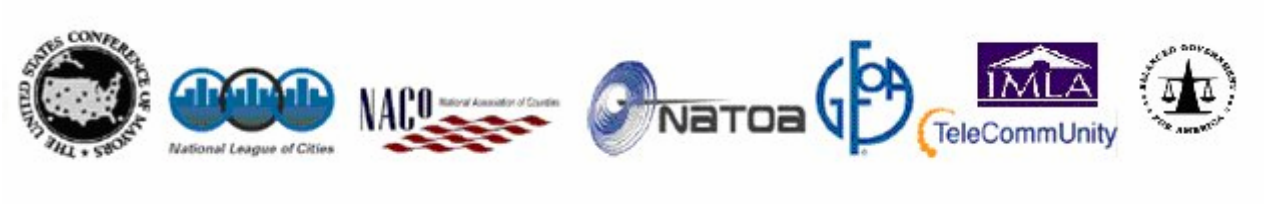

BEFORE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE, SCIENCE AND TRANSPORTATION
SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET

COMMUNICATIONS OPPORTUNITY, PROMOTION AND ENHANCEMENT ACT OF 2006

TESTIMONY

OF

THE HONORABLE KEN FELLMAN

ON BEHALF OF THE

UNITED STATES CONFERENCE OF MAYORS,

NATIONAL LEAGUE OF CITIES,

NATIONAL ASSOCIATION OF COUNTIES,

NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS,

GOVERNMENT FINANCE OFFICERS ASSOCIATION

INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION

NATIONAL CONFERENCE OF BLACK MAYORS

AND

TELECOMMUNITY

MARCH 30, 2006

WASHINGTON, D.C.

Introduction

Good morning Chairman Upton, Representative Markey and other distinguished members of this Subcommittee. My name is Ken Fellman, and I am the Mayor of the City of Arvada, Colorado. I want to thank all the members of the committee that have worked so hard to get us to this point.

I appear here today on behalf of the local governments across the nation, as represented by the United States Conference of Mayors ("USCM"), the National League of Cities ("NLC"), the National Association of Counties ("NACo"), the National Association of Telecommunications Officers and Advisors ("NATOA"), the National Conference of Black Mayors ("NCBM"), the Government Finance Officers Association ("GFOA"), the International Municipal Lawyers Association ("IMLA"), and TeleCommUnity. [1]

On behalf of local government, we would like to thank you for the opportunity to testify on this new legislation. Needless to say, the short time frame between the release of the draft and this hearing has presented some interesting challenges in reviewing the bill, but I hope I can shed some light on our continuing concerns. To begin, we believe this draft is more responsive to those issues we have raised with the Committee in the past, and stand ready to continue working with the Committee to correct what we perceive as flaws in the legislation. Having said that, we are very concerned that this new structure will lead to difficult and lengthy litigation, the will cost everyone dearly.

Hopefully I can dispel many of the untruths that have been circulated recently pertaining to local government involvement in video franchising, while responding to specifics of the bill. We would like to be your "myth-busters" for today – to cut through some of the deceptive claims and to provide you with a truthful picture of the status of cable franchising in the market today, as

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

well as how that franchising supports the desired delivery of new competitive entrants and services.

Title VI Franchising is a National Framework with an Essential Local Component

Congress struck the right balance in 1984 when it wrote Title VI into the Act, and again in 1992 when it made appropriate consumer protection improvements to it. Title VI established a light-touch national regulatory framework for cable television video services that includes appropriate local implementation and enforcement. The Act currently authorizes local governments to negotiate for a relatively limited range of obligations imposed on cable operators. Virtually none of these obligations is mandatory, and each is subject to decision-making at a local level. The current legal structure provides for something I hope we would all agree is important: *local* decisions about *local* community needs should be made *locally*. The proposed legislation retains the linkage to Title VI, which we see as appropriate, and attempts to address these local issues. However, we believe the language can be improved.

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

Local government remains concerned that rhetoric and not facts have led members of Congress to believe that competition and innovation will flourish only if local government is removed from the equation. We are here today to help you understand that nothing could be farther from the truth. Throwing away local franchising is not the solution that will bring competition or rapid

entry by competitive providers. This legislation does not solve the many questions associated with accelerated entry into the video business.

Local government has been anxiously seeking the competitive provision of video services for many years – and indeed the Communications Act has explicitly guaranteed such opportunities since 1992. Despite several previous changes in federal law to ease their entry into the video market, the telecommunications companies seeking new laws today have not brought forth the competition they promised. The reason is not local governments. The reason is not the current federal law. The reason is market place economics. The provision of video services has not yet proven to be as financially attractive as the telephone companies apparently require in order to provide the services they claim are the new lynchpin to their success. I believe that a brief review of the current law will demonstrate this trend. One of the shortcomings of the proposed legislation is an adequate definition of a threshold for competition. Is a single subscriber sufficient to trigger "cable competition"? The proposed legislation suggests that it is, and we would argue this is bad public policy. Is it reasonable for Congress to decree that locally negotiated franchises will be trumped whenever a competitor gets a national franchise only serving a small portion of the incumbent's footprint, thereby allowing the incumbent to walk away from its local franchise and take advantage of that minor competitor? Also unclear is whether or not a company offering of IPTV as a video alternative to cable is actually covered in the definition of "cable operator" in the draft. If IPTV is <u>not</u> covered by this proposed legislation, is this not a futile exercise? These are the some examples of the issues that need resolution.

Managing Public Rights-of-Way is a Core Function of Local Government

Even as technologies change, certain things remain the same. Most of the infrastructure being installed or improved for the provision of these new services resides in the public streets and sidewalks. Local leaders are the trustees of public property and must manage it for the benefit of all. We impose important public safety controls to ensure that telecommunications uses are compatible with water, gas, and electric infrastructure also in the right-of-way. Keeping track of each street and sidewalk and working to ensure that installation of new services do not cause gas leaks, electrical outages, and water main breaks are among the core police powers of local

government. And while it seems obvious, these facilities are located over, under or adjacent to property whose primary use is the efficient and safe movement of traffic. It is local government that best manages these competing interests. While citizens want better programming at lower prices, they do not want potholes in their roads, dangerous sidewalks, water main breaks, and traffic jams during rush hour as a consequence. We question whether this legislation adequately addresses constituent/citizen interests in protecting and managing the public rights-of-way. While the legislation preserves local authority, the draft fails to provide sufficient enforcement authority to assure compliance. We strongly object to the FCC being the appropriate forum for resolving local right of way disputes, and while the legislation is silent on the matter, we believe by default that task would move to the FCC. Just as with the current Act, a court of competent jurisdiction is a more appropriate forum for resolving such disputes.

Neither Franchising nor Current Regulation is a Barrier to Competition

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

Our constituents demand and deserve real competition to increase their options, lower prices and improve the quality of services. As you know, a GAO[3] study showed that in markets where there is a wire-line based competitor to cable, cable rates were, on average, 15% lower. Please understand that local governments are under plenty of pressure every day to get these agreements

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

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

in place and not just from the companies seeking to offer service. I know this Committee has heard some unflattering descriptions and anticompetitive accusations regarding the franchise process, and I would like to discuss with you the reality of that process.

Like Services Alike

We are encouraged that most of the telephone industry executives and their staff tell us that they fully support local governments' management and control of rights-of-way; that they are willing to pay the same fees as cable providers; that they are willing to provide the capacity and support for Public, Educational and Governmental ("PEG") access programming, and even that they are aware of and agree to carry emergency alert information on their systems. And yet – at least one company claims it is not subject to current law and they do not have to do these very things through local franchise agreements.

Congress must realize that local government franchising has facilitated the deployment of not only the largest provider of broadband services in this country – namely the cable industry – but that we also facilitated the entry of literally thousands of new telephone entrants immediately after the passage of the 1996 Telecommunications Act. We are well versed in the issues of deployment of new services, and have managed competitive entry for the benefit of our communities for many years. Local government supports treating like services alike.

Private Companies Using Public Land Must Pay Fair Compensation

At the same time that we manage the streets and sidewalks, local government, acting as trustees on behalf of our constituents, must ensure the community is appropriately compensated for use of the public space. In the same way that we charge rent when private companies make a profit using a public building, and the federal government auctions spectrum for the use of public airwaves, we ensure that the public's assets are not wasted by charging reasonable compensation for use of the public rights-of-way. Local government has the right and duty to require payment of just and reasonable compensation for the private use of this public property – and our ability to continue to charge rent as a landlord over our tenants must be protected and preserved. We believe the proposed legislation makes an attempt to do this, however, it may have fallen short of

the goal because even though it provides for franchise fees, it does not provide for auditing the payments or provide for enforcing payment obligations.

We are also specifically concerned about some exclusions in the definition of "gross revenues." Paragraph C excludes revenue from "information services" in defining gross revenue. Since the Brand X decision by the Supreme Court, there has been a move to define most IP-based services as an "information service." Some telephone companies have argued that IP video programming is an "information service" and not a "cable service." Is this a backdoor way to avoid paying franchise fees? Also, Paragraph (E) excludes from gross revenues "any requirements or charges for managing the public rights-of-way with respect to a franchise under this section, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages;…" We believe this goes substantially beyond reasonableness and should be stricken from the draft. It would basically allow companies to exclude from gross revenues any costs associated with protecting the public or damages incurred as a result of being a bad actor in the franchising area. Essentially this language allows a company to take credit against franchise fee obligations for any damages it may cause in a community. Are FCC penalties and fees excluded from gross revenue? The draft is not clear.

It is also unclear as to the definition of the local franchising areas for new entrants. What is their operational footprint? Who are they responsible for paying? How is that determined?

Social Obligations Remain Critical Regardless of Technological Innovation

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

Historical and Current Role of Social Obligations

I appreciate the opportunity to discuss with you the important social obligations inherent in current video regulation, and to explain why these core functions must be preserved, regardless of the technology used to provide them. These include the allocation of capacity for the provision of PEG access channels, prohibitions on economic redlining, and a basic obligation that local government evaluates, and the provider meets, the local needs of the community it serves, including public safety needs.

Public, Educational and Governmental (PEG) Access Channels

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

The proposed legislation acknowledges the importance of these video offerings and provides for PEG capacity on new entrant systems, provides for interconnection between existing PEG and

INET capacity to the new entrant and provides a mechanism to make that happen. The proposed legislation also provides for PEG financial support and for expansion of PEG capacity every ten years. These are all very well intentioned, and clearly the Committee heard most of what local governments were saying about the importance of these resources. However, the draft provides for only one percent of gross revenues to go for PEG support. In some jurisdictions, this will be sufficient. In others it may not. We would recommend that along with the one percent, those jurisdictions that have negotiated a higher figure be allowed to maintain that rate per subscriber, sufficient for maintain existing services. We also recommend that the financial support use definition be expanded to include "operations."

Economic Redlining

One of the primary interests served by local franchising is to ensure that services provided over the cable system are made available to all residential subscribers within a reasonable period of time. These franchise obligations are minimal in light of the significant economic benefits that inure to these businesses that are given the right to make private use of public property for profit. While there may be those who find certain franchise build out obligations unreasonable – we find them to be essential. The concept of "universal service" in telephone is no less important than in the case of broadband. Those who are least likely to be served, as a result of their economic status, are those whom we need most to protect. This deployment helps to ensure that our citizens – your constituents -- young and old alike, are provided the same opportunities to enjoy the benefits of cable and broadband competition – regardless of income. The capacity that broadband deployment offers to our communities is the ability of an urban or rural citizen to become enriched by distance education, and other opportunities that until recently were not available. But that will never happen if only the most fortunate of our residents, and the most affluent of our neighborhoods, are the ones who receive the enormous benefits of broadband competition. The spectre of "buildout" requirements haunts the discussion of serving the full community. Local governments have been managing this process for decades, and there is no reason to believe it cannot continue. Local officials have a responsibility to assure that the citizens of the community have access to competition. At the same time, we recognize that there needs to be sufficient flexibility on the part of the local franchising authority to address real world challenges, such as very low subscriber density, actual operational footprint of competitors

and so on. The proposed legislation does take on the challenge of opposing redlining, but once again fails to provide sufficient enforcement authority (indeed, the draft is incomplete in this area) to protect constituents. These should be local decisions with local enforcement based on local factors, not issues decided by Congress or the FCC.

Public Safety and Community Needs

Local leaders often focus on the needs of their first responders when evaluating community needs. The current law provides that local governments may require cable franchisees to provide institutional networks as part of the grant of a franchise. An institutional network is a network dedicated to the purpose of governmental and institutional communications needs. These are essentially "intra-nets" serving government facilities including police and fire stations, hospitals, schools, libraries and other government buildings. Institutional networks are typically designed to use state-of-the-art technology for data, voice, and video and allow local governments to utilize advanced communications services at minimal taxpayer expense. It has proven effective not only for day to day municipal and educational training and operations – but essential in emergencies such as September 11, 2001.[4] The proposed legislation does address Emergency Alert Systems in that it provides for local government utilization of a cable operator's emergency alerts system. The proposed legislation should make clear that new entrants can be required to provide emergency alter systems in our communities. Also in the VoIP arena, the Committee acknowledges the need for 911 and E911 capability for public safety.

Public Interest

I suggest to the Committee that these public interest obligations, noted above, continue to serve an important purpose and must be preserved, regardless of the technology that allows us to make the programming available. I hope that you would not yield to the simplistic notion that reducing public obligations on providers is always the best course. Customer service and consumer protection are examples of this concern. Should every community be required to do no more than what the FCC mandates, some citizens may not be afforded the protection they deserve. Telephone and cable companies are well versed in these arenas at the local level today. It should

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

not be a problem for them to maintain (and hopefully improve) their customer service and consumer protection. Major problems with the customer service provisions of the legislation are that its local enforcement decision to be appealed (and ultimately enforced) at the FCC. Neither consumers nor local governments can afford the expense of that kind of enforcement mechanism. Moreover, the legislation allows a local government to charge a "nominal fee" to cover the cost of issuing enforcement orders. This "nominal fee" language should be replaced with a provision to cover actual costs, including reasonable attorney fees. Local government must be able to enforce these important safeguards, and must be able to the cost of doing so.

We also believe that at renewal, providers should be subject to a public hearing to determine whether they have violated any of the four conditions for revocation, and whether they have met the customer service and consumer protection standards.

Strong Enforcement

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

Alternative to National Franchising

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

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

Furthermore, while some of the new entrants have asserted that franchise negotiations have not proceeded as fast as they would like, it is important to recognize that every negotiation must balance the interests of the public with the interests of the new entrant. Some new entrants have proposed franchise agreements that violate the current state or federal law and subject local franchise authorities to liability for unfair treatment of the incumbent cable operator vis-à-vis new providers. Some also seek waiver of police powers as a standard term of their agreement. No government can waive its police powers for the benefit of a private entity. In the same way, the federal government cannot waive the constitutional rights of its citizens. Unlike other business contracts that are confidential or proprietary, local government franchise agreements are public record documents, so a new provider knows the terms of the incumbent's agreement well before it approaches a local government about a competitive franchise.

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

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

Nothing in franchising or current federal law requires a new video entrant to deploy to an entire community immediately. Local governments have been negotiating franchise agreements with new entrants for many years. In these cases, newly built developments may have one schedule while existing areas may have a different schedule. By managing the deployment as we do, we protect the new provider's investment in infrastructure. We protect the public from unnecessary disruption of the rights-of-way, including safe use and enjoyment of the public rights-of-way.

And, we ensure that new entrants are provided with unfettered access in a reasonable and timely fashion, while ensuring that they comply with all safety requirements. This system has worked well for cable, traditional phone and other providers for many years, and is necessarily performed by the local government. Congress, when it authored Section 253 of the Act, preserved local government authority and evidenced its desire to maintain the federalist, decentralized partnership that has served our country well for 200 years. Unfortunately, this bill appears to abrogate these important principles of federalism.

The Current Framework Safeguards Against Abuse and Protects Competition

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

Local Government Helps Ensure Broadband Deployment

We all share the concern of a lack of broadband access throughout America, in urban and rural areas alike. Regardless of the locality, it is likely that communications technologies will be a driving force in the economic opportunities enjoyed by these communities that have access to advanced services. I believe that the Cable Act has provided significant benefits to consumers and communities alike, and I believe that local governments should be applauded for ensuring that those benefits are provided in a timely, fair and efficient manner to as many constituents as possible. Under the current regulatory regime, cable enjoys the highest deployment rate of

broadband in this nation, with over 105 million homes having access to cable modem service. The cable industry is now reaping the economic benefits of an infrastructure that is capable of providing broadband access to all of our citizens. It is local government's oversight and diligence, through the franchise process, that has ensured that our constituents are not deprived of these services. Local government is the only entity that can adequately monitor and ensure rapid, safe and efficient deployment of these new technologies when they are being installed on a neighborhood-by-neighborhood level in our local rights-of-way.

Changes Local Government Agrees Would Enhance the Competitive Environment

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

Application of Title VI

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

Uniform Assignment of Responsibilities Among Levels of Government

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

Streamlining of Franchise Negotiations

Title VI establishes the broad framework for those elements that may be negotiated in a local cable franchise. The provision of PEG access capacity and institutional networks is specifically protected in the current Act. Requirements in that regard should be presumptively reasonable,

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

Time Limits for Negotiations

Local governments have experienced just as much frustration as many in the industry with regard to the time consumed by franchise negotiations. While it is easy to claim that local governments are the cause for delay, let me assure you that the industry is also to blame for not always pursuing negotiations in a timely and efficient manner. Just as the industry would call upon local government to be under some time constraint for granting an agreement, so too should they be held to time frames for providing the necessary information on which a decision can be made and for responding to requests to negotiate in good faith. Otherwise, a time frame merely gives the applicant an incentive not to reach an agreement but to wait until the time frame expires. We do not believe that it is unreasonable to establish some time frames within which *all* parties should act, whether it is on an application for the grant of an initial franchise, for renewal, transfer or for grant of additional competitive franchises. But these obligations must apply to both sides and must be respectful of the principles of public notice and due process. Applicants must be required to negotiate in good faith rather than insisting on their own "form" agreement. No community should be forced to make a determination without permitting its citizens – your constituents – the opportunity to voice their opinion if that is the process that government has put into place for such matters.

Network Neutrality

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

Consumer Protection and Privacy

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

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

Conclusion

In the rush to embrace technological innovation, and to enhance the entry of new competitors into the market, it is still the responsibility of local government to ensure that the citizens of our communities are protected and public resources are preserved. We are concerned that this legislation will undermine all that has been achieved through years of thoughtful and careful

deliberation. Local control and oversight has served us well in the past and should not be tossed out simply as the "old way." This year, as the discussion of the delivery of new products and services over the new technology platforms includes not just video but new and enhanced video products and other potential services, I strongly encourage this Committee to rethink its headlong rush to judgment on this legislation. It has been available to the public for just three days. Certainly it is unnecessary to move so quickly as to ignore the substantial record of achievement evidenced by what we have shared with you today. Thank you. I look forward to answering any questions you may have.