2007 Telecommunications Symposium
Voice, Video and Broadband: The Changing Competitive Landscape and Its Impact on Consumers

Local Franchising Supports Competition

Statement of the

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And
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November 29, 2007
Washington, DC

Good morning. I am Jane Lawton, Cable Communications Administrator for Montgomery County, Maryland. Montgomery County has a million residents, over 350,000 households. We are a densely populated, suburban County, but over one-third of the County is rural, preserved for agriculture. Our Office:

- negotiates and administers cable, telecom and OVS franchises;
- monitors service quality and resolves customer complaints;
- oversees and supports 11 PEG channels; and
- coordinates the siting of wireless telecommunications facilities in the County.

In the past 12 years, my office has handled five cable franchise transfers, a franchise renewal, three competitive franchise applications and approvals, 18 telecom franchises, and approved over 1200 wireless sites for 15 providers.

I have the honor to also serve in the Maryland House of Delegates, representing my home District 18. I previously served as Mayor in the Town of Chevy Chase, where I was on the Town Council for 13 years, and before that, I was a Special Assistant for the Speaker of the U.S. House of Representatives. My career in public service and as an elected official has given me an expertise in public policy, local and state regulatory processes, economic development and, most important, consumer protection. I know cable providers and cable customers firsthand, because my role is to consider the need for provider services and the quality and equity of service access, and because when consumers have concerns, whether they are federal, state or local, it is my office that gets the calls. I have witnessed the overall impact of the cable and telephone industry's behavior on consumers individually and collectively.

In Montgomery County, we know that "triple play services" are essential – to all our residents. Through our work, we try to ensure that residents have access to the highest quality services at fair and equitable prices. We want competition, and we have competition. Without state franchising legislation and prior to any FCC actions to coerce our efforts, Montgomery County completed negotiations with three cable providers competing head to head: Comcast, RCN, and Verizon. We are at the end of the process of awarding a franchise to a fourth competitor, Cavalier Telephone. We are not a barrier to entry. [1]

I. Local Government has a Legitimate Role to Ensure Competition and Consumer Access to Quality Services

Montgomery County is pro-competition. For that reason, we are equally aggressive in exercising the full array of police powers to protect our consumers and to ensure all providers are treated fairly. Our robust regulatory environment is not a barrier to any of these competitors, who have similar franchise agreements, who all support PEG and I-Net, and who all enjoy enormous success in our market. Local governments want citizens to have access to these services, and we want competition in price and service quality. It is not accurate to suggest that local government favors the incumbent or refuses to give new entrants fair treatment. It is my position that we have been essential to the emergence and survival of competitive services.

Montgomery County is, as far we know, the first market in the country with four wireline competitors serving the same area. Our experience confirms that the state of video competition is determined by economics, not local regulation. There are other examples throughout Maryland and the country that show that local regulation has not prevented competitive success

[1] All of Montgomery County's cable franchises may be reviewed at http://www.montgomerycountymd.gov/mcgtmpl.asp?url=/content/cableoffice/cableandinternet.asp

in the marketplace. My formal statement provides the history of competitive franchising in five Maryland counties. Using these same five Maryland counties as a sample group, my formal statement provides a detailed analysis of just how different communities have addressed their local needs through negotiations while still being fully compliant with the Cable Act and providing for an environment that welcomes competition.

A. Build out obligations help ensure access to services.

Montgomery County wants all our residents to have access to these services, not just the highly affluent or those in the urban areas. (We consider access to these services to be essential for education, enrichment and economic success.) Our franchises have build out obligations, and two of our providers are meeting these obligations ahead of schedule. The only one to falter, RCN, met with economic problems caused by a downturn of investment from Wall Street, further confirming that it is economics, not local regulation, that influence the pace of deployment.

Local involvement helps to maintain and further fair and open competition. Local franchising and local governments application of local regulations with an even hand creates a competitive environment that is stable and conducive to business investment. The current efforts by state legislatures and the FCC to completely change this process are likely to slow competitive entry, not speed it. When two talented professional sports teams meet on a playing field, they can only play the game if there are rules and referees on the field as well. In 2000, when we first had competition, our new entrant believed that the incumbent was engaging in "predatory pricing" practices. They came to our office for help. It is time to recognize that eliminating local authority is a hindrance, not an encouragement, to competition.

B. Uniform Pricing is equally important

Under our present franchises, basic rates are equitable throughout the franchise area, making it difficult to engage in predatory pricing and ensuring that one area of our County is not prohibited access by pricing and does not subsidize another. Building standards and testing requirements also help ensure a quality product for consumers. Instead of serving as a barrier to entry, our franchise ensures wider access to services for all our residents and helps providers by ensuring a level playing field as a competitor enters the market.

II. Local Government has a Legitimate Role as Landlord and Manager of the Public Rights-of-way

As landlords and managers of the public rights-of-way, local governments have the responsibility to ensure that competitors use this limited resource in a safe and equitable way. Our rights-of-way are a public asset and as such, we cannot give them or their use away without fair rental payments. This valuable real estate is shared by all the essential utilities as well as individual homeowners for whom these are front and back yards. Some of our most serious and most frequent complaints involve the condition and safety of construction activities and facilities in the rights-of-way. Incumbents and competitors alike complain about intentionally cut lines, space on poles, or the impact of street cuts to build out plans. When Verizon constructed its FIOS system, our incumbent came to us to report hundreds of line cuts. These are real problems that require management and coordination. Local government involvement is necessary to support fair and equitable treatment of competitors when they construct in and occupy the public rights-of-way[2].

III. To Date, Competition has not Improved Rates, Programming or Customer Service

The wireline providers assert that competition will improve customer service, spur lower prices, produce a higher quality picture and offer a wider array of programming choices without the need for local regulation. Unfortunately, our experience to date has been that the new entrants in Montgomery County have not lowered rates[3] or improved customer service. We have seen the quality of service deteriorate, and programming choices have not changed significantly.

The FCC's 2006 Report shows that prices rose 6% (twice the rate of inflation), but our own experience is even more dramatic. In 2000, our incumbent's rate for the preferred basic tier was $36.85. Our first competitor arrived in 2000, and our second competitor arrived in 2007. Since that time, there have been no reductions, and Comcast's rate this year is $60.35, a 63.8% increase in seven years. Verizon entered the market in 2007 announcing an initial rate slightly below the incumbent's. That rate was raised even before they started providing service, and they, too, have just noticed us on a rate increase of $5.00, and 11.6% increase. This year, RCN has notified us that they are raising rates by $3.00, a 5.6% increase over last year. Customers who were attracted to highly touted "bundled services" didn't realize that these bundle discounts are for a limited time. They are reaching the end of their package deals and are startled at the enormous rate increases (my own was a 40% increase). A customer's only choice for relief is to change providers.

[2] Montgomery County's rights-of-way rules may be viewed at http://www.montgomerycountymd.gov/mcgtmpl.asp?url=/content/cableoffice/cableproviders2.asp

[3] Attached as D is an article that provides background on the recent Verizon announcement of a 7% increase in 2008, built upon an even larger increase in 2007.

As competitors enter the market, and incumbents anticipate the loss of revenue, they are cutting customer service, raising and creating new fees and changing customer policies to enhance their bottom line profits. Since competition began to impact our market, Comcast has added numerous fees: a transaction fee when customers call customer service; a "truck trip" fee of $19.95; inside wiring protection for $5 a month; guide fees, etc. Verizon just announced a truck trip fee of $79.95 whenever a repairman visits your home. If you stop service from RCN in our area, you pay $49.95 for a truck trip to pick up the converter box, or $21.95 for a mailer, or you can deliver it yourself – to another state. In order to maintain healthy profits, these providers are inventing new fees, and customers are gouged at every turn.

Because there are no federal standards for cable modem service quality, customers have no assurance that they will get the quality or reliability they expect. Previously, FCC video standards and annual testing requirements insured that cable TV customers were getting the quality service promised. Today's market has no such safeguards for cable modem service.

Another concern my Office has confronted are changes in customer service policies that deal with privacy, forced arbitration, and other issues which put customers at a disadvantage and limit their legal remedies. These policies are changed or imposed unilaterally by the provider after a service contract is signed. One example which has gained a lot of attention across the country is the privacy of personal information, now gathered and stored electronically. Several years ago Comcast changed its privacy policy in Montgomery County. Our County Attorney believes that the change does not comply with federal privacy laws, and we are on record with that admonition. Electronic "identity theft" is one of the fastest growing crimes, and consumers need assurances in this regard.

This summer Comcast announced a new "arbitration requirement" with only a negative option "opt out" for customers. When consumers attempted to opt out of the policy, the website was intermittent or not operational. We received more complaints and inquiries about this issue than any previously. These types of actions by providers are eroding consumer confidence in the whole cable industry.

IV. Local Government's Role is an Essential Protection for a Competitive Market

Against this backdrop, you can imagine how surprised and disappointed local government officials were when this Division of the Department of Justice took upon itself the unusual role to file comments with the FCC, without any public input, and to contact state legislators directly to assert that local franchising retards broadband deployment and will delay consumer protection. I ask:

- Where is the evidence that build-out resulting in consumer choice has been faster in state franchise states than in local franchise states?
- Where is the evidence that there has been any reduction in the rates paid by consumers in state franchise states? The only evidence you cite in your filings with the FCC and your letters are not DOJ studies, but rather from a 2003 study underwritten by the very industry that seeks to obtain the benefits of fast track franchising at the expense of consumers and tax payers.

I challenge this panel, and the professionals in the Anti-Trust Division, to demonstrate a single state in the nation that has a higher percentage of the population with choice in video offerings than we have in the state of Maryland, where no state franchise exists. You cannot. The states that begin to compete with Maryland are states such as Massachusetts, Delaware, Pennsylvania and New York – none have state franchising, but they do have an incumbent local exchange carrier that is committed to offering triple play services and has shown a willingness to respect and participate in the local franchising process.

The only states with state franchise regimes that might be able to compete with Maryland in percentage of consumers with choice are Virginia and New Jersey. Interestingly enough, those two states have the most aggressive build out requirements of all those states that have passed state franchising, and they have a competitive ILEC that is willing to enter the marketplace with those requirements.

Now compare those states and their results with Texas, where the local exchange carrier received permission almost two and one half years ago to provide local franchise free service, yet is still serving less than a single digit percentage of consumers. An examination of North and South Carolina, Kansas and a number of other state franchise law states reveals that more than a year after their laws went into effect, the principle proponent of state franchising in those states has yet to offer service to a single community.

And so, while you cannot document increased choice in many of the state franchise law states, I can document that consumer protection standards and fair compensation for use of public assets has suffered. The principle proponent of state franchising has not offered choice, but incumbents have abrogated their local franchises, eliminating benefits to the public without any corresponding advantages. For example:

- We have seen PEG support reduced, if not eliminated.
- We have seen local consumer protection rights established in franchises abrogated and
- We have seen local government and their public safety services jeopardized as I-Nets are being phased out or industry has demanded sharply increased payment for their use.

I am a state legislator, but I work on cable and telecommunications at the local government level. I know the nature of state legislatures, and I believe providers and consumers alike benefit the most if franchising is left to local governments. State government is not equipped to handle customer inquiries on a daily basis, and state government has no role in the management or coordination of providers in local public rights-of-ways.

The bottom line is that when you have companies that are committed to serving individual communities, communities which are eager for competition and know their community needs, negotiations go smoothly and deals get done. Neither the Federal government nor the State government should pick the winners and losers, nor should they disregard or diminish local government's legitimate role in franchising.

Consumers are beginning to depend on new telecommunications services for their daily communications needs, but without national standards and without local government's supportive role, they have little assurance that the products they choose are equitably priced, reliable, or will meet their individual needs. Consumers deserve more, not less. It is incumbent on local, state and federal governments to work together to ensure that the public has access to the same high level services, at reasonable prices, and with confidence that policies will not change to undercut their protections. The public looks to local government for assurance and consumer protection. The public and the competitive providers both benefit when local government involvement is supported at the federal level.

Thank you.

APPENDIX A

LOCAL CABLE FRANCHISING HAS PRODUCED GREAT BENEFITS IN MARYLAND.

A very brief account of key aspects of the cable franchising process in five Maryland counties (Anne Arundel County, Carroll County, Charles County, Howard County, and Montgomery County[4]) illustrates essential points about local franchising. Local franchising produces benefits for local communities. Local needs and interests differ, and effectively addressing those needs and interests requires local franchising, not a cookie-cutter template imposed from above. And local franchising has not impeded, but has actually enabled, cable competition in Maryland.

Anne Arundel County

Anne Arundel, a Maryland charter county surrounding the city of Annapolis, Maryland, is one of the few locations in the United States with a long history of head-to-head cable competition. The first franchise in the County was for the system now owned by Millennium Digital Media ("Millennium"). The original franchise was granted in 1971; it was renewed in 1990 with then-owner North Arundel CATV, Inc. A set of five other franchises originally granted to several different entities in the mid-1980s were consolidated into one system by Jones Intercable in the 1990s; that system is now owned by Comcast. The result: approximately 65% of the County's cable subscribers, located in the central part of the County, have actually had a choice of two wireline cable providers for the last fifteen to twenty years. In the northern and southern areas, there are also locations where only one cable operator, Comcast or Millennium, offers service.

The County's cable-related needs and interests have evolved over time. This was reflected, for example, in the 1990 Millennium agreement itself, which provided for a gradual increase in the franchise fee from three percent to five percent over three years (§ 3.2), and also for a gradual build-out over seven years to increasingly low-density areas of the County (§ 4.5). That agreement also provided (§§ 4.3, 5) for a system upgrade to ensure better service for County subscribers – what might today be called "accelerated deployment of advanced communications networks." Among other things, the franchise requires emergency alert capability in aid of public safety (§ 5.5); two public, educational, and governmental ("PEG") access channels, plus two more if the first two were fully utilized (§ 7.2); a capital grant of $400,000 with potential additional grants of $800,000 and $400,000 for PEG and institutional network ("I-Net") support (§§ 7.3-7.4); upstream transmission from at least six PEG origination sites (§ 7.8); cable service to specified public buildings (§ 7.1(d)); bonding and other enforcement mechanisms (§§ 3.5, 8).

One crucial benefit realized from the Millennium franchise negotiation was the founding of an institutional network. The County used part of the Millennium funding described above to build the first part of this network. The Comcast 2000 agreement, discussed below, allowed the County to extend and complete the I-Net by combining the assets it realized from the two providers. The results of this fruitful combination are described below.

[4] A description of each of the counties may be found at the end of this Appendix.

The County's changing needs over time are also reflected in the differences between the 1990 Millennium franchise and the Comcast franchise, renewed in 2000, which built on the 1990 foundations to bring cable communications up to date in the County. The Comcast agreement matches the Millennium franchise fee, which had by this time reached five percent (§ 3(b)). It also required an upgrade, since by this time the system Comcast had taken over from Jones was quite old (§§ 4-5). Comcast's density requirement for extending service is the same 15 homes per mile at which Millennium had by 2000 arrived. The Comcast franchise also requires emergency alert capability (§ 5(d)). The PEG channel count is now four, plus one special channel shown only in a particular area within the County, Heritage Harbour, that had long used this channel under a prior franchise covering only that area (§ 7(b)(1)-(2)). By 2000 PEG upstream transmission was being handled by the I-Net and no longer required dedicated facilities, so there is no separate provision for such facilities in the Comcast agreement. Cable service to specified public buildings is provided (§ 7(a)(2)).

Given ten years' inflation and the different sizes of the systems, Comcast's franchise agreement included a one-time capital grant of $5 million. As noted above, the Comcast agreement also provided for I-Net facilities to complete the County's fiber ring (§ 7(f)), although, based on ten years' additional experience with Millennium and with Comcast, the I-Net requirements were made more concrete and specific. The County paid Comcast for the I-Net fiber construction using part of the PEG capital grants. Enforcement mechanisms, too, had been improved over the preceding decade (§§ 3(g), 8).

Both Comcast and Millennium are subject to common rules regarding customer service, right-of-way management, and the like, embodied in the County Code.

These two franchises have provided County residents with PEG programming that includes extensive telecourses from Anne Arundel Community College, as well as programming from the elementary and secondary schools. The government access channel gives citizens a unique ability to see into the workings of County government and participate in the democratic process. Public access affords a public "soapbox" for citizens in the County who wish to produce and air video programming.

Moreover, the all-fiber I-Net obtained as part of the County's compensation for the cable operators' profitable use of County property allows the County government to provide new services to its residents and to serve with greater efficiency. This system connects 125 locations in the County, including public middle schools, high schools, vocational schools, fire stations, police stations, court buildings, detention centers and County office buildings. The uses of the Anne Arundel I-Net include computer network connections, video court proceedings, distance learning, Internet access, computer learning, remote systems operations, PEG program distribution, traffic control, video traffic monitoring, and video surveillance monitoring.

Anne Arundel County is currently in negotiations with Verizon to establish a third cable franchise in the interest of increased competition and greater opportunities for County residents to use advanced communications systems.

From Anne Arundel's experience it is evident that Maryland counties have for many years been prepared to entertain multiple franchisees, when multiple companies wish to enter. It is clear that the County's needs change over time, as do the technologies that meet those needs. And it is clear that the resulting relationship has benefited both the County and the cable operators.

Carroll County

Carroll County lies in northern Maryland, north of Montgomery County and west of Baltimore. It is a more rural county than Anne Arundel, but contains many residents with advanced communications needs. Moreover, communication among the cities and towns in Carroll County represents a greater challenge precisely because of their geographic separation. To date Carroll County's demographics have attracted only one cable operator.

In 2000 Carroll County renewed its franchise with what was then Prestige Communications, now a part of Adelphia (and soon to be part of Comcast). The 2000 franchise agreement provides for a five percent franchise fee (§ 7.1); use of the emergency alert system (§ 2.6); bonding and other enforcement measures (§§ 4, 12). Given the state of the system at renewal, an upgrade was not required, but the County reserved the right to require the system's capabilities to meet the state of the art during the latter half of the term (§ 9.3). The operator is required to serve to a density of twenty homes per mile (§ 5.9.2). The franchise agreement makes the operator subject to the Commission's customer service rules (§ 14.8).

Carroll County uses five access channels: two for educational purposes, one governmental, one public access, as in Anne Arundel – but because Carroll County includes a number of separately incorporated municipalities, a fifth channel is used for programming by these municipalities (§ 5.1). Up to three additional channels are available if needed (§ 5.1.2). Given the geographic dispersion of the County, the franchisee provides for a two-part I-Net: dark fiber connecting six key locations, and connectivity using cable modems to 86 other locations (§ 5.6). To support access programming and the I-Net, the cable operator provided an initial capital grant of $500,000 and funding of $300,000 to renovate PEG facilities, plus annual grants of $75,000 (adjusted for inflation) to support continuing PEG needs (§ 5.2.1). Upstream transmission from PEG origination sites is available from each of seven town halls to the PEG access center, and from there to the cable headend (§ 5.3). Cable service is provided to public buildings such as schools, libraries, police and fire stations (§ 5.8).

The 2000 franchise initiated the development of a healthy PEG program under the aegis of the County's Community Media Center, which has opened a studio for public use and programs the access channels. While it has proven difficult to ensure that the operator fully meets its I-Net obligations, at times bringing into play the enforcement mechanisms referred to above, the institutional network promises to improve communications among the County and Towns at a favorable cost.

Charles County

Charles County is a community in southern Maryland, just south of the District on the east side of the Potomac River. While the County has long been relatively rural in character, it has recently undergone considerable development, particularly in the northern part of the County.

Until relatively recently, the County did not see a need to franchise the cable operator (currently Comcast) that had been providing cable service in the County for a number of years. In light of the potential for improving service, advancing economic development, and increasing revenue, however, the County decided to require a franchise. The County's initial franchise agreement with Comcast was completed in 2002.

An upgrade was already under way at the time the Comcast franchise was granted; thus, the franchise agreement did not need to contain an upgrade requirement. However, the Charles County agreement incorporates system performance requirements including bandwidth and node size (§ 3(a)), and the potential to require an upgrade of system capabilities after the tenth year of the fifteen-year term (§ 3(c)). Comcast must extend its system to reach a density of twenty homes per mile (§ 3(b)). Four PEG channels are required (§ 4(a)(1)), plus two digital access channels for training purposes (§ 4(b)). Charles County also obtained a dark fiber I-Net connecting educational and governmental facilities throughout the County, together with data-over-cable services to other locations through Comcast's business-oriented cable modem service (§ 4(g)). PEG and the I-Net are supported by capital grants amounting to one percent of Comcast's gross revenues (§ 4(c)); in addition, Comcast provided a one-time capital grant of $250,000 toward the cost of an access studio (§ 4(d)). As in Anne Arundel's Comcast agreement, upstream carriage for PEG is handled over the I-Net. Cable service is provided to schools, libraries, County offices and agencies (§ 4(e)). Franchise fees (at five percent, § 5(a)) and PEG grants were phased in during 2003 to avoid "rate shock." Enforcement measures are provided to protect the County and its citizens against potential misbehavior by the operator (§ 6). The County Code provides for use of the Emergency Alert System, along with customer service rules, right-of-way management tools, reporting requirements, and related provisions.

Charles County's institutional network and PEG facilities have become extremely important to the County even in their relatively short life-span to date. Because of the I-Net, the County is able to dispense with slow, costly leased T-1 lines, and yet improve its communications capabilities (including VoIP and video over IP technology, remote help desk operations, HVAC management). The County can also achieve greater uniformity of instruction for its schools, since all schools can now access all services using the I-Net: every classroom has the same capability as every other, benefiting the students at every level. The centralization of servers that the I-Net makes possible allows for easier maintenance and deployment of upgrades. Additional remote sites not on the I-Net can be managed by extending the I-Net through the County's wireless data network and tower microwave network. The I-Net allowed the County to become the first Southern Maryland community to install a point of presence for the statewide Net.Work.Maryland. A host of public entities, especially public safety and emergency operations agencies, can now communicate better and faster. Specifically, the I-Net enhances the County's continuity planning and disaster recovery, since the ubiquitous network makes it possible to have government services anywhere on the I-Net when necessary.

With respect to PEG applications, existing production facilities can be leveraged to produce new programming, since material that was previously available only for internal school use can now be given wider distribution via the PEG channels. With the portable studio and the I-Net available, video programming can be originated from any I-Net site, without need for dedicated upstream connections. The digital training channels allow closed-circuit, in-service training that efficiently uses minimal bandwidth. Government access channel telecasts and emergency overrides provide the capability for faster and more informative communication with the general public regarding public safety messages and alerts, government programs, and issues addressed at public meetings.

One particularly significant lesson of Charles County's experience is that the absence of a franchise requirement until 2002 did not attract a single overbuilder. This indicates that the development of cable competition results from the perceived attractiveness of a given market or other motivations for company decisions, and not from the franchising process. Verizon, for example, has been free since 1996 to enter the market in Charles County, but has chosen not to do so.

Howard County

Like Carroll County, Howard County is a partly rural northern-tier Maryland community; but its needs and interests differ from those of its neighbor to the west. The general outline of franchise requirements in Howard County can be seen in the franchise agreement recently concluded with Verizon; the benefits bargained for by the County are similar to those of incumbent cable operator Comcast.

The Howard County-Verizon agreement contains a build-out requirement to make service available to an Initial Service Area within two years after the "Service Date" (the date on which Verizon first provides service, as distinct from the effective date of the agreement, and thus a less determinate date than one would normally expect to find in a franchise agreement), and in the remainder of the County within seven years, to a density of thirty homes per mile, with various exceptions (§ 3.1).[5] Cable service is provided to public buildings such as fire stations, schools, police stations and libraries (§ 3.3). The cable system has bandwidth requirements similar to those of contemporary incumbent systems (§ 5.1). The Emergency Alert System is made available for use by the County (§ 5.4). Like Anne Arundel, Howard County requires four PEG channels (§ 6.1). The PEG/I-Net grant, however, is merely twenty cents per month per subscriber (§ 6.2.2). Verizon expects to acquire the PEG signals by interconnection with the existing operator, so there is no requirement for upstream PEG transmission (§ 6.1.3). The franchise fee is set at five percent (§ 7). Certain customer service requirements are included in the franchise agreement (§ 8). Bonding and enforcement provisions are also included (§ 13).

[5] As a general matter, Verizon's insistence on specific ways of handling build-out, and its reluctance to make firm commitments similar to those of most cable franchises, is one of the factors that has made negotiations with Verizon slower than they otherwise would have been.

Howard County has chosen to establish relatively lower requirements for cable operators than some other Maryland counties, particularly in the area of PEG support.[6] This difference reflects the variability in local needs and interests, across communities as well as over time. Howard's case also shows that Maryland counties are ready to welcome *bona fide* competitive entrants even where multiple cable providers are not already present (as they are in Anne Arundel).

Montgomery County

Montgomery County, a technologically sophisticated suburban community bordering the District on the northwest, was served by a series of cable providers for many years without any application for competitive entry. The most recent renewal of its franchise (currently held by Comcast) occurred in 1998. Shortly afterwards, in 1999, the County concluded a franchise agreement with a second cable company, Starpower Communications, L.L.C. (now RCN). These agreements are essentially identical, except as to build-out requirements, where the County found it necessary to take into account the limitations of RCN's available capital after the collapse of the dot-com boom around the turn of the millennium.[7] Thus, the brief summary below will refer to the Comcast franchise.

The Montgomery County-Comcast agreement provided for a four-year rebuild of the then-existing system to modern standards (§ 6(d)-(k)) and the potential for further improvement if the performance and capabilities of the system fall behind the state of the art (§ 6(v)). It provides the County with access to the Emergency Alert System for public safety purposes (§ 6(q)); addresses right-of-way management issues and construction standards in detail (§ 5); generates a five percent franchise fee (§ 8(a)); and sets a density requirement of 15 homes per mile (§ 4(b)(1)). The franchise also contains requirements for non-discrimination in employment, training for employees, and procurement from minority, female, and disabled-owned businesses (§ 10). The County Code also covers customer service standards, along with right-of-way management provisions, enforcement mechanisms, and more.

Consumer protection is a major focus of cable oversight in the County. The County's cable office conducts weekly scheduled conference calls with the cable operators to discuss recurring issues and trends. The County Council also holds quarterly meetings with the cable operators to discuss customer service, construction, and other cable-related issues. In addition, the cable office frequently receives calls asking for clarification of particular issues after the subscriber has spoken with a cable company customer service representative. Such issues include, but are not limited to, the buy-through provisions of the Cable Act for premium channels. Many subscribers that contact the County's office are under the impression that a higher tier of service is needed in order to have access to premium channels. The County is in a position to explain the rules, describe what is and is not regulated, and advise the customer on

[6] In case one might be tempted to suppose that these lesser requirements caused Verizon to sign an agreement more quickly in Howard County than in other communities, it must be kept in mind that Verizon's Fairfax County agreement, with its three percent PEG grants and eighteen PEG channels, was signed before Howard's; and that, as noted above, Verizon did not seek to provide cable service in Charles County despite that jurisdiction's lack of *any* franchise requirements prior to 2002.
[7] The County accordingly amended the 1999 Starpower franchise in 2002 to adjust the build-out requirements.

what can be done, all in response to a citizen's specific question. (Obviously, no centralized office such as the Commission could take over this function nationwide.)

Customer service provisions are set forth in the franchise agreement (§ 9), as are bonding and enforcement measures (§ 14); but these specific provisions comprise only a small part of the County's program for resolving cable complaints. The cable office has one position dedicated to handling all complaints regarding the two cable providers in Montgomery County. In 2005, the County received over 2254 complaints, and filed 2161 formal complaints with the two cable operators. The County's cable office directly secured $93,871.65 in credits and refunds to current and former subscribers for complaints filed in 2005. The County believes that much of this money would not have been credited or refunded without this assistance.

The County's cable office sends out monthly surveys to complainants who have received closure letters from their cable companies. These surveys average a 33% return rate with a 96% positive feedback ratio. This serves as a check and balance for complaint issues. On average, 10% of returned surveys report that the issue has not been resolved. Those unresolved cases are than reported back to the cable provider. 98% of all returned surveys indicate the subscriber would use the County's service again should the need arise.

Montgomery County has put in place an additional procedure for complaints that remain unresolved for 30 days. These complainants may request their issue be heard before the Cable Compliance Commission. The Commission is composed of appointed County residents who volunteer their time to listen to both the complainant's issue and the cable provider's defense. The Commission has authority to award damages up to $1,000. In many cases, the cable provider will reach an agreement with the complainant prior to the day of a hearing before the Commission.

The franchise agreement provides the County with thirteen PEG channels (§ 7(a)(1)), plus a digital set-aside for PEG purposes (§ 7(a)(3)). The franchisee provides capital grants of $2 million in the first year, $1.2 million in the second year, and $200,000 per year, adjusted for inflation, thereafter (§ 7(b)(1)). Upstream transmission links to bring PEG programming to the headend are required in twelve County locations (§ 7(c), Exhibit E). The franchisee provides cable service to sites including educational institutions, nonprofit health care institutions, community centers and other municipal buildings (§ 7(g)).

Montgomery County has made extensive use of its institutional network for many years. The County government depends upon this network for crucial functions. Today's FiberNet has been built up out of assets from a number of sources, including the current Comcast franchise, a monetary settlement with a previous cable operator, and the County's own funding. The current Comcast franchise agreement provides an annual capital grant of $1.2 million for I-Net purposes, plus a grant of $1.25 million in each of the first two years to help fund I-Net electronics, plus dark fiber installed during the company's system upgrade (§ 7(h), (k)).

These networks allow the County flexibility in dealing with emergency situations, such as September 11 and the sniper incident a few years ago, as well as more mundane traffic and weather-related emergencies. The County's police and fire forces use the FiberNet for daily business and training. The courts use it for arraignments. The County's PEG channels provide coverage of local events, staff training, Council sessions, Town Hall meetings, and press conferences. They allow quick and accessible dissemination of information concerning government programs and services, Board of Education meetings, classroom support, and instructional programming. Moreover, they provide a venue in which citizens can train to produce and air their own programs. The County's thirteen PEG channels produce award-winning programs. They make possible local programming and media opportunities that are not available through other television venues.

In Montgomery County, then, the Commission may see a community that has paid close attention to the development of cable and taken steps to encourage that development. This active role has not discouraged competition. On the contrary, the County is currently served by two cable operators, and would readily agree at once to have Verizon also provide service under similar terms and conditions; dealing with Verizon's special demands and the company's institutional rigidity, however, may render such an agreement more difficult than it would be with a more flexible and reasonable provider.

Anne Arundel County: Anne Arundel County is located between Baltimore and Washington. The county is named after the wife of Cecil Calvert, the second Lord Baltimore. Its population is projected to grow from 485,800 in 2000 to 563,000 in 2030. The population of the County tripled in the decades between 1940 and 1960 from 68,375 to 206,634. The county was formed as a charter government in 1964.

Carroll County: Carroll County, with a population of 150,897, was formed in 1836 from the western part of Baltimore County and the eastern part of Frederick. Carroll County has a land area of 456 square miles and it measures about 27 miles in both width and length. Carroll County is governed by three county commissioners, the traditional form of county government in Maryland. (Carroll County voters have rejected charter amendments that would call for a government consisting of a County Executive and a County Council.)

Charles County: Charles County is a county in the south central portion of the state of Maryland. As of 2006, the population is about 135,000. Its county seat is La Plata. Charles County is a code county.

Howard County: Howard County is located in the north central part of the state of Maryland between Baltimore and Washington, DC. As of 2000, the population of the county was 247,842 and growing. The "Howard District" was formed in 1838 by the splitting of Anne Arundel County and in 1851 became an official county. Howard County was granted a charter form of government in 1968.

Montgomery County: Montgomery County is a suburban county located in the state of Maryland northwest of Washington, D.C. As of 2000, the population of the county was 873,341. Montgomery County was formed in 1776 by the splitting of Frederick County. In 1791, portions of Montgomery and Prince George's County were ceded to form the new District of Columbia. Montgomery County was granted a charter form of government in 1948.

APPENDIX B

The Franchise Benefits Needed In Each Community Depend On That Community's Individual Characteristics.

Any attempt to eliminate local cable franchising would cause communities great harm. Merely reviewing some of the general categories of franchise terms, as in the brief comments below – and this is not an exhaustive list – makes clear the range of benefits that flow to cities and counties from the franchise process. But, second, it also shows that in many of these areas, communities want different things. When they are permitted to bargain for them case by case (as a free market requires), they end up with different results. The diversity of the resulting franchises shows why it would be improper (and inefficient) to impose the iron hand of federal uniformity on the franchising process. The local franchise examples above are similar in their importance; but part of their importance lies in their differences.

1. Accelerated Deployment of Advanced Networks

Opponents of local franchising like to portray themselves as fearless[8] builders of advanced networks, and local communities as clueless Luddites standing in the way of progress. For this reason the Maryland Counties must underline a crucial fact: *Local franchising has always driven the expansion of advanced cable networks*. Local communities have not impeded the deployment of broadband. Rather, they have always pushed cable operators to commit to faster, broader deployment through franchise agreements. Most of the franchises outlined above include upgrade provisions, either as specific requirements at the start, or in the form of a right to demand state-of-the-art systems later if the operators fall behind. This shows the communities' commitment to *advanced* networks. And every franchise contains requirements that cable operators extend service to as low a density as possible. This shows the communities' commitment to extending the *deployment* of such networks. In recent years, as the services offered by cable operators have become more attractive to business customers, local franchises have also sought to ensure that business customers are served.[9] Moreover, the actual results of this local franchising initiative show that it has worked: cable networks have developed far further in the last twenty-five years than the public switched telephone network (largely unaffected by local franchising) did in the past century. If the Commission is serious about wishing to promote the deployment of advanced networks, it should welcome the involvement of local governments.

[8] The imaginary nature of this self-portrayal is evident both from the current Bells' ten-year wait (since the 1996 Act) to take any steps at all to provide broadband video, and from the remarkable array of bailout provisions and escape clauses in the typical Verizon franchise agreement. (The one Bell company that did move aggressively into cable, Ameritech, was acquired by SBC (now AT&T) – which immediately stopped the grand experiment and sold off the telco cable systems.) Indeed, the Bells' most marked characteristic in this venture appears to be fear – which is one reason that relying on these companies alone to lead the nation to the promised land of competition would be unwise.

[9] *See, e.g.*, § 4(a) of the Montgomery County-Comcast franchise agreement.

2. Customer Service

Largely ignored in the discussion of fees, PEG, I-Nets and rights-of-way has been the critical role local governments have played in providing consumer protection. While the Commission has adopted minimum customer service standards (which have not been revisited since 1992), Congress preserved the ability of a local government to set more stringent customer service standards, where necessary, and to enforce those standards along with the Commission's. 47 U.S.C. § 552.[10] Moreover, the contractual relationship of a franchise agreement, together with any ordinance-based mechanisms available in a given community, have provided the indispensable mechanisms that allow enforcement of these standards. The franchises outlined above approach these issues in different ways, depending on the problems that have arisen in each community; but each reflects the principle (well-grounded in experience) that cable operators will take advantage of customers unless they are aware of adverse consequences from doing so.

The Commission is not going to take over the job of dealing with customer complaints nationwide. It must not stand in the way of those who can.

3. Enforcement Methods

As noted specifically with respect to customer service, it is essential for local communities to have ways to ensure that cable operators honor their commitments and perform up to applicable standards (including the FCC's). Each of the franchises outlined above contains some such methods of enforcement, though these may differ depending on what kinds of problems each community has faced and what legal powers are available to it (for example, to a charter county as opposed to a commissioner county). An arrangement that deprived local communities of the power to enforce the applicable requirements would be a sham, since the requirements would be meaningless to a company that could violate them with impunity.

4. Public, Educational and Governmental Channel Capacity

The NPRM appears to assume at one point that local governments' interest in franchising is limited to right-of-way management and franchise fees.[11] The franchises outlined above make clear, however, that channel capacity and capital support for PEG channels are essential terms for a franchise.[12] A list of significant beneficiaries of the current PEG system would include

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[10] 47 U.S.C. § 552 (a) provides: "A franchising authority may establish and enforce—
(1) customer service requirements of the cable operator; and (2) construction schedules and other construction-related requirements, including construction-related performance requirements, of the cable operator."

[11] The Commission defines "the primary justification for a cable franchise" as a "locality's need to regulate and receive compensation for the use of public rights-of-way." NPRM at ¶ 22. While the Maryland Counties applaud the Commission's recognition of the importance of right-of-way management and compensation, there are also other important things involved in local cable franchising.

[12] As the Commission is no doubt aware, educational access channels are used by local educational institutions for the presentation of classes and educational information. Educational channels are also used for communications among schools, students, parents and the educational community. Government access channels present local, regional and state government information (typically produced by the local franchising authority) and include city/county council and committee meetings or hearings. Programs often highlight the governmental and public

local churches, civic groups, elder facilities, youth programs, and public safety organizations. But the number of PEG channels negotiated, and the kind of support, varies considerably, depending on the needs and interests of the individual community.

Congress specifically allocated to local franchising authorities the authority to require cable operators to provide PEG channel capacity and PEG capital support, including institutional networks. *See* 47 U.S.C. § 541(a)(2), (3) and (4).[13] The Commission has no authority to reverse this congressional mandate. Nor does the Commission have the capability to take over this function and achieve each local community's proper balance of PEG benefits.

5. Capital Grants for PEG

As the above examples show, individual communities may choose to receive greater or less PEG capital support (or none) for a variety of individual reasons: for example, because they prefer to negotiate other benefits from their contractual partners instead; because they believe that local consumers would bear the additional cost to the cable company; or because they prefer to find other sources of funding for PEG equipment and facilities. In these examples alone, PEG support amounts vary from Howard County's $0.20 per subscriber to Anne Arundel's $5 million lump-sum grant from Comcast – and even the comparison of the total amounts generated by these two approaches depends on how subscribership develops over the life of the franchise. Thus, no "one size fits all" approach is viable.

Moreover, those communities receiving capital support may obtain capital funding in different ways. Some, such as Charles County, receive payments over the life of the franchise. Others, particularly where PEG operations are just starting up, may prefer to negotiate an up-front lump sum payment to purchase the starting equipment required to make PEG programming possible (such as the specific initial grant in Charles County). Some (as in Anne Arundel County) are willing to take a lump-sum payment and deploy it over the life of a franchise. Again, no standardized approach fits all cases.

6. Upstream Transmission for PEG Programming

In addition to channel capacity and capital support, PEG programmers need a way to get their programming to the cable operator's headend so that it can be carried on the access channels. For this purpose high-capacity connections between a community's access studios or other PEG program origination sites, such as a county council or school board's chamber, and the cable operator's headend are vital to making PEG work. The variety of arrangements –

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facilities, services or activities within a particular community. Public access channels provide a forum to give voice to the public within certain guidelines established by the access channel manager.

[13] As compensation for private use of the public rights-of-way, local governments negotiate financial and in-kind compensation from cable operators that is appropriate to the individual community, which may include PEG capacity, facilities and support. As part of these negotiations, cable companies and local governments determine who will provide PEG studios, equipment and staffing. Not all cable operators provide the same number of PEG channels or the same amount or kind of support, and not all communities need the same resources of each sort. Congress affirmed this practice in the 1984 Cable Act when it stated that a franchising authority may "require adequate assurance that the cable operator will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support." (47 U.S.C. § 541). Congress has twice amended § 541, first in 1992 and again in 1996, but did not alter or limit this right.

dedicated lines versus use of a general-purpose I-Net, for example – and the variety of sites in the examples above makes clear that local franchise negotiations are necessary to meet local needs.

7. Cable Drops and Service

Another form of in-kind benefit obtained through the franchising process consists of connections (drops) and service to public, educational, and governmental facilities. Such cable connections can provide needed services to schools, police departments, and the like, and aid in the creation of an interconnected community.

8. Institutional Network (I-Net)

Local governments negotiate I-Nets as part of the compensation they receive from cable operators. Institutional networks are high-speed, typically fiber-optic, wide-area communications networks that connect government agencies, schools and similar entities. I-Nets can serve as secure and dedicated public safety networks, which are interconnected with but operationally separate from commercial cable and telephone systems. They can thus play an invaluable role in homeland security. (For example, when both the telephone network and the public Internet became unusable on September 11, 2001 due to traffic overloads, I-Nets remained operational.)

A sizable part of a cable franchise negotiation involves determination by cable companies and local governments as to who will construct and manage an I-Net and whether any compensation to the cable operator is required. The range of possible solutions is considerable. Each deal is unique. Not all cable operators have agreed to construct I-Nets, and not all communities have requested them. The Cable Act, however, recognizes local authority to require construction of I-Nets. *See* 47 U.S.C.§ 544(b) (right to require cable-related facilities and equipment), and 47 U.S.C. § 531(b) (right to require dedication of capacity on I-Nets).[14]

9. Franchise Fees

Franchise fees represent part of the compensation a community receives in exchange for a cable operator's use and occupation of public property – the public rights-of-way. Thus, a franchise fee is in the nature of rent. A community's right to charge a franchise fee stems from its basic rights over its own property. These rights do not arise from federal law, but predate the Cable Act.

While franchise fees are often used as a source of funding for a community's cable-related activities or administration of a cable franchise, there is nothing that requires franchise fees to be used for these purposes. In fact, 47 U.S.C. § 542(h)(2)(i) makes clear that no federal agency can regulate how a community chooses to use these funds. Thus, franchise fees can be contributed to a local government's general revenues, dedicated to PEG support or cable

[14] In addition, 47 U.S.C. § 541 specifically exempts I-Net requirements from the general prohibition on requiring telecommunications services in cable franchises.

oversight, or used for any other function, depending on the needs of the community – just as with any other income from the community's assets.

While the five communities discussed above currently receive franchise fees at the five percent federal cap, there are some communities that choose to receive a lower franchise fee and to obtain other franchise benefits instead.[15] This is a local option based on local needs and interests.

10. Emergency Alert Systems

Local governments may use the federally mandated Emergency Alert System (EAS). They may also use a similar but separate system – what might be called a local alert system ("LAS") – to disseminate local emergency alerts over a cable system. In each case the ability to use the cable system to spread vital emergency information can be a significant benefit to the community. Both types of solutions can be required by local governments as part of a cable franchise. But the different situations facing individual communities mean that local communities must retain the flexibility here to negotiate what they need.

11. Diverse Needs and Interests Make A Federal Cookie-Cutter System Unworkable.

The above examples illustrate some of the variety in needs and interests among communities: differences in channel capacity, PEG capital grants, upstream connections, upgrade requirements. But these brief summaries in fact understate the variety of franchise deals. There are differences in the details of many provisions that have merely been mentioned above, such as construction standards and customer service rules. These different franchise agreements reflect some of the differences among the counties involved: differences in size, in topography, in demographics, in location, in the priorities they attach to their needs and interests.

12. Franchising Enables Competitive Entry.

In the history of cable to date, "overbuilds" (construction of a second cable system where an incumbent cable operator is already in place) have been relatively rare – not because local governments do not seek competition, but because few companies have ever been willing to enter a market without assurance of a local *de facto* monopoly. (One of the most frequent questions raised by local elected officials facing a cable monopolist is, "Can we somehow bring in competition?" – and the answer is, "You can invite them, but you can't make them come.") The participating Maryland counties, however, provide a useful laboratory showing that local franchising is not only compatible with, but favorable to, competitive entry.

Two of the five communities discussed above – Anne Arundel and Montgomery Counties – already have two cable operators with overlapping service areas. But their situations (and hence the ways in which competitive entry can best be encouraged) differ considerably. Anne Arundel has had competing cable operators for years; its principal problem has been to ensure that the two competitors do not collapse into one through a buyout (as has been proposed by the companies more than once in the last fifteen years). Montgomery County granted a second

[15] Alexandria, Virginia, is one example.

franchise to RCN, which promptly needed to retrench due to a nationwide shortage of venture capital. Each would be happy to grant Verizon the same franchise terms, but is willing to work with Verizon in an attempt to accommodate that company's unique demands. Howard County, occupied by a single cable company up to now, has already reached such a solution.

It is no accident that the other participating counties, Carroll and Charles, lie further from the area's metropolitan centers and thus are less desirable markets for an overbuilder to enter. The reason they do not have second franchises is that *no one has asked for one*. There is thus no magic bullet that would immediately bring competition to these communities. A federal attempt to manipulate the franchising process will do no good whatsoever until some company is willing to build.[16] This is why the Commission's NPRM is looking in the wrong place. Local governments are not the villains of this piece. They are more than willing to play ball; but they have nothing to swing at until some prospective cable operator is willing to make a pitch.

None of these communities has ever denied a cable franchise to an overbuilder. Each of the existing overbuilders was able to obtain a franchise through the normal negotiation process. There is no reason to suppose that Verizon is unable to do what RCN or Comcast succeeded in doing – if Verizon is willing to make a reasonable deal.

The Maryland counties thus provide hard evidence that the local franchising process does not delay competitive entry. On the contrary, competitive entry has occurred, and is occurring, precisely by way of the franchising process. Local franchising can continue to achieve the benefits described above, including deployment of advanced systems – benefits which will themselves continue to change in character as technology and the marketplace (and the makeup and priorities of the counties themselves) do so. The imperative for the Commission here truly is deregulatory: Let the Commission stay out of the way of the market – here, the negotiations between local franchising authorities and users of their public rights-of-way – if it wishes to obtain the best results.

[16] As shown throughout these Comments, such a federal attempt would do no good in any case. Competitive entry will occur when competing companies decide it is profitable to enter the market, and not before.

APPENDIX C
Simple Questions, Complex Answers:

An Examination of SB5's Impact on Texans

By

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Introduction

This examination of the impact of Texas' state cable franchising law actually begins on the eastern side of the United States in North Carolina. During the summer of 2006, North Carolina joined several other states as it enacted a statewide cable television franchising process. AT&T and Verizon, along with the cable television association, asked the state to end its municipal franchising process in favor of uniform standards at the state level that allowed them to enter the cable television business faster. The industry said that these uniform standards could save North Carolinians hundreds of dollars as the price of cable television and other telecommunication services, such as high speed data, were priced more competitively.

While other states, such as Connecticut and Hawaii, have long had a statewide franchising process; Texas was the first state to pass a statewide franchising law with the idea of removing local jurisdiction over the specifics of cable provisions in favor of uniform standards and taxing. With this in mind, a natural question for North Carolina residents facing the same environment was to wonder how well SB5 was performing in Texas.

During the fall of 2006 and the spring of 2007, students enrolled in a course at Elon University in North Carolina, *Broadcasting and the Public Interest*, sought to understand what was happening in Texas. The work included:

- A review of the new franchise areas established using SB5 by Verizon and AT&T and the demographics of those locations.
- A review of the activity at the Department of Public Utilities in Texas.
- Perceptions among municipal officials as to how well the process was working.
- A review of citizen complaints being received.
- How the establishment of competitive environments impacted cable bills.
- An understanding of costs and taxation in Texas associated with the new telecommunications competition.

- A review of studies done by other groups on the impact of SB5.
- Interviews on the impact of public, education and government funding models changing. The project started with a simple question: Has SB5 created competition that resulted in lower cable costs for customers in Texas? What should be a simple yes or no response is actually quite complex and after weighing the variables addressed in this paper, one could argue the following:

SB5 has created competitive markets in more affluent, wealthier areas of Texas. These residents benefit from having choice between cable providers and the hope that a competitive environment will bring about better customer service and pricing benefits. However, none of the newly established pricing plans ultimately save these Texans more money on a monthly basis. At the same time this competitive cable scenario exists for a few communities in Texas, the passage of SB5 has resulted in every Texan paying higher taxes to bring about that competition.

The following report attempts to describe these findings in Texas a year after enacting SB5.

The Law

When Texas passed Senate Bill No. 5: An Act Relating to Furthering Competition in the Communications Industry in September 2005, it was a landmark passage and reflected a paradigmatic shift in the way in which video services oversight was provided in the United States. An analysis of the press coverage in the six months prior to the bill's passage, found the following positives and negatives were addressed by stakeholders:

The Argued Positives: The legislative and lobbying promise of the legislation were that it would: create thousands of jobs, create telecommunications competition, bring new products, and provide for better service from telecom providers and lower prices for consumers. Both industries (cable and telco) reportedly spent over $8 million dollars in lobbying money in the state of Texas engaging political advertising to garner public support for the passage of SB5.[17]

The Argued Negatives: Civic minded stakeholders and some public interest groups concerns about the legislation were that it would: raise telecom taxes due to the maintenance of the Texas Telecom Infrastructure Fund Fee, reduce revenue in some Texan cities where cable franchising provided more than a franchise fee, would fall hardest on the poorer communities and rural communities of Texas.

Six months after the bill was passed, press coverage stated the following positives: fiber to the home deployment was happening in Texas, more bundled packages were being offered in communities in the Dallas area, smaller companies were able to enter the video business faster

[17] Sherman, J. (2005, June 6) Telcos facing video obstacle. *TVWeek*. Interesting quote in this article from a Verizon employee that suggested it could take 200 years to obtain municipal franchises. Interesting in that cable has managed to engage in more than 30,000 municipal franchises that cover 99% of all US households in less than 15 years.

and that cable companies had lowered cable costs in communities where telephone companies had rolled out video services. The negatives that appeared in press coverage included problems with financial and in-kind support for public, education and government channels that was no longer required as a result of the new legislation. This was specifically in the communities of San Antonio and Houston. Other negative press coverage discussed the business models being used by the telephone companies in the roll out of video services which is only offered as a bundled package. In other words, Texans who benefit from lower cable costs are required to subscribe to telephone, high speed data (HSD) and then cable television. Newspaper coverage indicated that the bundle was a high-end product, more likely to be sold to a wealthier demographic.[18]

The First Roll-Out Areas

After passage of SB5, Verizon launched service in North Texas where the company's infrastructure had been upgraded to provide for fiber based delivery of high speed data and video services. These improvements, which create a fiber to the premise environment, are costly. Texas politicians pegged the total infrastructure improvements to be $150 million in North Texas.[19] Verizon has reported that it costs roughly $850 to pass a home with fiber to the premise and an additional $800 to bring the fiber to the home once the customers had decided to take the service. This represents an investment of roughly $1700 dollars per household.

The following chart demonstrates the level of franchising activity through November 2006; roughly one year after SB5 went into effect. Verizon had launched FiOS in 13 communities in Texas. According to census data, households in these communities:

- Earn almost twice as much in annual income as the average Texan.
- Are twice as likely to be White non-Hispanic
- Have home values that are more than double that of the average Texas home
- Have virtually non-existent poverty levels (500% lower than the State of Texas)
- Are twice as likely to have earned a college degree
- Additionally, 34% more likely to report owning their home.

These are the Texans that immediately benefited from telephone entry into the multichannel marketplace.

[18] Using the database Lexis-Nexis a review of Texas News Sources, as well as national coverage of SB5 was conducted. Stories were placed in a database and frequency of topic counted.
[19] (King, 2006). Retrieved from www.philking.com on February 24, 2007. Legislation championed by King leads to unprecedented technology investment.

Table 1: Markets with Verizon service one year after SB5 was signed into law.[20]

	Average Income in 000	% of Population that is White (Non-Hispanic)	Median Home Value in 000	% in Poverty	% with bachelors
Colleyville	117	91	267	1	56
Coppell	114	79	211	2	62
Flower Mound	105	87	184	3	53
Grapevine	82	82	157	5	43
Highland Village	120	92	189	<1	55
Keller	96	91	173	1	45
Lewisville	62	69	117	6	32
Murphy	93	74	170	2	48
Rowlett	79	77	117	3	33
Sachse	74	83	124	5	31
Southlake	151	92	341	2	59
Westlake	113	94	257	3	40
Wylie	66	85	106	3	17
Averages	98	84	186	3	44
State of Texas	**54**	**52**	**83**	**15**	**23**
Difference	82% greater than the average Texan income	62% more likely to be White than the average Texan	124% greater home value than the average Texan	500% less likely to live in poverty level than the average Texan	52% more likely to have a college degree than the average Texan

<u>The Complexity of Real Cable Costs</u>

What would appear to be a simple question, "Have cable rates dropped in the overbuilt Texas communities?"--isn't simple at all. The chart below demonstrates part of the problem. One can see that the telephone companies offer lower rates on video services; however these services are not available to customers unless they have paid for the more expensive telephone services. As a result, the bottom line suggests that there has not been an overall cost savings benefit to the customer.

[20] AT&T had technical difficulties launching its U-Verse service in the year following the passage of SB5. The first market targeted for the service was San Antonio. However, even without any volume in subscribership in San Antonio, the telco/cable issue made headlines there as San Antonio public access went dark because of issues surrounding its in-kind franchising provisions with Time Warner. This is covered in the section discussing issues with public, education and government access.

Table 2: Comparison of Rates (as of 8/1/07)

	Time Warner Cable (San Antonio)	**AT&T U-Verse (San Antonio)**	**Verizon-FiOS (North Texas)**
Package	**DigiPic 1000 Trio**	**Universe 200 w/all Distance Online Select**	**FiOS Premier Package w/Freedom**
Voice (Unlimited LD)	Digital Phone	All Distance Online Select	Freedom
# of Features	13 Features	13 Features	5 Features
Monthly Charge (includes voice mail)	$43.90	$50.00	$59.99
High Speed Data (HSD)	Road Runner High Speed Online	AT&T Yahoo Elite U-Verse Enabled	Verizon Online
Downstream Speed	7Mbps	6Mbps	5Mbps
Upstream Speed	384 Kbps	1Mbps	2Mbps
Other Features	Includes multiple email accounts, 5GB of webspace, Speed Zone Wi-Fi Access, web mail, video mail and security software	Includes wireless home network, security software and Yahoo enabled features.	Choose between Yahoo! and MSN Premium
Monthly Charge (including modem)	$34.95	$35.00	$39.99
Video	DigiPIc 1000	U-Verse 200	FiOS Premiere Package
# of Channels	~160	~190	~190
DVR Receivers	$9.95 month add'l.	1 DVR included	$12.99 per month
HDTV	Included	1 year free, then $10 per month	$9.95 per month
Monthly Charge	$55.05 (includes one digital box)	$54.00 (includes 3 boxes and 1 DVR)	$42.99 (includes one digital box)
Add Ons Available for Additional Charges	HBO The Works, Showtime, the Movie Channel, Cinemax, Starz, The Movie Service, International Channels, Sports Packages, HD Packages, Variety Service, Navigator Service	HBO The Works, Showtime, the Movie Channel, Cinemax, Starz, The Movie Service, Sports Packages, Parquet Espanol and 4th receiver.	HBO The Works, Showtime, the Movie Channel, Cinemax, Starz, The Movie Service, Sports Packages, International Channels and Spanish Language packages.
Additional set top box rentals	$5.00	---	$4.99
Taxes (8%+USF, EUCL)	$10.77	$17.30	$18.10
Total Bundle Price	**$144.67**	**$156.30**	**$166.10**

Understanding the Triple Play Customer

The triple bundle telecommunications package accounts for 17% of the traditional cable company's subscribers.[21] This is the level of customer for which the telephone companies will compete. In other words, the base of triple play customers of 17% are now afforded choice. The remaining 83% of cable subscribers will have to upgrade to a bundled package if they would like engage in telco delivered video services. As one policy analyst noted, "There is virtually no competition in Texas for the most affordable rate package."[22] This is significant considering this is where the bulk of cable subscribers reside.

Do we think there will be significant quick growth on the bundled services? The data suggests that is unlikely. The table below illustrates the cable television industry's penetration on digital cable services and bundled services. Digital cable has been available in most markets since 1998 and high speed broadband deployed shortly thereafter. Nine years since its deployment we see penetration numbers at just over 50% and growth on this product having significantly slowed. These numbers suggest that the cable subscribers interested in digital cable hovers at half. In other words, a considerable number of video services customers are not interested in enhanced services provided by digital cable, or in bundling their services with high speed data and telephone services.

Table 3: National Cable Television Association Statistics[23]

Total number of households served by cable	65,600,000 (59% penetration of HH)
Total number of digital cable subscribers	34,000,000 (52% of all cable households)
Total number of high speed data subscribers	28,900,000 (46% of all cable households)
Total number of telephone subscribers	11,000,000 (17% of all cable households)

An advocacy group, The American Consumer Institute, ran a study of some of the first telco subscribers in Texas. The study, conducted in March 2006, asked questions about the level of awareness among consumers regarding cable television competition and if they were saving money as a result of competition. Some of the charts in the study are in correct in that they only consider cable pricing and not the bundle that the customer is required to subscribe to in order to benefit from the cable discount. However, the customers articulated experience and awareness is worth noting.[24] In markets with competition, the two primary reasons for changing were better service and more package options. Cost savings was ranked third. In fact, most customers that

[21] (NCTA, 2007). Retrieved July 27, 2007. Statistics.
[22] Albanesius, C. (2006). Texas Telco Bill Worries Advocates. National Journal Group, retrieved from www.ntjtelecomupdated.com/lenya on March 12, 2007.
[23] (NCTA, 2007). Retrieved July 27, 2007. Statistics.
[24] (American Consumer Institute, 2006). Does Cable TV Competition Really Work? A survey of cable TV subscribers in Texas. March 2, 2006.

switched reported that their bills stayed the same or actually went up. It also appears dissatisfaction with the current cable provider was a key reason for switching to telco based video services. This phenomenon was specifically found in Keller, Texas. Most customers that did not switch (78% of those studied) are aware of the competition (73%) and indicate that they did not switch because there was no real cost benefit to doing so (78%). Even so, 93% reported competition was a good thing and clearly had other benefits, perhaps customer service or simply choice in mind, as they responded to that question.

Impact of Public, Education and Government Funding

SB5 allows for a uniform franchise fee of 5% and an additional 1% for the support of public, education and government channels. These funds are collected by the video service provider and then returned to the local governments. This report on cable prices mentions PEG funding because of two communities struggles and how those issues have an impact on not only cable subscribers, but all tax payers in the community.

In San Antonio, immediately following the passage of SB5, the existing cable operator, Time Warner, closed the public access studio. Time Warner was operating the studio as part of an in-kind local franchise agreement. The new legislation in Texas expressly prohibits this type of in-kind obligation. As a result of Time Warner's move to the statewide franchise it was no longer obligated to provide such services. When the doors closed on that facility, the City of San Antonio was faced with the decision of ceasing operations or attempting to provide opportunities for residents to continue to program a local public access channel. In order to continue operations an estimated $415,000 would immediately be needed. The City was in the middle of budget review and the timing made such a request difficult. The event received significant press and on the heels of SB5 demonstrated the potential of the new legislation to close down a hallmark of cable television franchising, the provision for locally created and distributed content. The City made provisions for the $415,000 by reallocating resources. Since then, the City has established a media coordinator who will work with access producers to create and program the City's access channels. Going forward, the expense of these efforts will be funded from the City's general fund and as result the expense moves to all taxpayers in the San Antonio community whether they receive cable or not. The once in-kind provision of Time Warner's franchise is now a new tax obligation on all residents.[25] This is an example of a new cost related to SB5 that one might not typically consider when trying to analyze the amount of cable saving to a video services subscribe. Any savings as a result of lower cable subscription costs, should be consider against any new taxes created as a means to support provisions once covered as part of the local cable franchise agreement. In the State of Texas this will include institutional networks once part of cable franchising agreements, cable drops in government buildings as schools, as well as PEG channel support. While this example detailed San Antonio, over 300 franchises will expire across the state in the next decade and each will have to consider how

[25] Telephone interview with San Antonio City Attorney Gabriel Garcia on March 7, 2007.

these provisions will be paid for. The City of Houston has made the news recently as it is faced with the same public access issue as they try to determine where $500,000 in public access operating expenses will come from in 2008.

Of interest is Verizon's recent move to launch its own local FiOS programming. The company announced in January that it would begin offering very local television programming on a dedicated channel. In the spring of 2007, Washington, D.C. became its first market. Time Warner and Comcast have also launched several hyper-local initiatives throughout the United States. In some ways, the content of public, education and government access channels is now in competition with these very local initiatives. Since these industry channels are subscriber fee and ad supported, it is important to consider the possibility that the industry's lack of desire to fund PEG could be market driven.

PUC and Local Municipalities

The Public Utilities Commission of Texas (PUCT) was asked about its experiences in the first year supervising SB5. Employees at the PUCT described the activity around SB5 in its offices as minimal. Since the PUCT is not responsible for oversight of the telecom companies' adherence to SB5, the PUCT primarily acts as an application process point. The PUCT does accept complaints about cable and indicated that while these have not been considerable, it is complicated in that customers are "annoyed" that no one seems to have the oversight leverage to require the requested level of service or address the service complaint.[26]

When considering the cost of SB5 and its ability to lower cable rates, one must also consider the pass through via the traditional phone bill for wireline improvements and the taxes being paid by telephone customers to provide for universal service. The State of Texas has the third highest telecom tax in the United States and the Texas Universal Service Fund provides over $600 million dollars in payments to telephone providers each year. These funds go to support infrastructure improvements that also provide the backbone for video services. In other words, while video services are currently being rolled out in wealthier communities in Texas, the infrastructure costs are being paid for by every Texan, every time they pay their phone bill. Additionally, the telcos are allowed to pass through a portion of their telephone advertising. Since video services are offered as part of a bundle, in effect when the telcos advertise telephone services, they are also advertising video services.

When considering the costs benefit of cable television competition, one should also consider the pass through of these costs in the basic telephone rate and the telecom taxes against those costs benefits. That rate has increased by 19% in recent years.[27]

[26] Personal communications with PUCT employees, February 27, 2007 and March 14, 2007.
[27] PUCT rate increases are based on a formula. Infrastructure improvements are one element of that formula.

Interviews were also conducted with several local municipalities in the North Texas region as part of this process. These included the communities of Carrollton, Grapevine, Keller, Lewisville, San Antonio, Wylie and the Texas Municipal League. Overall, most described consumer satisfaction or complaint to be relatively quiet about SB5. Two of the communities reported positive consumer reaction to the concepts of choice and lower prices. Almost all expressed concern about how once in-kind provisions of the franchises, such as institutional networks, cable wiring in city offices and schools, as well as PEG channel provisions would be met at the local level. Some communities described their public access as virtually non-existent prior to SB5, citing the Internet as a more efficient distribution system for this type of content. However, most cities did have active government access channels. The transition to carriage via the telco video service was described as relatively seamless by most, but some concerns were expressed related to ongoing funding of these channels.

Municipalities also indicated that there wasn't a clear understanding of what their role should be in customer complaints. All the communities were fielding some calls, although most described them as "light" to "minimal." However, going forward cities desire clarifications as to their role with video services customer care.

Assessment and Review Needed

Recent press noted the failure of the telecommunications competitiveness legislative oversight committee to review and report on the success of SB5 by December 31, 2006.[28] During the research for this paper that absent committee report was noted as well. If this committee had met, it would have discovered the same issues the work drafting of this report found. Several areas that need debate and consideration include:

- The oversight of customer service provisions of video services.
- An understanding of the target area for video services competition and when other communities of Texas will see deployment of telco video services.
- An understanding of the impact of the loss of in-kind provisions of the cable franchise on the local tax base and the loss of these services in general.
- The role of PUCT in video service issues.
- A review of the Texas telecommunications tax base and embedded costs in the phone bill related to infrastructure improvements and advertising for video services. Ultimately, a review of the telephone industry's accountability on funds received via tax and how PUCT regulated telephone rates is off-setting the costs of video service deployment should be addressed for consumers.

These are just a few of the issues that merit fact finding and discussion at the state level.

[28] Brass, K. (18 May 2007). Media watch: The incredible disappearing telecom committee. The Austin Chronicle, retrieved on August 9, 2007 from http://www.austinchronicle.com/gyrobase/Issue/column?oid=oid%3A475833.

What began as a simple question in an attempt to better understand the future for North Carolinians as related to state cable franchising unfolded a complicated puzzle of telecom provisions. The work to draft this report suggests that the average Texas consumer will find themselves at a disadvantage when trying to answer the simple question, "What's the best bang for my buck in telecom services in Texas?"

APPENDIX D

VERIZON PRICE HIKES

Verizon hikes prices for new subs to FiOS TV service
By Mike Robuck
CedMagazine.com - November 21, 2007

Verizon will be increasing the price of its FiOS video service to new subscribers beginning next year.

Starting Jan. 20, Verizon's FiOS Premier TV subscription rate is slated to increase by $5, to $47.99 per month for new subscribers. Last year, Verizon raised the price by almost $3, to $42.99.

According to a Verizon spokesperson, subscribers who signed up in the last two years will see their rates increased to this year's price level of $42.99, but customers who subscribed in 2007 will not see their rates change. Customers who do not have a bundle contract can lock in the 2007 FiOS TV price of $42.99 by signing up for a 12-month or 24-month bundle.

An e-mail from Verizon said the price increase was "not a cable TV-like annual rate hike," but some media outlets reported that the new price was the result of higher programming costs, and the result of having to pay for the build-out of the fiber-to-the-home (FTTH) network.

One of the reasons put forth for the granting of statewide franchises by Verizon and AT&T was that the competition between the telcos and cable operators would drive prices down for consumers, but Verizon's price hike seems to indicate that it does not want to get into a price war with MSOs.

Verizon currently sells its video service in 12 states, and the telco had 717,000 subscribers as of the end of September.

Verizon has expanded its promotions recently, including one that offers a free Sharp Aquos HDTV set for triple-play subscribers in some areas of its footprint. The company recently announced that it anticipates having 150 HD channels by the end of this year, with 60 new HD channels within the next few months.

Verizon is looking to sweeten its triple-play bundle in order to win over customers from cable operators.

At last month's TelcoTV conference, Tricia Lynch, Verizon's VP of programming acquisitions, said Verizon has 10,000 VOD titles, compared with Comcast's 9,000.

Verizon is targeting 1,000 HD VOD titles across all categories (movies, subscription and free content) by next year, and dynamic ad-insertion trials are slated for the first half of 2008, as well, with rollouts scheduled for the latter half of the year.

Lynch said Verizon's goal is to not only take the best of what cable has to offer in the VOD space, but to also exceed it. On that note, Verizon plans to launch free movies within the next few months once it completes pending deals with several major studios.

VOD is also an important component of the bundle, Lynch said, and Verizon is working on similar platforms across its linear and VOD video services, as well as its high-speed data and mobile offerings.

In other Verizon-related news, the company was granted a video franchise on Monday from the Pelham Manor, N.Y., board of trustees. Pelham Manor is located in Westchester County, and the approval by the board brings the total number of New York City-area communities that have approved video franchises for Verizon to 73.