers include the more than 1.2 million volunteers and 250,000 community groups annually 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.

### PEG Support

We are pleased to see that there is funding for PEG based on gross revenues. This ties PEG funding to the market forces which drive pricing and the number of subscribers. It also eliminates the need for future adjustment of PEG support.

One percent PEG support above the franchise fee is a strong step in the right direction. It will leave many, though not all, of our members whole. There would be difficulty in the smaller towns and rural areas where funding above 1 percent is necessary for basic operations. There is a level of funding below in which the doors just don't open. One percent funding will also reduce real funding in many communities which have made concessions to incumbent operators in exchange for PEG support or which have allowed them to provide in-kind support for PEG in-lieu of cash payments.

For this reason, the Alliance is offering language which recognizes these existing agreements. Our *Do No Harm* amendment is designed to prevent reduction or elimination of PEG services in such communities. My own community is a good example of why this is necessary.

Our PEG station, CMAP, has 13,000 cable subscribers in a service area of 90,000 residents. We manage four channels that cablecast twenty-four hours a day, seven days a week. Unlike a center serving a large metropolitan area, a 1 percent of gross revenue funding scheme would reduce our annual operating budget by two-thirds. In other words, 1 percent would close our doors. We currently receive 3 percent of gross revenue above franchise fees. In addition to 1 percent, we receive:

- A percentage of franchise fees from both Hollister and Gilroy;
- A \$700,000 capital equipment grant;
- Connection to the cable provider's head-end;
- An Institutional Network serving fifty public buildings in the three cities. Our school districts and cities use this system for voice and data transmission as well as emergency services, saving them tens of thousands of dollars a year. CMAP has the ability to transmit live programming from these fifty sites.

The language in this bill doesn't protect our current funding levels, nor does it protect the existing services we heavily depend upon for our operations.

CMAP is far from unique in its dependency on franchise fees and negotiated services. Here's how 1 percent funding will harm PEG in California alone:

- Media Center in Palo Alto serving four cities would see a 40 percent loss in funding;
- Santa Maria and Lompoc, 64 percent loss in funding;
- Santa Rosa Media Center; 42 percent loss in funding;
- Ventura Community TV would see a 45 percent loss in funding;
- Monterey Community Television, a 55 percent loss in funding;
- Pacifica Community TV, a 47 percent loss in funding.

Centers in other parts of the country will suffer similar fates. For example, Arlington Community TV and Fairfax Access in Virginia would both be severely damaged. Arlington Independent Media, the Public Access organization, has base funding of 1 percent. But additional benefits for the County include:

- Annual operating grants;
- Capital equipment grants;
- Studio space in the Comcast building;
- Operating support for the Educational channel; and
- Operating support for I-Net services.

These services were negotiated in lieu of other payments by Comcast, but would be lost under the funding of this bill. *Combined total loss is \$855,000 per year.*

The I-Net is used for Arlington County's primary *Emergency Preparedness Network*, connecting all EMT, firehouses, police, and emergency responders. The County I-Net is being interconnected with Alexandria, Falls Church, Fairfax, and the rest of Northern Virginia as the primary interconnected network for Homeland Security and Emergency Response. If there is no provision for I-Net in this legislation, the cable operator is in a position to name its price for future use—since the county cannot afford to build a duplicate system. These new charges would be subtracted from the franchise fees. Without revision, this funding system would be a disaster.

Similarly affected would be most PEG Access centers in Minnesota including:

- CTV 15 of Roseville,
- St. Paul Neighborhood Network;

- Townsquare Television—serving seven cities;
- Suburban Community Channels serving 12 cities;
- North Metro community TV serve seven cities;
- Quad Cities Community TV serving four cities;
- Stillwater Community TV serving five cities; and
- Burnsville-Egan Community TV.

In Oregon harm would be caused to communities served by:

- Capital Community TV;
- Portland Community Media;
- Metro East Community TV; and
- Tuolumne County Television.

This list is only the tip of the iceberg when it comes to centers that will be crippled, if not closed, by the PEG language in this legislation.

*This can all be fixed by one, simple amendment to this Act and which is being offered by the Alliance for Community Media. Our “Do No Harm” amendment would not harm the bottom line of video providers, but would do much to capture and protect those services unintentionally left out of the currently proposed legislation.*

*Additionally, we ask that the franchise fee revenue base not be reduced. A reduced franchise fee revenue base would reduce LFA financial support for PEG. The Alliance supports the recommendation of the municipal organizations fully in this matter.*

#### **PEG Channel Capacity**

We think it is a good idea that the video competitors match the existing number of PEG channels in most cases. It saves negotiation time and offers a level playing field. There are a number of adjustments we would suggest.

*Communities Without PEG Capacity.* Communities without cable operators should be able to establish PEG channels with national franchisees by following a rule-making of the FCC. We suggest that the FCC rule-making establish a minimum to be followed in those few areas which do have a cable operator, but which do not yet have PEG channels. This is sometimes the case in smaller communities which did not have the expertise or wherewithal to negotiate for them under older franchises. We can pump oxygen into these needy communities! No one wants to see innovation, development or democracy permanently stifled in underserved areas—often rural and smaller cities and towns with few other media resources.

The amount of bandwidth necessary to serve community needs *increases* with the number of subscribers:

- A system of 10,000 subs may be served adequately with two or three PEG channels out of 72 analog channels, or about 4 percent.
- In Manhattan/New York City with 500,000+ subscribers, community needs are barely met with nine analog PEG channels of a 72-channel system at the time of franchise.

The National Standard for PEG channel capacity developed by the Alliance would provide a bell-curve in which the vast majority of systems would have four PEG channels. The needs of both smaller and larger communities are met by balanced, market-based tests.

- We ask the Committee to recommend that the FCC consider the Alliance’s National Standard *sliding-scale* (available on request) in any proposed rule-making on PEG channel capacity.

#### **IPTV as Cable Service**

Although at first glance, this language might not seem like a PEG issue, the Alliance recognizes that the law must be crystal clear that so-called “IPTV” type services are subject to the terms of this national franchising model and that there is no “escape hatch” for new entrants to exercise. In particular, we would be greatly concerned if this question were left open to interpretation by the Federal Communications Commission. Without this assurance, we recognize new entrants would take advantage of this loophole and render the balance of the Act essentially meaningless. *Already, the same phone companies which have pressured Congress for this legislation have sought rulings which would exempt them from its provisions in Connecticut, Oklahoma and other states*—an incredible act of political cynicism! From our perspective, a clear Congressional statement including IPTV or other future technologies under these provisions is a fundamental requirement for a balanced and equitable law.

*A Word On Percentages.* Any public interest requirement for channel capacity needs to have meaning despite expected migration of video delivery services to the information services silo. As technology moves forward, there will be market pressure to satisfy PEG requirements with fewer bandwidth resources by not passing along the advantages of innovation. This is often already the case. The number of PEG channels generally remains fixed at 1984 levels even as digital technology provides ten times as many channels in the same space. The digital channels often involve new capabilities for commercial programmers not offered to community programmers.

Fixing PEG at a reasonable *percentage of bandwidth* based on current channel allotments eliminates this tendency and prevents PEG capacity from being *redefined* out of existence. More importantly, it eliminates regulatory language which might arbitrarily favor one use of technology over another.

- *The use of bandwidth percentages allows a community to align itself with the most current, innovative technology a new system provides while eliminating the need to ever redefine public interest capacity obligations.* Within this framework, communities will be able to evolve resources which are comparable in basic function and accessibility to those of other system users for years to come.

### **Interconnection**

The Alliance rates the language on interconnection as excellent. Without such language, many PEG centers would see their funding quickly dissipate as they pay the additional new expense. Some would be left to choose which provider to connect with and which not. We are also pleased that a mechanism is provided for cost saving deals between providers which do not hurt the PEG facilities.

### **Marketing and Promotion**

The Alliance very much appreciates the attention being given to comparability of listings, identifications and accessibility for PEG programming.

### **Network Neutrality**

Recently, the Alliance was given a demonstration of a proposed system for whose method of delivery is via the Internet. The signal to the home is via older twisted-pair in some areas. More importantly, the signal from PEG to the provider is across the Internet via T-1 line. Our channel signal to the video provider is to be carried across the open Internet.

What does this have to do with network neutrality? When your community channel is on the information superhighway with all the other voice, data and video signals, it will make a difference if it is lined up at a toll-booth while the Disney Channel is waved through at high speed. This will leave smaller providers—PEG channels, the public at large and the small, innovative companies who have really made the Internet what it is—with grainy picture, undependable or slow delivery and virtual invisibility. More importantly, the law must protect unfair treatment of public interest programming by operators seeking to give every advantage to their own financial interests.

It is tough to serve the community with so little funding for equipment, staff or production, but across the country our member PEG stations have done an admirable job. The one thing that has never been an issue is signal carriage. In theory, all PEG channels had to be carried on an equal basis with commercial channels. One could not buy special status. One could not pay to have another's channel dimmed. Channels, on the most basic level, had to rise or fall on the content of their own character. They should not have to rise or fall according to the content of the community's bank account.

### **Citizenship and Access to Broadband Communications**

The Alliance has an interest in inclusion of stronger language on build-out, red-lining or other such non-discriminatory provision, however termed. Any new legislation should anticipate inevitable market imbalances and should have tests for identifying those imbalances. It should provide concrete methods to bring comparability of price and service to all communities. PEG is dialogue, not a monologue. PEG is devalued by the absence of any community at the table. To the degree that PEG represents a democratic process, the absence of any segment of our society is a critical problem the solution to which is one of the primary responsibilities of good government.

### **Municipal Communications Systems**

The Alliance hopes that the Committee will include a reasonable standard for municipal communications systems. Private investors are reasonably protected. The potential of municipal entry can be a positive market force, particularly in those areas

which, for whatever reason, have inadequate competition. It also provides an opportunity for remedy in areas where there is inadequate service or perceived lower profitability.

#### **Transition Time Needed**

At the time of enactment of the Texas franchising legislation, the local cable company was in renegotiation with San Antonio. When the existing franchise expired, Time Warner broke off negotiations, applied for and received a state-wide franchise. They announced with little warning that they would no longer provide the studio, staffing or other in-kind support for Public Access that had been required under the local franchise, but which was not required under the new state-wide franchise. This had the immediate result of diminishing the resources of the people who owned the PROW. However, its effects, unintended by the statute's authors, went much further. In the few days between the announcement of the change and its implementation by the cable company, the City was unable to acquire equipment, allocate funding and put the equipment in place. The channel went dark. The cable company then invoked fallow time provisions which allowed them to take the channel back for their own programming use. The City of San Antonio and its citizens are forced to patch together enough production resources to program the minimum number of hours required under the state franchise law just to regain the channel they had operated for years.

The law was intended to keep existing PEG resources whole. It was intended to allow those without PEG resources a reasonable process to secure them. Its very first implementation led to a loss of existing resources, both financial and channel capacity.

This Act should provide a transition mechanism to prevent unintentional loss of PEG services.

#### **State and Federal Laws**

We would like to see clear language that Federal PEG minimums supersede state and local ordinances. In this way, we can avoid a bidding war between states in which the broader public interest is traded out for higher placement on a provider's service rollout calendar. This idea harmonizes with the stated desire of Congress and Industry to simplify the patchwork of state level regulation.

#### **Conclusion**

The Alliance for Community Media recognizes the hard work that has brought us to this point. We want to see competition and innovation. We want to see greater access for our children to the tools which will do much to determine what their potentials are as human beings. We reaffirm our relationship to you, the Congress which, in great foresight, protected the public interest in this great new communications system. We reaffirm our permanent relationship the big cities and the small towns in which we live and to the governments which we, as free people, have chosen to represent our interests.

We hope that you will continue this conversation with us as we, together, design, not a television system, but a brave new world. We welcome your questions and comments.

---

PREPARED STATEMENT OF HON. CURT PRINGLE, MAYOR, CITY OF ANAHEIM

As the Mayor of the City of Anaheim, California, I respectfully submit this written testimony to the United States Senate Committee on Commerce, Science and Transportation, supporting its hearing on The Communications, Consumer's Choice and Broadband Deployment Act of 2006.

I support the spirit under which the Senate is updating the Communication Act of 1934; a reflection of the rapidly advancing technological environment in which we live today. However, I respectfully disagree with the use of franchise fees as the method with which to "facilitate" a city-wide deployment of new technology services, internet, broadband television or others. First, the use of franchise fees is an arcane method of securing city-wide service and enabling cost recovery (both by cities and technology providers) that restricts the free-flow of this dynamic marketplace. Second, the use of a franchise model diminishes the competition in the marketplace that has fostered the race to continuously advance the internet technology that we use daily. Lastly, the current and proposed franchise fees are tantamount to a flat five percent tax on income, and when passed through to the consumer, a five percent tax based on product usage.

Anaheim is a recent entrant into the discussion of how best to provide technology services on a city-wide basis. We now have two model agreements on which I base

my testimony. Our recent analysis of this issue has led the city to the following three key decision factors: (1) to best serve residents subscription rates must be kept low, lower than similar services, (2) through appropriate stewardship, leverage city assets to facilitate the wide deployment of the product (3) approach the deployment of these products utilizing a business market model that does not utilize the city's general funds or burden taxpayer resources.

In our first agreement, completed more than six months ago, the city undertook a comprehensive analysis of how best to provide city-wide WiFi Broadband Internet access. As such, the city entered into a contractual agreement with EarthLink to become the first city in the Nation to provide city-wide broadband access to our community of more than 350,000 residents. (Attachment 1)\* Current marketplace competition compels EarthLink to maintain prices at an economical level and continue technological development to satisfy customer demand. With this recent agreement as an example, I posit that an "arms length" contractual agreement accomplishes the same as a franchise agreement, ensuring cost recovery for direct impacts and preserving aesthetic approval of design and placement.

The City of Anaheim also recently entered into an agreement with AT&T to allow for the deployment of their Internet Protocol Television (IPTV) services. (Attachment 2)\* As was done with EarthLink, the AT&T agreement calls for a removal of franchise fees, preserves the City's rights-of-way controls and aesthetic requirements and fosters competition within the city for the provision of video services.

First, these agreements were accomplished via the removal of outdated barriers to competition under the franchise model. Franchise fees are a relic of the past. Originally established as a method for local governments to recoup costs associated with the utilization of city infrastructure, a mutually beneficial agreement was developed effectively granting a monopoly to those original companies. By limiting new entrants to build-out or franchise fee requirements, established companies are able to maintain *de facto* monopolies within their territories. Eliminating these monopolies is crucial to establishing market-share competition and continued technology development.

Second, many of today's arguments favor "leveling the playing field." However, what many of these organizations mean by this is in fact to charge a franchise fee to all new entrants to video service delivery. We agree that each of the video service providers should be treated equally, but we do not believe the way to do so is to impose a franchise fee, to all providers.

Lastly, while the bill expands opportunities and helps to encourage robust competition, it ratifies an income tax on companies. In this case, the fee is based on the overall revenues of the video service provider, not the cost to the local entity of providing the right of way for the cable or fiber optic wire. Unfortunately, the end consumer is the one "stuck footing the bill" as these franchise fees appear directly on consumer billing statements as a pass-through tax for the company. Furthermore, consumers will pay a higher "fee" under this bill if they consume more services even though their burden to the local entity will be exactly the same. As with any tax, the people should have a say.

I believe the true reason cities are siding with cable operators is to protect general fund revenues without having to directly purvey a tax. Cities have become highly dependent upon the franchise fee structure as a source of revenue. If a city chooses to preserve this revenue, a jurisdiction can assess a utility tax thus allowing each community to decide for itself whether or not it chooses to tax itself. The Federal Government should not remove the autonomy of local governments by making this tax decision for each and every local community.

In conclusion, in the 21st century, technology is changing on nearly a day-to-day basis. To the extent that government needs to be involved in the marketplace in order to be responsible stewards of the public interest, government leaders at all levels should be working to create a business environment that can nimbly respond to market changes that result from some new exciting technological breakthroughs. In the past, competition has been stifled in the world of video services due to government regulations. I believe that this bill helps to propel this discussion and at the same time, takes into account the many market forces that will help to make competition a reality.

I respectfully request that Congress implement reforms that allow the American consumer to benefit from increased competition in the marketplace, enjoying new delivery methods and potentially lower costs for those services. We invite the Committee to review our comments to the FCC or to visit our city and see a local community that is able to deliver quality video service without a franchise fee, giving its residents real choice in the marketplace. (Attachment 3)\*