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HOW INTERNET PROTOCOL-ENABLED SERVICES ARE CHANGING THE FACE OF COMMUNICATIONS: A LOOK AT VIDEO AND DATA SERVICES

HEARING

BEFORE THE

SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

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HOW INTERNET PROTOCOL-ENABLED SERVICES ARE CHANGING THE FACE OF COMMUNICATIONS: A LOOK AT VIDEO AND DATA SERVICES

WEDNESDAY, APRIL 20, 2005

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS
AND THE INTERNET,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 2123 of the Rayburn House Office Building, Hon. Fred Upton (chairman) presiding.

Members present: Representatives Upton, Stearns, Gillmor, Whitfield, Cubin, Shimkus, Pickering, Radanovich, Bass, Walden, Terry, Ferguson, Sullivan, Blackburn, Markey, Doyle, Gonzalez, Inslee, Boucher, Towns, Gordon, Rush, Eshoo, and Stupak.

Staff present: Howard Waltzman, chief counsel; Neil Fried, majority counsel; Will Nordwind, policy coordinator; Jaylyn Jensen, senior legislative analyst; Anh Nguyen, legislative clerk; Kevin Schweers, communications director; Jon Tripp, deputy communications director; Peter Filon, minority counsel; Johanna Shelton, minority counsel; and Turney Hall, staff assistant.

Mr. UPTON. Good morning. Today's hearing is entitled "How Internet Protocol-Enabled Services Are Changing the Face of Communications: A Look at Video and Data Services."

Video and data are the second and third legs of the three-legged IP-enabled stool. Recently, we examined Voice over IP, which is the other leg. And as we modernize our Nation's communications laws, it is my goal to ensure that all three legs of the IP-enabled stool are covered by whatever we do. Anything short of that could hamper deployment of the widest range of IP-enabled services to the American people and thwart the widest range of intermodal competition in the communications marketplace.

When video is sent in an IP format through a broadband connection, it enables the provider to send just the content that the subscriber wants at that particular time, as opposed to cable or satellite technology, which typically requires all channels to be available to each subscriber at the same time, waiting for the subscriber to change the channel. As a result, IP delivered over broadband enables a much more efficient use of a provider's capacity and thus enables that capacity to be used to offer more content and more services. In addition, when video is sent in an IP format through

a broadband connection, it enables more interactively, which, in turn, enables more customization of the subscriber's video experience. Moreover, it enables voice and data to be combined with a video offering, which many subscribers may find attractive.

At issue today is what the proper regulatory framework for IP-delivered video should be. Of particular interested to me is whether IP-delivered video services should be treated the same way as cable in terms of existing local franchise law. Shouldn't the FCC's determination that Vonage's VoIP service is uniquely interstate in nature and therefore not subject to State regulation guide our logic when we discuss local franchise authority over IP-delivered video services? Moreover, couldn't certain IP-delivered video services be so distinct from today's cable service to warrant a distinction in the law regarding local franchise authority?

I look forward to exploring these and other issues with our witnesses today. And with that, I yield to the ranking member and my friend, Mr. Markey from Massachusetts, for an opening statement.

Mr. MARKEY. I thank you, Mr. Chairman. And I thank you so much for calling this hearing this morning on the policy questions raised by the Internet Protocol-based video and data services. This morning, we will receive testimony on IP-enabled data services and video services.

Microsoft's Xbox, for example, is not only a widely popular game application for broadband networks, but also provides voice services as a feature. Policy makers will need to address what happens when IP applications combine multiple services, such as voice, with other data information for purposes of determining proper regulatory treatment.

We also need to enact strong protections ensuring the consumers are not thwarted from utilization the applications of their choice over the Internet and that innovators and entrepreneurs are not frustrated in their ability to offer innovative new services to consumers over broadband networks.

Today's hearing raises a number of important policy issues on video-related issues as well. The cable market today remains highly concentrated. Consumers continue to pay too much for cable service. An independent cable operator is almost an oxymoron, as the overwhelming majority of cable channels are either owned by major television networks or the cable operators themselves. When cable operators are questioned annually about why rates continue to rise annually, they note that they have spent large sums upgrading their networks for additional services and channels.

There is no question the cable networks have been upgraded and that they increasingly offer an array of services to customers, including much-needed voice competition. Additionally, cable operators often point to increases in programming costs as a key reason consumer rates keep rising. The programmers, in turn, often point to rising costs in the sports marketplace. Policy makers have been hoping for years that competition would arrive to ameliorate some of these unhealthy dynamics in the marketplace, but for millions of consumers, effective competition has not yet arrived.

Which brings us to the Bell Telephone utilities. As the Bells roll out IP video services, policymakers must determine whether such services represent a qualitatively distinct service of services now of-

fered for cable operators. If so, we will also need to determine whether that also means that must-carry rules, sports blackout rules, community access channels, local franchises, franchise fees, consumer privacy protections, and other obligations to which we currently hold cable operators should be ignored in whole or in part for the Bell companies.

The benefits of competitive IP-based services are manifold in terms of consumer choice and possible job creation and innovation. But we must remember that consumers can only derive the benefits of such new broadband services if they can actually afford a broadband connection and only if providers offer such services in their neighborhood in the first place. With this in mind, it is particularly troubling that SBC and Verizon have deployment plans that skip over or avoid the very communities in their service territories which could most benefit from an affordable alternative in the marketplace. It is unusual, in this context, to receive requests for forbearance from the public interest obligations the cable operator's discharge from providers whose current deployment plans arguably widen rather than bridge the digital divide, which remains in our society.

An argument that rules need to be bent or waived so that service can reach the most affluent sooner is simply not a compelling public interest case to make. I hope that these companies will reflect on their plans and needs of their own customers and recalibrate their deployment plans so that all sectors of our society are appropriately served. In the end, this is not only good telecommunications policy, it is also good economic policy for our country.

I want to thank Chairman Upton so much for this hearing, and I look forward to hearing from our witnesses.

Mr. UPTON. Mr. Whitfield?

Mr. WHITFIELD. Mr. Chairman, thank you very much.

We, I noticed, have a distinguished panel here of seven people, so I will waive my opening statement.

Mr. UPTON. Mr. Shimkus.

Mr. SHIMKUS. Pass.

Mr. UPTON. Mr. Walden.

Mr. WALDEN. Thank you, Mr. Chairman.

Since I am dressed like the chairman of the Oversight and Investigations Subcommittee, I, too, will waive.

Mr. UPTON. Mr. Ferguson.

Mr. FERGUSON. Thank you, Mr. Chairman. I have a different suit on, so I will offer an opening statement.

Thank you for holding this hearing on Internet Protocol-related services. These hearings have been a great opportunity for all members, particularly new subcommittee members, like myself, to get the full picture of the exciting new services being made available to our constituents. They have also given us guidance on how our committee should treat these services as we consider a rewrite of the communications act.

Voice over Internet Protocol has already permeated the American marketplace, providing new ways for people to communicate outside traditional telephony and wireless cell phones. IP video, the subject of today's hearing, is a new and exciting product poised to enter the marketplace and to have a major impact on the video

services industry. IP video, some already available and some in development, will fundamentally change the way we watch television and receive other video content. This new option will also directly compete with other established offerings, such as cable and satellite. With these options available to the consumer, this committee will need to consider how to ensure that a level, competitive playing field exists for all industries.

We also need to determine whether and how these new services fit into the current regulatory landscape and what it takes to get them deployed quickly with the least amount of government interference. I welcome the witnesses present here today. I look forward to hearing your varied perspectives on what Congress's role should be as we move forward in this exciting new area.

Mr. Chairman, with that, I yield back. And I thank you.

Mr. UPTON. Mr. Doyle.

Mr. DOYLE. Thank you, Mr. Chairman.

I want to thank you for holding this hearing, and I also want to thank each witness for agreeing to appear before us today.

This is our third hearing on IP-enabled services, and in the time that we have looked at this issue, I have only become more convinced that the revolutionary effect this medium will have on every aspect of communications.

It is truly an exciting time in the telecom world, exciting both for consumers who will benefit from increased choice and value, and also for companies that will use IP-enabled services to compete for new business opportunities. I have always believed that the role of this subcommittee should be to try to pass legislation that will promote and increase competition within industries in order to yield greater benefits for consumers. And it is clear to me that if we can craft and pass good legislation, one major area where consumers will see significant benefits is in the area of choice. Consumers will have multiple choices to make when determining from whom or where to purchase voice, data, and video services.

VoIP calls for a cable provider, video services through a phone company, and data services through a satellite provider are all closer than most people might think. In fact, these services are here, and they are growing in popularity. And in order for them to continue to grow in popularity, it is incumbent upon us to provide legislative clarity to both industry and consumers. It is clear to me that the speed with which IP-enabled services have changed the telecommunication industry requires that we craft legislation that places more emphasis on regulating the services companies offer as opposed to regulating the manner in which they are delivered.

Regulatory parity across platforms seems like a sensible goal for us to strive toward. Some issues that have always been the subject of regulation may have grown in importance as this technology has advanced. Because the extent that a consumer can benefit from this new IP-enabled technology is entirely dependent upon that consumer's access to broadband networks. All communities should have access to the benefits of IP-enabled services. We must do more to promote the deployment of broadband services, and we must ensure that those services are available in all of our communities, not just the most affluent ones. For this technology to truly create opportunities, it must be available to everyone.

I look forward to hearing from our witnesses today. I want to specifically welcome Mr. David L. Cohen, Executive Vice President of Comcast Corporation to the subcommittee this morning. I have had the pleasure of knowing David for many years, dating back to his Chief of Staff days to then mayor of Philadelphia and know our Governor, Ed Rendell. David's civic and charitable activities make him an asset both to Comcast and also to the State of Pennsylvania. David, welcome.

Welcome to all of the panelists.

Mr. Chairman, thank you, and I yield back.

Mr. UPTON. Mr. Sullivan.

Mr. Pickering.

Mr. PICKERING. Mr. Chairman, I just want to thank you for having this hearing, and I will waive my time.

Mr. UPTON. Mr. Terry.

Ms. Eshoo.

Mr. Gordon.

Mr. GORDON. Mr. Chairman, this is an important hearing, and I welcome the opportunity to hear from our witnesses today.

Mr. UPTON. Mr. Boucher.

Mr. BOUCHER. Well, thank you very much, Mr. Chairman. I want to compliment you for focusing the subcommittee's attention this morning on a matter of far-reaching consequence for the telecommunications marketplace.

The arrival of advanced communications over the Internet, including Video over Internet Protocol, promises a broad transformation in the market for multi-channel video programming services. Internet-based video will bring digital clarity and a wider array of service offerings to consumers.

As the private sector both welcomes and accommodates these dramatic changes, a new regulatory framework is required. That is why our colleague, Mr. Stearns, and I have introduced legislation that would treat all advanced Internet communications with a light regulatory touch. It is noteworthy that our bill would apply the new regulatory framework to IP video as well as to VoIP and other more commonly known applications that are Internet-based. Our view is that the scope of the new law should be broad and not be limited just to VoIP.

After hearing this morning from our witnesses about the dramatic new IP video services that are now on the horizon, I hope that the members of the subcommittee will agree that these services should also be within the coverage of the new, light-touch regulatory framework. Within that framework, IP services would be declared to be interstate in nature and the States would be prohibited from regulating.

At the Federal level, regulation would truly be minimal. Legacy regulations applicable to the public-switched telephone network would not apply. The FCC would be empowered only to do the following and only with regard to VoIP, which substitutes directly for regular telephone service: provide for E911 access, provide for disability access, provide for access charges where the call is terminated on the public switched telephone network, provide for Universal Service payments, and provide for technically feasible law enforcement access.

We face a number of questions, including the need for network neutrality, to prevent platform owners from discriminating in favor of their own content to the disadvantage of unaffiliated content providers, and how to address the video franchising requirements imposed by local governments.

Perhaps our witnesses this morning will address some of these matters during their comments.

Thank you very much, Mr. Chairman. I yield back.

Mr. UPTON. Mr. Stupak passes.

That concludes our opening statements. I would just make unanimous consent that all members will be able to put their opening statements in as part of the record. I would note that the House is in session, and we are taking up a very important energy bill on the House floor, so members will be in and out. Other subcommittees are meeting as well.

[Additional statement submitted for the record follows:]

PREPARED STATEMENT OF HON. JOE BARTON, CHAIRMAN, COMMITTEE ON ENERGY AND COMMERCE

Mr. Chairman, thank you for holding this hearing. Last month we examined how Internet Protocol is revolutionizing voice services. Today we examine how Internet Protocol and broadband technology is revolutionizing video services.

Many of you are probably already aware of video streaming technology. Companies such as RealNetworks have for some time been enabling consumers to watch news clips and other video content over computers using the Web and browser-type interfaces.

One advantage to delivering content in IP format and over broadband connections is that it uses capacity more efficiently. Cable and satellite operators have traditionally had to make all their channels available to each subscriber simultaneously, regardless of which channel the subscriber was watching at a particular time. Internet Protocol allows a provider to transmit only the content that a consumer is watching, freeing capacity on the network to offer more content to more consumers as well as additional services and applications. And broadband networks are increasingly providing more bandwidth, enabling the provision of new, content-rich services.

Another advantage of IP is its increased interactivity. By converting video to an IP format and adding two-way broadband connectivity, providers can tailor programming to each specific viewer, and allow the viewer to alter specific components of that programming in real time. IP also facilitates the introduction of voice and data functionality into the video product.

As we look toward modernizing the Communications Act, we will need to consider what the appropriate statutory framework should be for IP-delivered video services. Should they be governed by existing provisions in the Communications Act, such as the franchising, must-carry, and program access rules, even though those provisions were drafted without IP technology in mind? Is it even possible to apply those rules to video delivered over the geographically boundless Internet? What is the right statutory framework that will increase competition, allow innovative services to flourish, and enable all industry participants to benefit from the advantages of IP technology?

I look forward to today's testimony, and welcome our witnesses' help in examining the technological, business, and legal implications of IP-delivered video.

Today we stand on the threshold of a new age in communications. The 1996 Telecommunications Act served an important purpose, but technology has moved on. This year, one of my high priorities is to update the old act and to do it well. The right approach will invigorate the tech sector and produce jobs, growth and opportunity for its workers. American consumers will get an array of services and choices that were unimagined just a few years ago. I can't wait to get started.

I yield back.

Mr. UPTON. As all of my colleagues indicated, we do have a very distinguished panel of witnesses for today's hearing. And we are joined by Ms. Lea Ann Champion, Senior Executive Vice President of IP Operations and Services for SBC; Mr. Paul Mitchell, Senior

Director and General Manager of Microsoft TV Division; Mr. David Cohen, Executive Vice President of Comcast; Mr. Robert Ingalls, President of the Retail Markets Group for Verizon; Mr. Greg Schmidt, Vice President of New Development and General Counsel for LIN Television Corporation; Mr. James Gleason, President of New Wave Communications; and Mr. Jack Perry, President and Chief Executive Officer of Decisionmark. We appreciate you sending your testimony up yesterday, at least I got it yesterday, in advance. I would note that your testimony is made part of the record in its entirety. I understand a couple of you have video presentation in conjunction with your remarks, and we would like to think that you could keep your opening statement to no more than about 5 minutes.

Ms. Champion, we will begin with you. Welcome. You need to turn that mic button on.

STATEMENTS OF LEA ANN CHAMPION, SENIOR EXECUTIVE VICE PRESIDENT, IP OPERATIONS AND SERVICES, SBC SERVICES, INC.; PAUL MITCHELL, SENIOR DIRECTOR AND GENERAL MANAGER, MICROSOFT TV DIVISION, MICROSOFT CORPORATION; DAVID L. COHEN, EXECUTIVE VICE PRESIDENT, COMCAST CORPORATION; ROBERT E. INGALLS, JR., PRESIDENT, RETAIL MARKETS GROUP, VERIZON COMMUNICATIONS; GREGORY SCHMIDT, VICE PRESIDENT OF NEW DEVELOPMENT AND GENERAL COUNSEL, LIN TELEVISION CORPORATION, ON BEHALF OF NATIONAL ASSOCIATION OF BROADCASTERS; JAMES M. GLEASON, PRESIDENT, NEW WAVE COMMUNICATIONS, CHAIRMAN, AMERICAN CABLE ASSOCIATION; AND JACK PERRY, PRESIDENT AND CHIEF EXECUTIVE OFFICER, DECISIONMARK CORPORATION

Ms. CHAMPION. Very good. Thank you very much.

Thank you Chairman Upton and members of the committee for offering me this opportunity to speak with you today. My name is Lea Ann Champion and I am Senior Executive Vice President for IP Operations and Services at SBC Communications, Inc.

And it is a pleasure to be with you here today to talk about the seismic shifts that are reshaping the communications and entertainment industries and how SBC is building a powerful new Internet Protocol platform to meet customers'. Today, customers do want more choice. They want the ability to control their communications and entertainment experience. They want to be able to communicate, to gather information, and to enjoy entertainment when they want it, how they want it, and on what device they want it.

That is why it is important for us to invest into new technologies. It is not enough to repackage the same old stuff. We must bring a new level of integration and functionality to our customers.

We will do that by using Internet Protocol, or IP-based, services. The simple elegance of IP technology is that it allows various broadband applications to communicate and work together to enhance the capabilities of otherwise separate services. This is because, with IP, the digital bits all look the same whether they are carrying video, voice, or data, music, photos, high-speed Internet, or wireless services, no matter what the device.

Through Project Lightspeed, we plan to invest $4 billion over the next 3 years in our network, operations, customer care, and IT infrastructure. We are working with companies like Alcatel and Scientific-Atlanta, to deploy a two-way, interactive, switched IP video network and extend approximately 40,000 miles of new fiber optics. In existing neighborhoods across our 13 States, we will extend fiber to within 3,000 feet of a home on average. And in most new developments, we plan to take fiber all of the way to the premises. The initial deployment will reach more customers, 18 million households, faster than any other company with a fiber deployment plan in the United States.

Our plan is to deliver a single IP network connection providing high-quality TV viewing, super high-speed Internet access, and integrated digital voice services, a single IP address to every home for video, voice, and data.

Now let me show you some of the features that will be available in the initial or later stages of our product.

[Video.]

Customers will be able to scroll through and preview other channels in a picture-in-picture guide, without leaving the channel that they are watching, something that they can not do today with traditional cable services.

Customers will be able to enjoy the customized and personalized content of their SBC Yahoo! service on their TV screens, such as personalized sports, weather, and stock information, something they can not do today with traditional cable services.

Through IPTV technology, our whole-home DVR, digital video recorder, goes beyond what standard DVRs do today. You can record a program in one room and then watch it on any TV in the house, something that can not be done today with traditional cable services.

With IP-based picture-in-picture technology, the entertainment experience will move from passive TV viewing to an interactive one. And I would like to show you an example, courtesy of our friends at Major League Baseball and Microsoft. Today, with traditional cable services, you watch baseball like this, one game with a few stats. Here is how you will watch it with IPTV. Even the Cubs, who are ahead in the eighth inning there, five to one, Mr. Chairman. Here is how you will watch it with IPTV. With this new TV viewing capability and experience, watching sports will never be the same.

The IP-based platform will allow customers to access and program services even when they are away from home. As an example, customers will be able to use their Cingular phone to access a list of shows, watch a commercial for the show right there on their phone's screen, and then schedule to record that show. And the customer will be able to see a notification both on their Cingular phone as well as on their TV back at home that the show has been set to be recorded. This is something that customers can not do today with traditional cable services.

There are other applications in development, using our ability to deliver on-demand data, that will deliver a better TV experience.

With our IP platform, customers will have instant access to the program they select, eliminating the annoying delay experienced with today's current digital cable services.

And IPTV allows new levels of interactivity. Let us say you are watching a commercial with a cliffhanger ending. Instead of going to a website, you could just press a button for more information about what comes next. Or, if you are viewing a talk show and want to order the "book of the month" just discussed, you can order it through your television, again, something that can not be done today with traditional cable services.

In short, we are not building a cable network nor do we have any interest in being a cable company offering traditional cable services. Instead, we intend to offer customers a new, unique, total communications experience, one that they can customize and personalize to suit their family's needs and tastes. Likewise, our super high band with IP platform will offer broadcasters and programmers a more nimble and sophisticated alternative to take content to the future.

So we are building very aggressively to reach half our customers' homes in 3 years with this new IP network, but we are not stopping there. We are also creating another integrated solution to compete for customers in the video space. Through a joint venture with 2Wire, a Silicon Valley-based company, we will integrate satellite video with our high-speed Internet access service through a combination set-top box, available to the majority of our customers later this year.

The service will allow various capabilities to work together. For example, via SBC Yahoo! DSL Internet connection, Internet-based entertainment services can be downloaded and viewed. Customers will be able to use their stereo system to listen to their music that is stored on their PCs and will be able to view digital photos that have been stored on their set-top box or saved on a networked PC right on their TV screen. And as with IPTV, customers can even control their entertainment experience while they are away from home. They may remotely program their set-top box to record a show, change parental controls, download movies, access their photos and personal music collection.

With these two video initiatives, we plan to bring a new level of interactivity and integration to customers.

With Project Lightspeed, we have decided to put billions of dollars of private investment at risk. We can move forward with greater confidence due to the progress that has been made in the public policy and regulatory arena. The FCC and Congress have so far employed a light touch approach to regulating the Internet and IP-based services, and we applaud you for your forward-thinking efforts. We need to extend this minimal regulation approach applied to VoIP, only now the "V" stands for video.

SBC will be a new entrant in the video space, providing a competitive alternative to incumbent cable operators. And we intend to move quickly. Public policy should reduce any roadblocks and unnecessary rules to encourage new entry into the video services market. In particular, new entrants should not be saddled with the legacy regulation applicable today to incumbent providers. Only then

will consumers benefit from the innovation and choice that is just around the corner.

Thank you very much for the opportunity to be here today, and I would be happy to take any questions.

[The prepared statement of Lea Ann Champion follows:]

PREPARED STATEMENT OF LEA ANN CHAMPION, SENIOR EXECUTIVE VICE PRESIDENT—IP OPERATIONS AND SERVICES, SBC COMMUNICATIONS INC.

Good morning. Thank you, Chairman Upton, and Members of the Committee for offering me the opportunity to speak with you today. My name is Lea Ann Champion, Senior Executive Vice President—IP Operations and Services for SBC Communications Inc.

It is a pleasure to be here to talk about the seismic shifts that are reshaping the communications and entertainment industries and how SBC is building a powerful new Internet Protocol platform to meet customers' needs. Customers today want to have choice. They want to control their communications and entertainment experience. They want to communicate, gather information and enjoy entertainment when they want it, how they want it and on which device they want it.

That's why it is important for us to invest in new technologies. It is not enough to repackage the same old stuff. We must bring a new level of integration and functionality to our customers.

We'll do that by using Internet Protocol or IP-based services. The simple elegance of IP technology is that it allows various broadband applications to communicate and work together to enhance the capabilities of otherwise separate services. This is because, with IP, the digital bits all look the same whether they are carrying video, voice, music, photos, high-speed Internet access, or wireless services—no matter the device.

Through Project Lightspeed, we plan to invest $4 billion over the next three years in our network, operations, customer care and IT infrastructure. Working with companies such as Alcatel and Scientific-Atlanta, we will deploy a two-way, interactive, switched IP video network and extend approximately 40,000 miles of new fiber optics. In existing neighborhoods across our 13 states, we will extend fiber to within an average of 3,000 feet of the home. In most new developments, we plan to take fiber all the way to the premises. This initial deployment will reach more customers—18 million households—faster than any other company with a fiber deployment plan in the United States.

Our plan is to deliver a single IP network connection providing high-quality TV viewing, super high-speed Internet access and integrated digital voice services. Let me show you some of these new features that will be available in the initial or later stages of the product:

- Customers will be able to scroll through and preview other channels in a picture-in-picture guide—without leaving the channel they are watching.
- Customers will be able to enjoy the customized content of their SBC Yahoo! service on their TV screens, such as personalized sports, weather and stock information.
- Through IPTV technology, our whole-home DVR—digital video recorder—goes beyond what standard DVRs do today. You can record a program in one room, and watch it on any TV in the house.
- With IP-based picture-in-picture technology the entertainment experience will move from passive TV viewing to an interactive one. I'd like to show you an example, courtesy of our friends at Major League Baseball and Microsoft. Today, you watch baseball like this—one game with a few stats. Here's how you'll watch it with IPTV. With this new TV viewing experience . . . watching sports will never be the same.
- The IP-based platform will allow customers to access and program services when they are away from home. As an example, customers may use their Cingular phone to access a list of shows, watch a commercial for the show right on the phone's screen, and schedule to record it. The customer will see the notification that the program is set to record in two places: on the wireless phone and on the DVR guide at home.

There are other applications in development—using our ability to deliver on-demand data—that will deliver a better TV experience.

- With our IP platform, customers will have instant access to the program they select—eliminating the annoying delay experienced with today's current services

- And IPTV allows for new levels of interactivity. Say you're watching a commercial with a cliffhanger ending; instead of going to a Web site, you can press a button for more information about what comes next. Or, if you're viewing a talk show and want to order the "book of the month" just discussed, you can order it through your TV.

So, we're building very aggressively to reach half our customer homes in three years with this new IP network—but we're not stopping there. We are also creating another integrated solution to compete for customers in the video space. Through a joint venture with 2Wire, a Silicon Valley-based company, we will integrate satellite video with our high-speed Internet access service through a combination set-top box, available to a majority of our customers later this year.

The service will allow various capabilities to work together. For example, via SBC Yahoo! DSL, Internet-based entertainment services can be downloaded and viewed. Customers will be able to use their stereo system to listen to music stored on their PCs. And, customers will be able to view digital photos stored on the set-top box or saved on a networked PC right on their TV screens. As with IPTV, customers can even control their entertainment experience while away from home. They may remotely program their set-top box to record a show, change parental controls, download movies, and access their photos and personal music collection.

With these two video initiatives, we plan to bring a new level of interactivity and integration to consumers.

With Project Lightspeed, we have decided to put billions of dollars of private investment at risk. We can move forward with greater confidence due to the progress made in the public policy and regulatory arenas. The FCC and Congress have so far employed a light-touch approach to regulating the Internet and IP-based services, and we applaud you for these forward-thinking efforts. We need to extend this minimal regulation approach applied to VoIP—only now the "V" stands for video.

SBC will be a new entrant in the video space, providing a competitive alternative to incumbent cable operators—and we intend to move quickly. Public policy should reduce any roadblocks and unnecessary rules to encourage new entry into the video services market. In particular, new entrants should not be saddled with the legacy regulation applicable to incumbent providers. Only then will consumers benefit from the innovation and choice that is just around the corner.

Again, thank you for the opportunity to be here today. I would be happy to answer any questions you have.

Mr. UPTON. Thank you.

I made a mistake in the beginning. I did not see Mr. Gonzalez to my left. I apologize. Would you like to make—I know that this was a constituent from Texas. Did you want to say something?

Mr. GONZALEZ. No, I was going to waive opening except for the extent that I wanted to welcome the witness, Ms. Champion from SBC, which, obviously, is headquartered in the very heart of my District and of course commend all of the efforts SBC does in the community. And it is truly a model corporate citizen.

Other than that, I yield back.

Mr. UPTON. Mr. Mitchell.

STATEMENT OF PAUL MITCHELL

Mr. MITCHELL. Thank you, Mr. Chairman, Mr. Markey, and members of the subcommittee.

I am Paul Mitchell, and I am the Senior Director and General Manager for the Microsoft TV Division——

Mr. UPTON. Can you just pull the mike just a little closer to you?

Mr. MITCHELL. I am the Senior Director and General Manager for the Microsoft TV Division at Microsoft.

This hearing is important, because it asks how current Internet technologies are transforming the consumer experience and what, if any, obligations should apply.

Microsoft is not a network provider. Instead, we offer a variety of Internet products and services that ride atop of and use a broadband transport. Our products and services that make use of

the Internet and IP technologies include Windows XP and Media Center Edition, MSN, the Xbox, and Microsoft TV IPTV division.

My division, Microsoft TV, offers technology solutions to infrastructure providers, including Comcast, SBC, and Verizon. We have Microsoft TV Foundation Edition for traditional cable networks and our advanced IPTV edition products for advanced IP networks, DSL, cable, or wireless.

The emergence of IP technology is finally delivering the long-promised convergence of Internet service and products. Ten years ago, the then-Chairman of this subcommittee predicted that in the future, you will be able to watch your phone, answer your PC, and download your television. And today, these notions are a reality.

We are moving from a time when consumers looked at the Internet as a distinct medium to a world where consumers simply make calls, watch TV, and obtain information without realizing that the service is being provided in an IP format. The Xbox Live Service demonstrates how IP technology can transform the consumer experience, in this case, gaming. It allows gamers to compete with each other over the Internet and the gaming experience is enhanced by allowing them to talk to their competitors. This ancillary VoIP feature associated with an Xbox and the Xbox Live Service, does not allow for connection to the public switch network, does not use numbers, can only be used with an Xbox game console, and can not be used with a phone.

This use of Voice over Internet Protocol technology highlights the challenge that is faced by policymakers as they contemplate Internet services. VoIP implementations encompass a great range of capabilities, from a feature supported by a gaming console such as the Xbox, to a full substitute for telephone service that is connected with the public switch network.

As Congress considers how to treat VoIP services that are a substitute for a traditional phone service, it must ensure that other VoIP products or implementations are not inadvertently swept into the mix, because no one would cancel their landline phone just because they bought an Xbox and subscribed to the Xbox Live Service. The service clearly stands outside of the communications act.

As this subcommittee considers the shape of future laws, we think that a look back is constructive. In 1996, this committee wrote into the act the following statement: "It is the policy of the United States to promote the continued development of the Internet and to preserve the vibrant and competitive free market unfettered by Federal or State regulation." That policy has served the Nation well over the past 10 years, and we believe that it remains sound policy today.

Because Microsoft provides products and services and not broadband transport networks, we will not address all of the questions facing the subcommittee, but we do have some core principles for your consideration.

First, Internet services and products should remain largely unregulated. The Internet has been a remarkably successful tool for consumers and business. Congress should proceed carefully so it does not inadvertently disturb this accomplishment. You should ask whether any proposed law or regulation that burdens Internet services and products is necessary for the public good.

Second, consumers should be able to continue to use and access any site and any lawful application or device with a broadband connection. In his speech last fall, the former FCC Chairman, Michael Powell, listed four Internet freedoms: the freedom to access content, the freedom to use applications, the freedom to attach personal devices, and the freedom to obtain service plan information. And those freedoms have clearly helped shape the tremendous success of the Internet to date, and they remain of vital importance in a broadband environment.

Third, if policymakers act, they should maintain a light touch. The regulatory light touch approach of the past decade that has been embraced by Congress and the FCC triggered the explosion of new services and applications that fueled the Internet economy. In the Internet marketplace, it is exceedingly difficult for government regulations to keep pace with technology, so it is important to remember this: the unfolding world of Internet services will not neatly map to all of the existing regulations. So if legacy rules are applied indiscriminately, they will hold back innovation. Before applying existing regulatory concepts, some of which date back 70 years, to Internet services, it is important to first test whether the rule benefits the public now in a broadband world.

And finally, if regulated at all, Internet services should be subject exclusively to Federal jurisdiction. Congress should protect Internet services from conflicting and overlapping State regulation. Internet services are used in interstate commerce, they do utilize global networks, and they generally require the transmission of bids across State lines. Therefore, Congress should make certain that where subject to regulation, Internet services should fall exclusively within Federal jurisdiction.

In conclusion, let me emphasize that Microsoft is very excited about its role in bringing innovative Internet products and capabilities to consumers. And we stand ready to work with this subcommittee to ensure that any legislation accomplishes these goals.

Thank you.

[The prepared statement of Paul Mitchell follows:]

PREPARED STATEMENT OF PAUL MITCHELL, SENIOR DIRECTOR AND GENERAL MANAGER, MICROSOFT TV DIVISION, MICROSOFT CORPORATION

Mr. Chairman, Mr. Markey, and Members of the Subcommittee: My name is Paul Mitchell, and I am Senior Director and General Manager for the Microsoft TV Division at Microsoft Corporation. I am pleased to appear before the Subcommittee as it works to understand how current Internet technologies are transforming the consumer experience, and as it turns to the critical job of reviewing existing laws and rules in an effort to determine how new ones need to be written so that these new technologies can flourish and consumers can receive and enjoy new and innovative Internet services and products.

We see the emergence of broadband platforms and Internet Protocol (IP) technology as delivering—finally—the long promised convergence of Internet service and products. Ten years ago, at a hearing much like this one, the then-Chairman of this Subcommittee predicted that in the future you will be able to watch your phone, answer your PC, and download your television. These notions are no longer theory. Today, they are a reality. IP services and products today enable the delivery of voice, data, and video in new and innovative ways and represent a transition in how consumers communicate, since it allows consumers at work, at home or on the go to access content, services, and applications through a greater diversity of devices, including PCs, TVs, mobile phones, and handheld devices. We are moving from a time when consumers looked at the Internet as a distinct medium (they looked for information "on the Internet" or made "Internet calls") to a world where consumers

simply make calls, watch TV, and obtain information without realizing that the service they receive is being provided in an IP format.

We are excited about this development because Microsoft offers a variety of Internet products and services that use broadband transport connections to create new and innovative consumer experiences. In our world, Internet or IP services and products generally mean those services and products that ride atop or are connect to broadband transport networks. For example, we provide software used to run the Windows Media Center Edition PC which is available in the market today and enables consumers today to access an analog or digital broadcast video service, an analog multichannel cable video service, photos, music, Internet services, and all the other features of a PC. We are currently in talks with the cable industry to enable the Media Center Edition PC, hopefully in a short timeframe, to access digital cable and interactive services. In the future, we expect the Media Center Edition PC also to enable consumers to access IPTV services. Media Center Extenders and Portable Media Centers allow consumers to enjoy this content and these services throughout the home and on the go. MSN delivers to the computers and wireless phones and handheld devices of consumers a variety of content, including news and entertainment, as well as other services such as downloadable music and video offerings. In addition, consumers can sign up for Hotmail, a free email service, and MSN Messenger, a free instant messaging product. Microsoft Live Meeting enables a group of people in an enterprise environment or other setting to enjoy new options for real-time collaboration, to increase productivity, using Microsoft software and a broadband transport connection. Our Xbox Live Service offers another example of how IP technology can be used to improve a consumer experience, in this case gaming, by allowing gamers to compete against each other over the Internet and enhancing their gaming experience with a VoIP feature.

In addition to the products just mentioned, my group, Microsoft TV, offers technology solutions to infrastructure providers. We developed Microsoft TV Foundation Edition, currently being deployed by Comcast, which brings advanced guide functionality with digital video recording and a client applications platform to traditional cable networks. We also developed the IPTV products that SBC and Verizon are deploying, which deliver a high-quality interactive video content service to consumers. These products can be deployed over a variety of networks including a broadband telephony, cable, or wireless network. Our IPTV products will offer new interactive features for consumers, and we think consumers will find this a very compelling experience.

We may hear today about VoIP, which is the delivery of voice communication over an IP based platform. VoIP is a technology that can be used in a variety of ways and as such highlights the challenge for policy makers. VoIP encompasses a great range of capabilities—from a feature in a gaming console such as Xbox, to a computer-to-computer communication, to a full blown telephone service that is capable of interconnecting with the PSTN. Even Internet radio programs are, in some sense, VoIP services. As Congress considers the appropriate regulatory treatment for those VoIP services that consumers use or that are offered as a substitute for their traditional phone services—what I will call a VoIP Telephony service—it must ensure that other VoIP services or features are not swept inadvertently into the mix. No one sees the VoIP feature that can be used with our Xbox Live gaming service as a substitute for your landline phone. The Xbox Live VoIP feature does not use telephone numbers, cannot be used in conjunction with a phone, cannot connect to the PSTN, can only be used if you have an Xbox game console, and users are identified solely by their gamer tags and not their names. In short, the Xbox Live VoIP feature is simply too limited to be of use to consumers outside the gaming experience. Essentially, you are not going to give up your regular phone connection to the PSTN just because you have an Xbox.

The Subcommittee will hear today about tremendous innovations which result from billions of dollars of investments by Microsoft and other high tech companies as well as upgrades by the network transport providers represented here today. The investments in innovative software, devices, services, and applications are, in fact, major drivers of the tremendous investments being made in network capacity. As Congress has indicated, policy makers should avoid any action that slows, disrupts, or distorts that innovation. This suggests Congress should proceed cautiously before creating new rules and avoid expanding the scope of regulation unless and until it is demonstrably needed.

Indeed, in writing the Telecommunications Act of 1996, this Subcommittee recognized that an overarching policy goal is to preserve the vibrant Internet marketplace unfettered by unnecessary regulation, in order to encourage innovation, create jobs, and stimulate the economy. That principle, embodied in Section 230(b) of the Communications Act, is a testament to the vision of the Members of this Sub-

committee, who stated ten years ago that, "It is the policy of the United States . . . to promote the continued development of the Internet . . .; [and] to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation . . ."

We believe that this overarching policy statement has served our nation well over the past ten years, and we think that policy remains sound today. The hard questions come when Congress moves beyond this policy statement, which we think Congress should reaffirm in any new legislation, to specific provisions of existing law and how new technologies fit, or don't fit, into those legal schemes. Because Microsoft provides products and services that rely on broadband connections, but does not operate broadband transport networks, we sit in a different place than many other companies testifying today. Consequently, we do not have answers to all of the important questions facing network operators and this Subcommittee as communications networks migrate to the widespread use of IP technology. But we do come to this debate with certain core principles and want to share them with you today:

1. Internet services and products should remain largely unregulated.

Internet services, that is, those services and products that ride atop or connect to the underlying broadband transport services, should remain largely unregulated and not be subject to the Communications Act. The success of the Internet as a tool for consumers and business has been remarkable, and Congress should proceed carefully so it does not inadvertently disturb this accomplishment. The choice of content and services available over the Internet overwhelms all of us, and that stands out as a huge accomplishment of this medium. Thus, Congress should ask whether any proposed law or regulation that touches upon this tremendous variety of Internet services and products is necessary for the public good. No question that our information technology and communications networks are changing rapidly, but it is wise for this Subcommittee to pause and ask whether the evolution of technology requires an expansion of our laws into new realms.

2. Consumers should be able to access any site and use any lawful application or device with a broadband connection—just as they have been able to do in the narrowband world.

At a speech last fall, Chairman Powell stated that as we continue to promote competition among high-speed platforms, "we must preserve the freedom of use broadband consumers have come to expect." He then went on to challenge the broadband network industry to preserve what he called "Internet Freedoms." Specifically, these are:

- *Freedom to Access Content.* First, consumers should have access to their choice of legal content.
- *Freedom to Use Applications.* Second, consumers should be able to run applications of their choice.
- *Freedom to Attach Personal Devices.* Third, consumers should be permitted to attach any devices they choose to the connection in their homes.
- *Freedom to Obtain Service Plan Information.* Fourth, consumers should receive meaningful information regarding their service plans.[1]

We see these consumer freedoms as fundamental to the success of the Internet. Those freedoms, which have been at the core of the telecommunications world for the past three decades or longer, shaped the dial-up Internet world, and we firmly believe these principles should be carried forward to the broadband future.

As a Commerce Department study found, availability of value-added businesses and consumer applications at competitive prices is a key demand-side driver of broadband.[2] Preserving an environment for innovation and competition among services and devices that connect to broadband networks will, in turn, encourage further investments in these networks. Thus, we hope that everyone at this table and this Subcommittee agree that these consumer freedoms must continue to hold true for the Internet to succeed.

3. If policy makers act, they should maintain a "light touch" and act only with respect to those services that give rise to present day policy questions.

Since passage of the Telecommunications Act of 1996, the FCC and this Subcommittee have stayed the course on the principle that the Internet services should

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[1] Michael Powell, Remarks at the Voice on the Net Conference (Oct. 19, 2004) (available at http://hraunfoss.fcc.gov/edocs—public/attachmatch/DOC-253325A1.pdf).

[2] Department of Commerce, Office of Technology Policy, *Understanding Broadband Demand: A Review of Critical Issues,* at 14-17 (Sept. 22, 2003).

be unregulated or at most lightly regulated. We firmly believe that this regulatory "light touch" approach triggered the explosion of new services and applications that has fuelled the Internet economy that we have today. Rapid change and technological advancement in the IP services market mean that it is exceedingly difficult for government regulations to keep pace with technological advances in the IP marketplace. That reality counsels caution in expanding the scope of regulation or in writing overly prescriptive rules.

In order to avoid constraining the continued growth of IP services, any regulation imposed on IP services should focus on objectives, not means, and should allow implementers flexibility in how to technically meet those objectives. For example, policymakers should retain as a policy objective that consumers should be able to obtain, at retail, a variety of innovative devices for accessing IP services over a broadband connection, while allowing industry and appropriate standards bodies to develop the solutions for connectivity of such devices.

An area which this Committee may consider is how these new services may affect the existing telecommunications infrastructure and the support systems, such as universal service, that accomplish important social goals. The local telephone network is currently subsidized through massive implicit subsidies as well as explicit subsidies which involve telecommunications carriers making payments into the universal service fund. Plainly, the system that finances the universal service fund is under strain today, because it is funded by interstate telecom revenues, and demand for subsidy payments is growing at the same time that those revenues are shrinking. Thus, we encourage the Subcommittee to consider alternative means, such as assessing a universal service fee on telephone numbers if you want to fund the telephone service or assessing it based on connections if you want to fund the underlying infrastructure. In addition, the existing system for compensating telecommunications carriers that exchange traffic is deeply flawed and has been the subject of reform efforts for years. Those efforts should come to conclusion and the system should be fixed before it is applied to IP services, or else innovation will suffer.

This example illustrates an important point: Old rules will not map neatly to the unfolding world of Internet services and will hold back innovation. The transformative nature of IP services, including IP transport services, means that existing regulatory or legislative concepts, some of which have not been reconfigured in seven decades, should not be applied without first analyzing whether the legacy rule still benefits the public in the broadband world.

Regardless of the legislative approach this Committee takes, we think it is instructive to learn from the FCC's light touch in developing a policy toward the Internet over the past ten years. We also believe that the existence of certain core consumer safeguards provide key signals to all those who use the Internet—network operators, content developers, consumer equipment manufacturers, software developers, and consumers—that their investment will be protected and that their innovation may be rewarded. Any legislative drafting must be done carefully so as not to overreach, and we hope to work with the Committee to clarify the scope of any legislation.

4. Where subject to regulation, Internet services should be subject exclusively to Federal jurisdiction.

Lastly, Congress should protect IP services from conflicting and overlapping State regulation. IP services are used as an integral part of interstate commerce, they utilize interstate or global networks, and they generally require the transmission of bits across state lines. As a consequence, where subject to regulation, they should be exclusively within Federal jurisdiction. The FCC has correctly decided that VoIP is an interstate service, and that conclusion should apply to other IP services that are subjected to regulatory treatment. Accordingly, where this Committee subjects an IP service to the Communications Act, it should make clear that the IP service is subject only to Federal jurisdiction.

In conclusion, IP services are beginning to deliver to consumers a world of content and communications that will dramatically improve economic and social welfare. Investment and innovation in these services thrives in an environment in which these services are unregulated or lightly regulated, and where certain core principles regarding the freedom of use that broadband transport customers have come to expect are preserved. To the extent IP services have to be regulated, if at all, it should be done exclusively at the Federal level, and only then to the degree necessary to achieve core government interests that the marketplace cannot solve.

Mr. UPTON. Mr. Cohen.

STATEMENT OF DAVID L. COHEN

Mr. COHEN. Good morning, Mr. Chairman and members of the committee.

Mr. UPTON. You just need to move that.

Mr. COHEN. Good morning, Mr. Chairman and members of the committee. It is a pleasure to be here today.

One of the favorite stories of Comcast Chairman and CEO Brian Roberts relates to a conversation he had with Bill Gates of Microsoft in early 2002. Mr. Gates said he was more excited than ever about cable's potential to bring new services to America because of IP. The next day, when Brian returned to Philadelphia, he called in all of his engineers and said, "What is this IP that Bill was talking about?" Well, 3 years later, we all know what IP is. It is a powerful technology that is changing the world of communications. And the cable industry has embraced IP. As an industry, we have now invested nearly $100 billion since 1996 to bring an IP-enabled broadband network to nearly every doorstep in America. For Comcast, our part of that investment has been about $39 billion, and we will use that infrastructure to bring advanced digital voice service to nearly every one of the 40 million homes that we pass over the next 2 years.

Congress and the FCC are now considering how IP may change the competitive landscape and what the implications are for that for regulation. Some phone companies want to use IP to bring another competitive video choice to consumers. And we say, "Welcome." The video marketplace is already robust with competition, and now phone companies and others plan to offer even more. This additional competition warrants a comprehensive reexamination of the rules regulating cable, rules adopted in a far less competitive era.

At least one phone company is arguing, "IP video is a different technology. Exempt us from everything," which invites some fundamental questions. On what basis do we regulate? Do we make regulatory distinctions based on technology? Or should we treat like services alike?

In January of this year, my friend and your former colleague Tom Tauke of Verizon made the following comment to the Nation's mayors, and I quote: "It is not logical to treat different sectors of the communications marketplace differently based on what technology they use when they are all delivering the same service."

We think he is right. If the consumer views the video service delivered by a phone company to be essentially the same as what they get from a cable company, the law should not treat them differently based on whether they use a lot of IP, a little IP, or no IP at all. Like services should be treated alike, and everybody should play by the same rules.

As the phone companies have described their IP video ideas to date, they clearly seem to be just like cable services. The demonstration you saw here today, for those of you who were at the cable show less than a month ago, you saw very similar demonstrations, picture-in-picture, customized TV, whole-home DVRs demonstrated on Comcast cable network in the Bay area as you saw on the demonstration today. As such, those services today should be governed by the cable provisions of the communications act. And

that is not to say that they would be regulated identically to incumbent cable operators.

Title VI of the act applies lesser economic regulation to new entrants, including freedom from all price regulation. However, Title VI generally applies service non-economic rules to all competitors, including the need to obtain a local franchise and the responsibility to bring the benefits of competition to every American, rich or poor.

A cable operator may not discriminate based on the economic characteristics of a community. Every cable operator in business today, large and small, has been required to build out its systems to avoid redlining and so should all new entrants.

Now let me be clear. We do not oppose a review of Title VI. In fact, we think the level of competition today justifies elimination of many of the requirements of Title VI for all providers, and we applaud the chairman and the committee for taking up this issue.

Similarly, we supported efforts in the last Congress to establish new rules for all VoIP providers. And while VoIP services are now widely available in the marketplace, we still lack clarity about the rules that will apply. So we also this committee to complete its important work on VoIP policy as quickly as possible.

In contrast, no one is providing IP video services in any significant way today in the commercial marketplace. There is no IP video market that is being held back by current policies, and there are unique policy issues raised by IP video that do not apply to IP voice, including issues of localism and content rights management, in addition to the redlining issue I mentioned earlier. Therefore, this is a great time for Congress to comprehensively review the regulatory framework for all multi-channel video services, given the substantial growth in video competition. And if the rules are to be changed, I think it is clear that some of the rules need to be changed, then they should be changed for all providers.

Mr. Chairman, for years the phone companies have protested that the law treats their DSL service differently from the way it treats cable's high-speed Internet service. "Treat us like the cable companies," they have said. And I would note that Comcast, for one, has never objected to that position.

Now that the phone companies plan to offer video, I suggest that they should get their wish. They should be treated like the cable companies, and whatever rules apply to us should apply to them, too.

Thank you very much, and I am also looking forward to taking your questions.

[The prepared statement of David L. Cohen follows:]

PREPARED STATEMENT OF DAVID L. COHEN, EXECUTIVE VICE PRESIDENT, COMCAST CORPORATION

Good morning, Mr. Chairman and Members of the Committee.

Comcast's Chairman and CEO Brian Roberts tells the story of two conversations he had with Bill Gates of Microsoft that represented turning points for our company.

The first was in 1997, when Mr. Gates agreed to invest a billion dollars in Comcast to help jump-start our industry after a severe downturn.

The second was in early 2002, at the Consumer Electronics Show. Mr. Gates said he was more excited than ever about the potential of the cable industry to bring new services to America because of "IP." The next day, Brian returned to Philadelphia, called in his engineers and said, "What's this IP that Bill was talking about?"

Well, three years later, now we all know what IP is. It's a powerful technology that's changing the world of communications. And the cable industry has embraced IP. We have now invested nearly 100 billion dollars to bring an IP-enabled broadband network to nearly every doorstep in America. And at Comcast, we will use our IP infrastructure to provide advanced digital voice service to 40 million homes in the next two years.

Congress and the FCC are now considering how IP may change the competitive landscape, and what the implications are for regulation. Some phone companies want to use IP to bring another competitive video choice to consumers. We say, "Welcome." The video marketplace is already robustly competitive, and entry by more competitors can bring more consumer benefit. And we believe that this additional competition warrants a comprehensive reexamination of an existing regulatory framework adopted when the video marketplace was far less competitive.

But at least one phone company argues, "IP video is a different technology. Exempt us from everything." Which leads to some fundamental questions: On what basis do we regulate? Do we make regulatory distinctions based on technology? Or do we treat like services alike?

In January, my friend Tom Tauke of Verizon made the following comment to the nation's mayors: "It's not logical to treat different sectors of the communications marketplace differently based on *what technology* they use *when they're all delivering the same service.*"

We think he's right. What matters to consumers, and what should matter to this Congress, is not the technology used to provide services, but the services themselves. If the consumer views the video service delivered by a phone company to be essentially the same as what they get from a cable company, there is no basis for the law to treat them differently based on whether they use a lot of IP, a little IP or no IP. Like services should be treated alike, and everyone should play by the same rules.

Today, the law permits a phone company to offer video programming in one of four ways—as a common carrier, as a wireless provider, as an open video systems provider, or as a franchised cable operator. Based on what we understand of the business models planned by the phone companies here today, they will fall into that fourth category—they would be franchised cable operators, governed by the cable provisions (Title VI) of the Communications Act.

Title VI already contains reduced obligations for new entrants, such as freedom from price regulation, but, in general, it does not distinguish among competitors in imposing certain non-economic rules—including the need to obtain a local franchise, and the responsibility to bring the benefits of competition to every American, rich or poor.

A cable operator may not discriminate based on the economic characteristics of a community. Therefore, as a condition of granting a local franchise, a city government may insist that every neighborhood is to be served within a reasonable period of time. Every cable operator in business today lives under this rule and has built out its systems to avoid redlining. By the way, that's also how we're rolling out our IP-powered "digital voice" service as well—when we provide this service in a community, we will quickly serve the whole community. And we will offer it to every home in the franchise area, whether or not that home is currently a video or data customer.

Let me be clear. We do not oppose a review of Title VI. In fact, we think the level of competition today justifies elimination of many of the requirements of Title VI for all providers.

Mr. Chairman, we supported efforts in the last Congress to establish new rules for VoIP. That job is not yet done—and while VoIP services are now widely available in the marketplace, we are left waiting for clarity about the rules that will apply. We believe that VoIP deserves the prompt attention of this Committee. And our position on VoIP is consistent with our position on IP video: for VoIP, we support minimal economic regulation while ensuring that all VoIP providers satisfy E911, CALEA, universal service and disabilities access requirements.

By contrast, there is no one providing IP video services in any significant way today. There is not an IP video market that is being held back by current policies. Many of the issues raised by IP video have no parallel in IP voice and so have not been part of the debates over the proper framework for voice offerings. Legislating or regulating in advance of a careful consideration of these issues, such as localism, content rights management, and redlining, could inadvertently undermine important public policies. Responsibility for some of these issues has been placed at the local franchise level, and Congress and the FCC may or may not want to shift that responsibility to other levels of government.

Instead of having a debate about IP technology, we believe Congress should consider how *all* multichannel video services should be regulated in the future. Congress should consider the current state of competition and the additional competition that IP video could bring—and, if the rules are to be changed, they should be changed for all providers.

Mr. Chairman, for years the phone companies have protested the disparity between the way the law treats their DSL service and the way it treats cable's high speed Internet service. Their plea has been, "Treat us like the cable companies." And I would note that Comcast has never objected to that.

Now that the phone companies plan to offer video, we say "welcome . . . and we agree—you should be treated like cable companies, because that is what you are." And whatever rules apply to one should apply to all.

I would like to thank the Committee for the opportunity to appear here today, and I look forward to answering any questions.

Mr. UPTON. Thank you.

Mr. Ingalls.

STATEMENT OF ROBERT E. INGALLS, JR.

Mr. INGALLS. Chairman Upton, Ranking Member Markey, and members of the subcommittee, thank you for the opportunity to testify today. My name is Robert Ingalls. I am President of Retail Markets at Verizon, and I am responsible for the sales and marketing of Verizon's products and services, including broadband, to our residential and small business customers.

And I want to tell you about the exciting new broadband and video experience Verizon is ready to deliver to its consumers. We are deploying a fiber optic network called FiOS, and we have prepared a short video to introduce to you these capabilities.

I think we have a video. We have a technical glitch.

[Video.]

Thank you. So Verizon is the first broadband network to use fiber to the premises architecture. And FiOS is capable of delivering 100 megabits downstream and up to 15 megabits upstream, which will make it the fastest, most interactive network deployed anywhere in America.

FiOS gives consumers a super-fast broadband data experience. It has speed up to 30 megabits downstream and 5 megabits upstream. As we move forward, the bandwidth and upstream capacity of the fiber system will allow us to offer consumers a number of other exciting services, including FiOS TV.

FiOS TV will provide consumers with a video experience that is different from anything they have today. The tremendous capacity of the fiber system gives us all kinds of room for hundreds of digital video channels, local programming, high-definition and on-demand content. Digital video recording options will allow content to be distributed throughout the home.

What we think the consumers are really going to like about FiOS is the upstream capacity of the system that will connect them to a world of multimedia and interactive possibilities. Families will be able to quickly and easily produce, store, send, and share home videos and share pictures with friends across the country. Other interactive possibilities include 3-D gaming, video-on-demand, online shopping, real-time polling, even setting camera angles while watching sporting events.

I think you see why Verizon is so excited and why our customers are so eager for this broadband and video choice to reach the market.

We are deploying FiOS in more than 100 communities across the country right now. We have begun to introduce FiOS Data, our super-fast Internet services, with excellent results. Our plan is to pass three million homes by the end of 2005, with further expansion as fast as technology and the marketplace will allow.

We are making all of the necessary preparations for the commercial launch of FiOS TV this year. We are obtaining franchises. We are signing content deals with broadcasters and programmers, working with the software programmers on interactive features and with the hardware developers on our set-tops.

The result will be a compelling video experience for consumers and the true video choice for the marketplace.

Regulatory issues, however, are affecting how soon we will enter the video market on a wide scale.

First, current law does not serve innovation well. The law was written for a world where telecom and cable were different technologies and distinct services. In the converged world we are in today, those distinctions make less and less sense.

We need a national broadband policy that does not shoehorn new technologies into old categories. This national policy should promote broadband deployment, new technologies, and increased investments by any provider.

Second, as a local telephone company, Verizon has a franchise to deploy and operate networks. Yet we are being asked to obtain a second franchise to use those same networks to offer consumers a choice in video. We believe this redundant franchise process is unnecessary and will delay effective video competition for year unless a Federal solution is enacted soon.

Verizon is sensitive to the needs and concerns of local communities regarding such matters as franchise fees, local access, and public interest content, and we will continue to work to address them. But we believe a streamlined, national franchise process is the fastest route to a much-needed choice and competition in the video market.

The era of broadband video has arrived. Verizon is eager to deliver it to our customers. We are also excited by the opportunities with software and hardware companies, content developers, and distributors to tap the full potential of this great new technology. Together, our efforts will empower consumers, transform communities, and encourage innovation and economic growth across America for years to come.

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

[The prepared statement of Robert E. Ingalls, Jr. follows:]

PREPARED STATEMENT OF ROBERT INGALLS, JR., PRESIDENT, RETAIL MARKETS GROUP, VERIZON COMMUNICATIONS

Chairman Upton, Ranking Member Markey, and members of the subcommittee, thank you for the opportunity to testify today. My name is Robert Ingalls, President of Retail Markets at Verizon. I am responsible for sales and marketing of Verizon products, including broadband, to residential and small business customers.

I want to tell you about the exciting new broadband and video experience Verizon is ready to deliver to consumers. We are deploying a fiber optic network called FiOS, and we have prepared a short video to introduce you to its capabilities.

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What we think customers are *really* going to like about FiOS is the *upstream* capacity of the system that will connect them to a world of multi-media and interactive possibilities. Families will be able to quickly and easily produce, store, send and share home videos and share pictures with friends across the country. Other interactive possibilities include—3-D gaming, video-on-demand, online shopping, real-time polling, even setting camera angles while watching sporting events.

I think you can see why Verizon is excited and why our customers are so eager for this broadband and video choice to reach the marketplace.

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- Obtaining franchises,
- Signing content deals with broadcasters and programmers,
- Working with software programmers on interactive features, and
- Working with hardware developers on set-tops.

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

Mr. UPTON. Mr. Schmidt.

STATEMENT OF GREGORY SCHMIDT

Mr. SCHMIDT. Thank you, Mr. Chairman and members of the committee. My name is Greg Schmidt. I am LIN Television's Vice President of New Development and General Counsel. We own 24 local broadcast television stations.

Let me begin by expressing local broadcasters' enthusiasm for the possibilities being discussed today. Video-over broadband has the potential to introduce much-needed competition into the multichannel video marketplace. Doing so will provide cable subscribers, who are currently locked into a structure of subscription rates that have escalated 40 percent in just 5 years, with additional options. It will also give broadcasters additional options to distribute their local programming. In short, we welcome any technology that enhances competition to cable.

As broadcasters, we are no strangers as to how technology evolves to meet better consumer needs. Imagine for a moment if I told you about a new cutting-edge technology that would be digital, would be wireless, and would provide local news and weather in real time, and, best of all, would be free. That technology exists. We call it broadcasting. In short, local broadcasters were wireless before wireless was cool.

Some tend to forget, our industry innovated radio and then brought about television. Broadcasters proposed and then built the first digital video distribution system. We developed the tantalizing images of HDTV broadcasts. I don't have any video for you today, but I will remind you that 7 years ago this month, in this room, we brought the first local sports event in HD, an opening day game of the Texas Rangers versus Chicago White Sox, and displayed it live in this room from Arlington, Texas. Broadcasters also created the additional programming options of digital multi-casting. So as an industry, we see great potential in the development of video-over broadband.

As Congress unlocks the potential of IP video, it must, however, be careful to continue advancing its long-standing goal of preserving a free, over-the-air television system. Local television remains essential to the fabric of this country. From its beginning, Americans have turned to television and broadcasting for vital news and information. In weather emergencies, like last year's hurricanes in Florida, when cable and satellite systems were unavailable, local stations offered a lifeline of information. Viewers turn to us for coverage of local news and political programming. Our stations cover the high school sports that communities rally around. We raise billions for local charitable causes and give a voice to community organizations. In short, local television stations are integral to the communities they serve, and the people we serve, our audience, are the same people you serve. Your constituents are our viewers. With that in mind, as Congress examines the regulatory framework for Video-over broadband, it should continue to hold a robust system of local, over-the-air television as a paramount goal.

As the technology evolves, government regulation of IP video may someday in the future become completely unnecessary. For the time being, however, Congress should ensure that new entrants into the market operate under the existing ground rules that have

enhanced competition, encouraged diversity of content, and protected the intellectual property rights of content creators.

At minimum, a few key protections that currently exist should be extended into any future regulatory framework. First, Congress has long honored network affiliate stations' contractual rights to be the exclusive providers of network programming in their markets. Congress and the Commission have also recognized the importance of stations' exclusivity for syndicated programming. The local advertisements sold by a station during popular network programming, such as CSI or Alias or syndicated programming, such as Seinfeld, help fund our local programming. Congress has applied similar thinking that supports blackout rules, and these protections, too, should be extended as Congress moves forward.

Ultimately, if other video providers were permitted to offer duplicative network and syndicated programming, stations would lose audience share and advertising dollars. And these dollars fund the local programming that makes local broadcasting so valuable. It is, therefore, vital that as Video-over broadband regulatory model develops, it continue to respect network non-duplication and syndicated exclusivity.

Second, the retransmission consent and must-carry rules must continue into the digital age to ensure the continued liability of the over-the-air model. In 1992, when passing the Cable Act, Congress recognized that video services that sell advertising have a direct incentive to delete, reposition, or even refuse to carry local television broadcast stations. Congress also recognized that a vibrant over-the-air system requires access to cable households. The fundamental policies and basic facts that drove Congress to adopt must-carry and retransmission consent are as sound today as they were in 1992.

Mr. Chairman, Congress has wisely stood by these principles over the years to ensure that cities as large as New York all of the way down to communities as small as Glendive, Montana can have their own unique broadcasting voices. This committee, in particular, has repeatedly recognized the value of broadcast localism when writing the first Satellite Home Viewer Act of 1998 and reauthorizing the act in 1999. And again this year and last year, the committee made clear its strong support for localism.

Our industry stands ready to work with the committee in developing the regulatory framework that fosters additional competition to cable and satellite operators while simultaneously strengthening and sustaining America's unique system of local broadcasting.

Thank you.

[The prepared statement of Gregory Schmidt follows:]

PREPARED STATEMENT OF GREGORY SCHMIDT, VICE PRESIDENT OF NEW DEVELOPMENT AND GENERAL COUNSEL, LIN TELEVISION CORPORATION

Good morning Mr. Chairman, Ranking Member Markey, Members of the Committee. I am Gregory Schmidt, Vice President of New Development and General Counsel for LIN Television Corporation. I appear today on behalf of the National Association of Broadcasters.

Let me begin by articulating how enthusiastic local television broadcasters are about the possibilities being discussed in this hearing today. We are excited about new and innovative Internet services such as video over broadband. Broadcasters, like many others, see great promise in what this new platform has to offer. Video over broadband has the potential to introduce much needed competition into the

multi-channel programming distribution marketplace. We see this as a positive development for consumers and broadcasters.

As we embrace new technologies, however, it is vital that the policies you adopt continue to recognize the importance of maintaining a robust system of local, over-the-air television. Competition may eventually lead to deregulation of all video media, but until it does, existing policies designed to promote competition, diversity and intellectual property rights must extend to all multi-channel platforms. Thus, I encourage you to explore important questions such as: How will policies designed to protect and promote public access to important local information be realized for this new service? How will local rights to content such as sports, network and syndicated programming be protected? These are questions that you asked and answered as cable and satellite technology developed. They are once again questions to be asked as you address public policy issues related to this new service. And they should be asked in two contexts. First, how will these policies affect content providers such as broadcasters, and second how will they affect competition among context distributors such as cable satellite, and now potentially new distribution technologies.

LOCAL TELEVISION

The American television system is an integral part of the fabric of this country. Television is not just an entertainment medium. From its very beginning, Americans have turned to television and over-the-air broadcasting for vital news and information. Indeed, often in the case of weather emergencies, when the multi-channel systems such as cable and satellite are unavailable, over-the-air broadcasting is the only way to get life-saving information to the public. Thus, it is not surprising that Congress, the courts and the Federal Communications Commission ("FCC") have consistently recognized that public access to a healthy, free-over-the-air broadcast system is an important federal interest.

Our country has made a substantial investment in free, local over-the-air service. Unlike many other countries that offer only national television channels, the United States has succeeded in creating a rich and varied mix of *local* television outlets through which more than 200 communities can have their own local voices. But over-the-air local TV stations—particularly those in smaller markets—can survive only by generating advertising revenue based on local viewership. If new technologies can override program exclusivity rights of local stations by offering the same programs on stations imported from other markets, or effectively block their subscribers access to local signals, the viability of local TV stations—and their ability to serve their communities with the highest-quality programming—is put at risk.

To preserve this public access to free-over-the air television, policy-makers must continue to support the principles of localism and of local station program exclusivity. These are the principles that underlie the policies of syndicated exclusivity, network non-duplication, must-carry and retransmission consent. These policies help preserve the health of the free-over-the air television upon which the American public relies.

LOCALISM

The fundamental policy of localism has been embedded in federal law since the Radio Act of 1927.[1] The objective of localism in the broadcast industry is "to afford each community of appreciable size an over-the-air source of information and an outlet for exchange on matters of local concern." *Turner Broadcasting Sys. v. FCC,* 512 U.S. 622, 663 (1994) (*Turner I*); *see United States v. Southwestern Cable Co.,* 392 U.S. 157, 174 & n.39 (1968) (same). As pointed out by the Supreme Court, that policy has provided crucial public interest benefits.

[1] *Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act,* First Report and Order, 14 FCC Rcd 2654, 2659 (1999); *see Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act,* Notice of Proposed Rulemaking, 13 FCC Rcd 22977, 22979 (1998) ("The network station compulsory licenses created by the Satellite Home Viewer Act are limited because Congress recognized the importance that the network-affiliate relationship plays in delivering free, over-the-air broadcasts to American families, and because of the value of localism in broadcasting. Localism, a principle underlying the broadcast service since the Radio Act of 1927, serves the public interest by making available to local citizens information of interest to the local community (*e.g.,* local news, information on local weather, and information on community events). Congress was concerned that without copyright protection, the economic viability of local stations, specifically those affiliated with national broadcast network[s], might be jeopardized, thus undermining one important source of local information.")

> Broadcast television is an important source of information to many Americans. Though it is but one of many means for communication, by tradition and use for decades now it has been an essential part of the national discourse on subjects across the whole broad spectrum of speech, thought, and expression. *Turner Broadcasting Sys. v. FCC,* 117 S. Ct. 1174, 1188 (1997).

Thanks to the vigilance of Congress and the FCC over the past 50 years in protecting the rights of local stations, over-the-air television stations today serve more than 200 local markets across the United States, including markets as small as Presque Isle, Maine (with only 28,000 television households), North Platte, Nebraska (with fewer than 15,000 television households), and Glendive, Montana (with only 3,900 television households).

This success is largely the result of the partnership between broadcast networks and affiliated television stations in markets across the country. The programming offered by network affiliated stations is, of course, available over-the-air for free to local viewers. Although other technologies offer alternative ways to obtain television programming, tens of millions of Americans still rely on broadcast stations as their exclusive source of television programming and broadcast stations continue to offer most of the top-rated programming on television.

The network/affiliate system provides a service that is very different from nonbroadcast networks. Each network affiliated station offers a unique mix of national programming provided by its network, local programming produced by the station itself, and syndicated programs acquired by the station from third parties. H.R. Rep. 100-887, pt. 2, at 19-20 (1988) (describing network/affiliate system, and concluding that "historically and currently the network-affiliate partnership serves the broad public interest.") Unlike nonbroadcast networks such as Nickelodeon or USA Network, which telecast the same material to all viewers nationally, each network affiliate provides a customized blend of programming suited to its community—in the Supreme Court's words, a "local voice."

America's local television broadcast stations make an enormous contribution to their communities because broadcasters are uniquely positioned to help community organizations promote their causes, through media saturation and attention from local on-air talent. Broadcasters help give an organization a voice, and are the main conduit for members of a community to discuss the issues of the day amongst themselves. A broadcaster can help an organization make its case directly to local citizens, to raise its public profile in a unique way, and to cement connections within local communities. A broadcaster can help an organization better leverage its fund raising resources and expertise, its public awareness and its educational efforts.

Community-responsive programming—along with day-to-day local news, weather, and public affairs programs—is made possible, in part, by the sale of local advertising time during and adjacent to network programs. These programs (such as "CSI" and "American Idol") often command large audiences, and the sale of local advertising slots during and adjacent to these programs is a crucial revenue source for local stations.

LOCAL PROGRAM EXCLUSIVITY

The FCC has recognized the need for strong and effective rules enabling television stations to preserve the exclusivity of programming in their local markets since the earliest days of cable. The first cable rules, for example, were non-duplication rules to protect both network programming and syndicated programming for which local broadcasters had negotiated exclusive exhibition rights.[2] The basic principle was that non-duplication was "something to which a station is entitled, without a showing of special need, within its basic market area."[3] The FCC explained:

> Our aim . . . is not to take any programs away from any CATV subscriber, but to preserve to local stations the credit to which they are entitled—in the eyes of the advertisers and the public—*for presenting programs for which they had bargained and paid* in the competitive program market.[4]

In 1972, the FCC adopted its first rules authorizing stations that had purchased local exclusive exhibition rights to syndicated programming to demand that cable systems located in their service areas delete such programming from imported dis-

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[2] *Amendment of Subpart L, Part 11 to Adopt Rules and Regulations to Govern the Grant of Authorization in the Business Radio Service for Microwave Stations to Relay Television Signals to Community Antenna Systems,* First Report and Order, 38 FCC 683 (1965).

[3] *Id.,* at 719.

[4] *Id.,* at 715 (emphasis added).

tant signals.[5] While these rules were repealed in 1980[6], eight years later the FCC reinstated a revised set of syndicated exclusivity rules as well as revising and strengthening the network non-duplication rules.[7] The FCC concluded that:

> The restoration of syndicated exclusivity protection will enhance competition in the video marketplace by eliminating unfairness to broadcasters. It will increase incentives to supply the programs viewers want to see and it will encourage the development of a pattern of distribution that makes the best use of the particular advantages of different distribution outlets. It will encourage promotion of programming. Although cable operators may have to make some changes in the way they do business, compliance costs will not be burdensome and, in any event, are outweighed by benefits. Specifically, television viewers generally will be exposed to richer and more diverse programming.[8]

In addition to reinstating the syndicated exclusivity rules, the *1988 Report and Order* also expanded the scope of protection that network affiliates could enforce under the network non-duplication rules. Quoting approvingly from CBS' comments, the FCC concluded that:

> In a word, the relationship between broadcast network and its affiliates is one of intense symbiosis. It is fundamentally premised both on the network's ability to acquire exclusive rights from its suppliers, and on the affiliated stations' ability to enjoy program exclusivity in their respective marketplaces. This vital feature of the system of free over-the-air television has been true for over forty years.[9]

In a similar vein, when Congress crafted the original Satellite Home Viewer Act in 1988, it emphasized that the legislation "respects the network/affiliate relationship and promotes localism." H.R. Rep. No. 100-887, pt. 1, at 20 (1988). It also found that "depriving local stations of the ability to enforce their program constraints could cause an erosion of audiences for such local stations because their programming would no longer be unique and distinctive.[10] And when Congress extended the distant-signal compulsory license in 1999, it reaffirmed the importance of localism as fundamental to the American television system. For example, the 1999 SHVIA Conference Report says this:

> "[T]he Conference Committee reasserts the importance of protecting and fostering the system of television networks as they relate to the concept of localism . . . [T]elevision broadcast stations provide valuable programming tailored to local needs, such as news, weather, special announcements and information related to local activities. To that end, the Committee has structured the copyright licensing regime for satellite to encourage and promote retransmissions by satellite of local television broadcast stations to subscribers who reside in the local markets of those stations." SHVIA Conference Report, 145 Cong. Rec. H11792 (daily ed. Nov. 9, 1999).

In addition, the legislative history of SHVERA reinforces the importance of program exclusivity, particularly to broadcast localism. For example, Congressman Dingell noted during floor debates regarding SHVERA:

> [T]he act will protect consumers and foster localism by ensuring that satellite customers receive all of their local broadcast signals when these signals become available via satellite. Local broadcasters provide their communities with important local programming. Whether it is local news, weather, or community events, these broadcasters are there, on the ground serving their friends and neighbors. See Congressional Record, H8223, October 6, 2004, H.R. 4518

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[5] *Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Community Antenna Television Systems, and Inquiry into the Development of Communications Technology and Services to Formulate Regulatory Policy and rulemaking and/or Legislative Proposals,* 36 FCC 2d 141, 148 (1972) (hereinafter cited as "*Cable Television Report and Order*"), *recon. granted,* 36 FCC 2d 326 (1972) (hereinafter cited as "*Reconsideration Order*").

[6] *Cable Television Syndicated Program Exclusivity Rules,* Report and Order, 79 FCC 2d 663 (1980) (hereinafter "*1980 Report and Order*").

[7] *1988 Report and Order.*

[8] *Id.,* at ¶89. *See Amendment of Parts 73 and 76, of the Commission's Rules Relating To Program Exclusivity in the Cable and Broadcast Industries,* Memorandum Opinion and Order, 4 FCC Rcd 2711, ¶24 (1989) ("In reinstating our syndex rules, we are attempting to remove unnecessary impediments on broadcasters' right to contract (thereby enhancing competition) and to provide an environment that is more conducive over the long run to the production, diversity, responsiveness, quality and distribution of programming in order to ensure that consumers receive an optimal mix of programming.").

[9] *Id.,* at ¶116. The FCC cited to record evidence that when a small market Palm Springs affiliate lost non-duplication protection, it lost half of its audience to an imported distant affiliate. *Id.,* at 117.

[10] H.R. Rep. No. 887 Part 2, 100th Cong. 2nd Sess. 26 (1988).

The FCC has clearly articulated how localism and the ability of local television stations to fulfill their public interest obligations are inextricably linked to their ability to enforce local market program exclusivity. In its *1988 Report and Order,* the Commission said:

> In fulfilling our responsibility under Sections 301, 307(b), and 309, we believe the public interest requires that free, local, over-the-air broadcasting be given full opportunity to meet its public interest obligations. An essential element of this responsibility is to create a local television market that allows local broadcasters to compete fully and fairly with other marketplace participants. Promoting fair competition between free, over-the-air broadcasting and cable helps ensure that local communities will be presented with the most attractive and diverse programming possible. Local broadcast signals make a significant contribution to this diverse mix. As we documented previously, the absence of syndicated exclusivity places local broadcasters at a competitive disadvantage. Lack of exclusivity protection distorts the local television market to the detriment of the viewing public, especially those who do not subscribe to cable. Our regulatory scheme should not be structured so as to impair a local broadcaster's ability to compete. Restoration of our syndicated exclusivity rules will provide more balance to the marketplace and assist broadcasters in meeting the needs of the communities they are licensed to serve.[11]

From a policy perspective, there is no benefit—and many drawbacks—to delivery of distant signals with programming that duplicates local station programming. Unlike local stations, distant stations do not provide viewers with their *own* local news, weather, emergency, and public service programming. Viewership of competing programming on distant stations provides no financial benefit to *local* stations to help fund their free, over-the-air service. To the contrary, duplicative distant signals, when delivered to any household that can receive local over-the-air stations, simply siphon off audiences and diminish the revenues that would otherwise go to support free, over-the-air programming.

The need for local station program exclusivity in medium and small sized markets is particularly acute. Many of these markets operate in areas overshadowed by larger markets and have relatively spare and more diffuse population densities. That is why the Commission, early on, provided smaller markets with an extra wide zone of program exclusivity protection.

None of the facts or premises underlying the FCC's determination that this extra zone of protection was needed[12] has changed since 1975. If anything, the position of broadcasters has become more precarious; especially for affiliates in hundred plus markets that usually operate on a slimmer profit margin and are less likely to be profitable.[13] The erosion of even a few percentage points of revenue caused by a reduction in the non-duplication protection zone will undoubtedly affect the service they can provide to their communities.

MUST CARRY/RETRANSMISSION CONSENT

Must-carry and retransmission rights are also an important part of the local broadcast equation. In the Cable Television Consumer Protection and Competition Act of 1992,[14] Congress expressed its belief that revisions in the law was necessary to ensure the continued viability of: (1) free-over-the-air television broadcast service, and (2) the benefits derived from local origination of programming. Congress recognized that because cable systems and broadcasters compete for advertising revenue and programming, and because cable operators would have an interest in favoring affiliated programmers, the cable provider would also have an incentive to delete, reposition, or refuse to carry local television broadcast stations. At the same time, Congress also recognized that cable systems had, in many instances, received great benefits from local broadcast signals in the form of subscribership and increased audience for cable programming services even though they had been able to exploit a broadcaster's signal without its consent. Accordingly, the 1992 Cable Act adopted a mechanism whereby stations could elect between assured carriage (must carry) and no compensation, or retransmission consent, where the station and the cable operator negotiated over the terms and conditions of carriage.

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[11] *1988 Report and Order,* at ¶ 74.

[12] *Id.*

[13] In 2004 the profit margins for the average affiliate station in ADI markets 101-125, 126-150, 151-175, and 176 plus were 8.4%, 0.6%, 10.6%, and 1.4%, respectively, and the average Pre-Tax profits for affiliates in these markets were $616,000, $30,000, $475,000, and $39,000, respectively.

[14] *See* Pub. L. No. 102-385, 106 Stat. 1460, codified at 47 U.S.C. § 521 *et seq.*

In upholding the must carry rules, the Supreme Court recognized the "important federal interest" in "protecting noncable households from loss of regular television broadcasting."[15] The Court described the interest in ensuring public access to the multiplicity of programming . . . services . . . that over-the-air broadcasting offered as "governmental purpose of the highest order."[16] And, both Congress and the Court have acknowledged that the legitimate public policy goal would not be "satisfied by a rump broadcasting industry providing a minimum of broadcast service to Americans without cable."[17]

The fundamental policies and basic facts that cause Congress to adopt must carry requirements are as sound today as they were in 1992. Some 20.3 million U.S. households receive television service solely over-the-air. Many of these viewers choose not to subscribe to pay television services for well thought out and legitimate reasons. For example, they do not want to be locked into the ever-increasing costs of pay television service and they have additional sets that are not hooked up to cable or satellite, among others. They feel well-served by the locally-oriented and public interest programming they receive over the air and do not see the need for expensive pay television services.

But there are also a large number of viewers who cannot afford pay television. Twelve percent of American households fall below the poverty line.[18] They should not be forced by government policy into paying subscriber fees that only escalate over time and that they cannot afford. They deserve as an option a vibrant, over-the-air service that provides the benefits of new digital technologies. Must-carry is necessary to preserve this option.

A station's second option under the 1992 Cable Act, retransmission consent, has also worked well. Many stations, including some of LIN's stations, have used retransmission consent to create and improve mechanisms that better serve their local communities and regions. LIN has used retransmission consent in some of its markets to launch separate cable channels providing local weather information. Here in the Washington, D.C., area, Albritton Communications, owner of ABC affiliate Channel 7, has used retransmission consent to launch News Channel 8 that provides ten hours of local news, weather and public affairs programming zoned separately for Washington and its suburbs.

In short, the must carry/retransmission consent regime in the 1992 Cable Act has worked as Congress intended in protecting the free over-the-air broadcasting system and providing a mechanism to help that system improve service to the local communities it serves.

CONCLUSION

Because broadcast television is universally available and is the only service used by millions of Americans, when considering public policies to apply to new technologies such as video over broadband, we urge you to adopt the same principles of local market program exclusivity, must carry, and retransmission consent that have served broadcasting and its local viewers so well for the last thirteen years. This will not only help ensure the continued viability of a free over-the-air locally oriented broadcasting service, it will also provide a level playing field whereby existing video production delivery services and any new services play by the same rules.

Mr. UPTON. Thank you.

Mr. Gleason.

STATEMENT OF JAMES M. GLEASON

Mr. GLEASON. Thank you, Mr. Chairman and members of the subcommittee.

My name is Jim Gleason, and I am President of New Wave Communications, an independent cable business serving nearly 20,000 customers in the Midwest and Southeast.

As this committee investigates how to deploy new and advanced video services, it is essential to address two major components of

[15] Turner, 520 U.S. at 190 (quoting Capital Cities Cable, Inc. v. Crisp, 467 U.S. 691, 714 (1984)).

[16] *Id.*

[17] *Id. at 1187.*

[18] *See Census Bureau says 1.3 million more slipped into poverty last year; health care coverage also drops,* CNN Money (Aug. 26, 2004), available at http://money.cnn.com/2004/08/26/news/economy/poverty__survey.

a successful rollout. What most people seem focused upon is the first question: Who will deploy these services? In short, our view is that no industry should be artificially shackled by the failed policies of the current regulatory regime while others are allowed to run around unfettered. Therefore, outdated policies should be reformed or discarded so that creative competition can be unleashed to the benefit of consumers.

While that facet is important and merits consideration, there is a second item that merits equal time: What content will those services be able to provide?

Based on my extensive experience in the cable business, I am certain you do not want to carry many of those rules that have governed the analog world into the IP world. Between the DTV transition and the telecom rewrite, you have a unique and historic opportunity to address the significant problems that exist in multi-channel video competition, including growing media consolidation, increases in programming prices, forced tying of channels, and retransmission consent abuse. If you do not address these problems concurrently, I believe you will not achieve the flexibility, choice, and price you want for the new world.

So what should you do?

Now is the time to discard current rules that, if left in place, will, one, constrain access to programming; two, force consumers to take programming they don't want; three, allow media consortiums to raise prices with no regard to what consumers value; four, hide the reasons for higher rates from Congress, the FCC, local franchising authorities, and consumers, and fail to harness the greatest of American tools, a free market.

Specifically, I want to highlight three changes that must be made if your goal to provide competition to multi-channel video at prices consumers will pay in the IP world. They are: one, treat video services alike, regardless of the means of delivery; two, change retransmission consent rules to remedy the imbalance of power caused by media consolidation; and three, correct rules that allow for abusive media behavior and control of content.

Point one: Congress must reduce or at least equalize the regulatory burdens so that all providers of like services are treated alike. For example, you should either extend or eliminate, for all providers, franchise fees and other franchise requirements. Leaving only one provider with this burden would distort what should be a free and open competitive environment.

Point two: retransmission consent. Cable operators must, in essence, purchase the right to carry free, over-the-air local television signals owned by the big four media conglomerates: Disney, Viacom, Fox, GE, and other broadcast groups and stations. This year, broadcasters will leverage retransmission consent rules to extract nearly $1 billion from consumers served by ACA members alone for programming that is freely available over the air. Additionally, some conglomerates use retransmission consent rules in one market to force cable operators to carry affiliated programming in entirely separate markets. This means that consumers who won't even see the broadcast signal are unknowingly forced to pay for it.

There is an easy solution to this problem. When a broadcaster seeks payment for retransmission consent in cash or a carriage of programming, give operators the ability to shop for a lower-cost network station. This would finally allow competitive markets to establish a fair market value for signals that are currently protected by antiquated government rules that now have an anti-competitive and anti-consumer effect.

Point three: media consolidation has permitted the following abuses. The first is lack of local choice. Today, the big four restricts choice by forcing all of their channels onto the basic or expanded basic tiers. Two, price discrimination against smaller and medium-sized cable companies. We often pay 30 to 50-percent higher prices than larger competitors for exactly the same programming. Three, the media giants cloak these arrangements with strict confidentiality and non-disclosure obligations. These clauses prevent Congress, the FCC, local franchising authorities and consumers from knowing what programmers are really charging cable operators for programming. As a result, Congress must address these market problems and update rules to give local providers more flexibility to tailor programming offerings to consumer needs.

In conclusion, media consolidation has rendered the current 1970's-era programming laws and regulations outdated and anti-competitive. You have the ability to update these laws to protect your constituents with exciting new programs, content, and flexibility while finally allowing free market to spur competition. Please seize the opportunity by avoiding the mistake of carrying a broken regulatory regime and an anti-competitive programming market into the IP-enabled world.

Thank you, Mr. Chairman.

[The prepared statement of James M. Gleason follows:]

PREPARED STATEMENT OF JAMES M. GLEASON, PRESIDENT AND COO, NEWWAVE COMMUNICATIONS, INC.

INTRODUCTION

Thank you, Mr. Chairman and members of the subcommittee.

My name is Jim Gleason, and I am president and chief operating officer of NewWave Communications, an independent cable business currently serving 20,000 customers in Missouri, Tennessee, Arkansas, North Carolina and South Carolina. My company provides cable television, digital cable, high-speed internet, local phone VOIP service, digital video recorders and other advanced services in 10 smaller systems and rural areas throughout the Midwest and Southeast United States.

I am also the chairman of the American Cable Association. ACA represents nearly 1,100 smaller and medium-sized independent cable businesses. These companies do one thing—serve our customers. They don't own programming or content; nor are they run by the large media companies. Collectively, ACA members serve nearly 8 million customers, mostly in smaller markets. ACA's constituency is truly national; our members serve customers in every state and in nearly every congressional district, particularly those of this Committee.

To begin, I want to commend you for holding this hearing. My testimony today details what I think has gone right and what has gone wrong in the video services industry over the past decade, and I will offer my thoughts on what lessons should be transferred into the digital IP world. I believe you stand at an historic moment, when we shift from the 1970s-era policies of the analog world to the exciting and enticing future that the digital revolution can provide. I strongly urge this Committee to seize this moment and to adopt what has worked in the past and to discard what has outlived its purpose. In short, I believe it is time for the balance of power between programmers, operators, media consortiums and broadcasters to be recalibrated for the digital world so that each is subject to the creative power of competitive market forces.

I have been in the cable business for 20 years, and I have seen firsthand the effect that growing media consolidation, rising programming increases, forced tying and bundling of channels, and retransmission consent have had on my company and, most importantly for you, on your constituents. As you analyze what rules should be in place in an IP-based market place, I believe you must review whether the current analog rules are really providing consumers with the "best television money can buy." Now is the time to discard the rules that: 1) force consumers to take programming they do not want; 2) allow media consortiums to raise prices with no regard to what consumers value; 3) hide the reasons for higher rates from the Congress, the Federal Communications Commission, the local franchising authorities and consumers alike; and, 4) fail to harness the greatest of American tools, a free market to spur diverse and new programming. Digital platforms may provide consumers with a wondrous world of new and valuable programming. But if you allow the old rules stay in place, it will just be more of the same. Wouldn't it be a shame to clog the healthy and robust arteries of the new IP infrastructure when you have the chance to inject new vitality into this space? To provide consumers with the greatest benefit, it is imperative that you break with the past and recognize that some old ideas no longer serve the greater good.

Before describing my views on how to craft the best market structure, I want to offer one other cautionary point about smaller markets and rural communities.

Out in the smaller communities ACA members serve from Pennsylvania to Nebraska to Oregon to Mississippi, it is our core video business that allows us to finance and provide the high-speed services that everyone wants in order to bridge the Digital Divide. But unlike independent cable, satellite providers, telephone giants and major cable companies are not rushing into these communities to offer high-speed data or other advances services. The headlines you read about new services and suites of services are offered to larger communities. If ACA members' video service cannot survive, I can assure you no one of us will be around to offer the cable modem services these communities need. In short, video programming is not "just" about programming choices and rates, but it is also the foundation upon which advanced services are built.

As I see it, there are four fundamental and specific changes that need to be made if your goal is to provide the greatest diversity of video services at prices consumers will pay in the IP-enabled world. These steps have been detailed extensively in the ACA's recent comments in the FCC's programming inquiry, ACA's petition for rulemaking on retransmission consent that was recently opened by the FCC, and in ACA's comments on the Satellite Home Viewer Extension and Reauthorization Act. I urge each of you to review these filings because I believe they embody the core elements of what is wrong with today's market and provide solutions for a better market tomorrow. The four changes are:

1. Update And Change The Current Retransmission Consent Rules To Help Remedy The Imbalance Of Power Caused By Media Consolidation.
2. Treat Video Services Alike As Much As Possible, Regardless Of The Means Of Delivery.
3. Make Access To Quality Local-Into-Local Television Signals Available.
4. Correct Rules That Allow For Abusive Behavior Because Of Media Consolidation And Control Of Content.

What needs to be changed and why:

1. Current Retransmission Consent Rules Must Be Updated To Help Remedy The Imbalance Of Power Caused By Media Consolidation.

- The current retransmission consent and broadcast exclusivity laws and regulations limit consumer choice and impede independent cable operators' ability to compete in smaller markets and rural America by permitting distant media conglomerates to charge monopoly prices for programming. This situation must not be carried forward into the IP world or in the post-DTV world.

The current laws and regulations governing retransmission consent and broadcast exclusivity limit consumer choice and significantly impede independent, smaller and medium-sized cable operators' ability to compete in rural America by permitting distant media conglomerates to mandate the cost and content of most of the services that these operators provide in local small markets. We estimate that *this year broadcasters will leverage retransmission consent rules to extract more than $860 million from consumers served by ACA members. Remember, this is cash out of consumers' pockets to pay for programming that is freely available over-the-air.* And broadcasters don't only demand cash for carriage. Some members of the largest media conglomerates even require our cable companies to carry affiliated satellite programming in systems outside of the member's local broadcast market. In this

way, ownership of a broadcast license is used to force carriage of, and payment for, affiliated programming by consumers who do not even receive the broadcast signal at issue.

The programmers can get away with these abuses because the pricing of retransmission consent does not occur in a competitive market. Under the current regulatory scheme, media conglomerates and major affiliate groups are free to demand monopoly "prices" for retransmission consent while blocking access to readily available lower cost substitutes.

They do so by two methods:

- *First,* the network non-duplication and syndicated exclusivity laws and regulations allow broadcasters to block cable operators from cable-casting network and syndicated programming carried by stations outside of the broadcaster's protected zone. For example, a Disney/ABC-owned station that broadcasts in a small town or rural area can use the broadcast exclusivity rules to block a cable operator from cable-casting a station owned by a local ABC affiliate in the next market. In other words, the conglomerate-owned station makes itself the only game in town and can charge the cable operator a monopoly "price" for its must-have network programming. The cable operator needs this programming to compete. So your constituents end up paying monopoly prices.
- *Second,* the media conglomerates require network affiliates to sign contracts that prevent the affiliate from selling their programming to a cable operator in a different market. Again, the conglomerate-owned and operated stations are the only game in town.

In these situations, the cable companies' only defense is to refuse to carry the programming. This has virtually no effect on the media conglomerates, but it prevents your constituents from receiving must-have network programming and local news. This result directly conflicts with the historic goals and intent of the retransmission consent and broadcast exclusivity rules, which were to promote consumer choice and localism.

There is a ready solution to this dilemma. When a broadcaster seeks a "price" for retransmission consent, give independent, smaller and medium-sized cable companies the ability to shop for lower cost network programming for their customers.

Accordingly, in our March 2, 2005, Petition for Rulemaking to the FCC, ACA proposed the following adjustments to the FCC's retransmission consent and broadcast exclusivity regulations:

- *One:* Maintain broadcast exclusivity for stations that elect must-carry or that do not seek additional consideration for retransmission consent.
- *Two:* Eliminate exclusivity when a broadcaster elects retransmission consent and seeks additional consideration for carriage.
- *Three:* Prohibit any party, including a network, from preventing a broadcast station from granting retransmission consent.

On March 17, 2005, the FCC released ACA's petition for comments. *By opening ACA's petition for public comment, the FCC has acknowledged that the current retransmission consent and broadcast exclusivity scheme requires further scrutiny.* Before codifying a new regulatory regime for video services utilizing IP, Congress should ask similar questions and make the important decision to update current law to rebalance the role of programmers and providers.

Congress, too, should revisit the retransmission consent laws to correct the imbalance caused by the substantial media ownership concentration that has taken place since 1992. One solution is to codify the retransmission consent conditions imposed on News Corp. to apply across the retransmission consent process. The three key components of those conditions include: (i) a streamlined arbitration process; (ii) the ability to carry a signal pending dispute resolution; and (iii) special conditions for smaller cable companies.

In summary, the retransmission consent and broadcast exclusivity regulations have been used by the networks and stations to raise rates and to force unwanted programming onto consumers. This must stop. If a station wants to be carried, it can elect must-carry. If a station wants to charge for retransmission consent, let a true competitive marketplace establish the price.

2. Treat Video Services Alike As Much As Possible, Regardless Of The Means Of Delivery.

As a fundamental principal of competition, like services should be treated alike, regardless of how the service is distributed to consumers, whether by cable, satellite, wireless, copper or other means. I would urge you to be skeptical of those advocating reduced regulatory obligations to provide like services, because that is a harbinger of their desire to eliminate, not promote, competition.

We're here today partly because huge, national phone companies are asking to be released from fundamental video regulations, such as the need to obtain a franchise from a local government to use its public rights-of-way or the obligation to pay a franchise fee for the use of such rights-of-way. These companies claim that if Congress would only release them from regulation, they would be able to compete against cable.

Ironically, the companies asking to be deregulated today had to be broken up in the not-too-distant past because of their monopolistic practices.

Furthermore, it is not genuine for these giant, national phone companies that are on the path again toward consolidation and dominant market control to say they need Congressional help to compete against my smaller company or any ACA member.

As the FCC has observed, video competition is *local.* Competition is *not* national, as if it were PHONE versus CABLE versus SATELLITE. It's my company, NewWave Communications, versus DirecTV and EchoStar, and now versus SBC, Verizon and other phone giants.

Nearly 1,100 ACA members compete head-to-head against these giant companies in Dexter, MO, Brownsville, TN, and also in Bloomingdale, MI, Braintree, MA, Parkdale, OR, Ramsey, IL, and many other towns represented by this Committee. Compounding this challenge is the fact that for our members each new customer and mile of cable must be financed by a loan from the local bank signed by the local owner, while our mega-competitors are financed by Wall Street.

Direct broadcast satellite (DBS) is an example of this point.

Since 1999, the DBS industry has become a mature, successful business and a powerful competitor to cable. This is especially true in the smaller markets and rural areas served by my company and ACA members. DBS took away cable market share from the start, even before receiving specific legislative and regulatory relief. In some smaller markets, DBS has become the dominant provider. And when you consider competition at the local level, it is not hard to see why.

The typical ACA member company in your state serves about 1,000 customers per cable system. DirecTV serves almost 12 million more customers than the average ACA member. Similarly, EchoStar serves almost 10 million more subscribers than the average ACA member. It is self-evident that these companies benefit from far greater economies of scale, access to capital and bargaining power over programmers and other suppliers. As the FCC found, the acquisition of DirecTV by News Corp. enhanced those competitive advantages. Compounding the problem, smaller cable operators bear a much greater regulatory load against these giants. It would no different with the national phone companies if they are deregulated. Consider the following comparison:

REGULATORY BURDENS

	ACA MEMBERS (Avg. 8,000 Subscribers)	Big Telcos' Current Obligations Under Title VI And Related Regulations	What Big Telcos are Asking For	DBS (DirecTV—12 million subscribers; EchoStar—10 million subscribers)
Mandatory carriage of broadcast on basic.	Yes	Yes	To be exempt	No
Must-carry in all markets	Yes	Yes	To be exempt	Must-carry only in selected markets
Must-carry for qualified low power stations.	Yes	Yes	To be exempt	No
Retransmission consent	Yes	Yes	To be exempt	Yes
Full public interest obligations	Yes	Yes	To be exempt	Limited public interest obligations
Emergency alert requirements	Yes	Yes	To be exempt	No
Tier buy-through	Yes	Yes	To be exempt	No
Franchising requirement	Yes	Yes	To be exempt	No
Franchise fees	Yes	Yes	To be exempt	No
Local taxes	Yes	Yes	To be exempt	No
Signal leakage/CLI	Yes	Yes	To be exempt	No
Rate regulation	Yes	Yes	To be exempt	No
Privacy obligations	Yes	Yes	To be exempt	Yes
Customer service obligations	Yes	Yes	To be exempt	No

REGULATORY BURDENS—Continued

	ACA MEMBERS (Avg. 8,000 Subscribers)	Big Telcos' Current Obligations Under Title VI And Related Regulations	What Big Telcos are Asking For	DBS (DirecTV—12 million subscribers; EchoStar—10 million subscribers)
Service notice provisions	Yes	Yes	To be exempt	Limited to notice regarding privacy rights
Closed captioning	Yes	Yes	To be exempt	No
Pole attachment fees	Yes	Yes		No
Channel positioning requirements for local broadcast stations.	Yes	Yes	To be exempt	Only requirement is to retransmit local broadcast stations on contiguous channels
Billing requirements	Yes	Yes	To be exempt	No
Public file requirements	Yes	Yes	To be exempt	No

Before changing the rules now for the giant telephone companies, Congress should examine the regulatory disparity among all providers that exists in local markets today and try to eliminate those artificial and unnecessary disparities. With vibrant competition as the goal, why should the heavy hand of government weigh on one type of provider versus another, let alone do so in order to disadvantage small businesses such as my own that are the heart and soul of local Chambers of Commerce across this country?

To ensure that local communications businesses continue to deliver advanced services in smaller markets, Congress should consider reducing, or at least equalizing, the regulatory burdens on independent cable.

Moreover, any legislative or regulatory action to treat multi-video programming distributors differently—whether cable, satellite, phone or wireless, among others—will skew competition across America.

For these reasons, the Committee should treat and regulate all video providers alike, regardless of how video signals are distributed to the customer.

3. Make Access To Quality Local-Into-Local Television Signals Available.

Another legislative obstacle to competition and rural consumers' access to local programming is the current local-into-local statutory scheme.

Because of distance from transmitters, many rural cable systems cannot receive good-quality local broadcast signals. By contrast, in local-into-local markets, DBS can deliver clear local broadcast signals regardless of distance from transmitters. The problem? The DBS duopoly refuses to allow rural cable systems to receive these DBS-delivered broadcast signals. As a result, more than one million rural consumers cannot receive good quality local broadcast signals from their provider of choice.

The inability to provide local broadcast signals is a serious handicap—it was this limitation that caused Congress to enact the Satellite Home Viewer Improvement Act in 1999, which Congress recently reauthorized through SHVERA. But SHVERA does nothing to solve the local signal problem for rural cable operators and customers.

Congress can solve this problem by revising the retransmission consent laws as follows:

> In markets where a satellite carrier delivers local-into-local signals, that satellite carrier shall make those signals available to MVPDs of all types on non-discriminatory prices, terms and conditions when (i) the MVPD cannot receive a good quality signal off-air; and (ii) the MVPD has the consent of the broadcaster to retransmit the signal.

ACA's recommended revisions to the laws and regulations governing retransmission transmission consent and broadcast exclusivity are modest. But they will advance the widespread dissemination of good quality local broadcast signals to your constituents and will address the serious competitive imbalance currently hurting small market and rural cable systems. Carrying this restrictive situation into the IP realm would further compound this mistake. All video vendors must be able to have access to quality signals if they are going to be viable competitors within the IP-enabled marketplace.

4. Correct Rules That Allow For Abusive Behavior Because Of Media Consolidation And Control Of Content.

What most consumers do not understand is that my independent company and ACA member companies must purchase most of their programming wholesale from just four media conglomerates, referred to here as the "Big Four"—Disney/ABC, Viacom/CBS, News Corp./DirecTV/Fox, and General Electric/NBC. In dealing with the Big Four, all ACA members continually face contractual restrictions that eliminate local cable companies' flexibility to package and distribute programming the way our customers would like it. Instead, programming cartels, headquartered thousands of miles away, decide what they think is "valuable" content and what our customers and local communities see.

ACA members have intimate knowledge of the wholesale practices of the Big Four and how those practices can restrict choice and increase costs in smaller markets. By leveraging their broadcast assets, these cartels make the decisions that tend to lead to the headlines we all experience. We've seen the headlines: "Higher rates," "Indecent content," and "I have 200 channels and nothing is on" and the like. Why would we want to carry over a regulatory scheme that propels this situation into the IP world? Today is the day to recognize that there is no "market" in this market and the responsibility to correct that situation lies within this body.

To fix this situation, Congress must update and reform the rules so that:

a. **Local providers of all forms and customers have more choice and flexibility** in how programming channels are priced and packaged, including the ability to sell programming channels on a theme-based tier if necessary;
b. **Tying through retransmission consent must end.** Today, the media giants hold local broadcast signals hostage with monopolistic cash-for-carriage demands or demands for carriage of affiliated media-giant programming, which was never the intention of Congress when granting this power;
c. **The programming pricing gap between the biggest and smallest providers is closed** to ensure that customers and local providers in smaller markets are not subsidizing large companies and subscribers in urban America; and,
d. **The programming media giants must disclose, at least to Congress and the FCC, what they are charging local providers,** ending the strict confidentiality and non-disclosure dictated by the media giants. Confidentiality and non-disclosure mean lack of accountability of the media giants.

Let me explain.

Forced Cost and Channels

For nearly all of the 50 most distributed channels (see Exhibit 1), the Big Four contractually obligate my company and all ACA members to distribute the programming to all basic or expanded basic customers regardless of whether we think that makes sense for our community. These same contracts also mandate carriage of less desirable channels in exchange for the rights to distribute desirable programming.

A small cable company that violated these carriage requirements would be subject to legal action by the media conglomerates, and for ACA's members, this is a very real threat.

These carriage restrictions prohibit ACA members from offering more customized channel offerings that may reflect the interests and values of our specific community.

More Forced Cost and Channels Through Retransmission Consent

As previously discussed, retransmission consent has morphed from its original intent to provide another means to impose additional cost and channel carriage obligations. As a result, nearly all customers have to purchase basic or expanded basic packages filled with channels owned by the Big Four (See Exhibit 2).

In short, media conglomerates that control networks and broadcast licenses are exploiting current laws and regulations to actually reduce consumer choice and to increase costs, all for their own benefit. Such control should not be perpetuated in the IP or in the post-DTV transition world.

Forced Carriage Eliminates Diverse Programming Channels.

The programming practices of certain Big Four members have also restricted the ability of some ACA members to launch and continue to carry independent, niche, minority, religious and ethnic programming. The main problem: requirements to carry Big Four affiliated programming on expanded basic eliminate "shelf space" where the cable provider could offer independent programming.

If new independent programmers are to provide outlets for this type of programming to reach consumers, you must ensure that they are not subject to the handcuffs current programming practices place upon them.

Local Flexibility is Needed.

In order to give consumers more flexibility and better value, changes in current wholesale programming practices and market conditions are needed for all providers. Operators must be given more flexibility to tailor channel offerings that work best in their own local marketplaces.

As I have stated, the Big Four condition access to popular programming on a range of distribution obligations and additional carriage requirements. These restrictions and obligations eliminate flexibility to offer more customized channel packages in local markets.

With more flexibility, cable operators could offer a variety of options to their customers, including more customized program offerings that meet the local needs and interests of our customers.

However, without congressional or regulatory involvement or accountability, the Big Four will continue to act solely to benefit themselves, without regard to the cost, channels and content forced upon consumers. Again, this situation must be remedied now and guarded against in any future IP regulatory regime.

It's important to point out that neither my company nor any ACA member controls the content that's on today's programming channels. That content—decent or not—is controlled by the media conglomerates that contractually and legally prevent us from changing or preempting any questionable or indecent content.

However, if my company and other ACA members had more flexibility to package these channels with the involvement of our customers, current indecency concerns raised by both Congress and the FCC could also be addressed.

Price discrimination against smaller cable companies makes matters worse.

The wholesale price differentials between what a smaller cable company pays in rural America compared to larger providers in urban America have little to do with differences in cost, and much to do with disparities in market power. These differences are not economically cost-justified and could easily be replicated in the IP world as smaller entrants are treated to the same treatment our members face.

Price discrimination against independent, smaller and medium-sized cable companies and their customers is clearly anti-competitive conduct on the part of the Big Four—they offer a lower price to one competitor and force another other competitor to pay a 30-55% higher price FOR THE SAME PROGRAMMING. In this way, smaller cable systems and their customers actually subsidize the programming costs of larger urban distributors and consumers.

In order to give consumers in smaller markets and rural areas more choice and better value, media conglomerates must be required to eliminate non-cost-based price discrimination against independent, smaller and medium-sized cable operators and customers in rural America.

With less wholesale price discrimination, ACA members could offer their customers better value and stop subsidizing programming costs of large distributors.

Basis For Legislative and Regulatory Action

Congress has the legal and constitutional foundation to impose content neutral regulation on wholesale programming transactions. The program access laws provide the model and the vehicle, and those laws have withstood First Amendment scrutiny. This hearing provides the Committee with a key opportunity to help determine the important governmental interests that are being harmed by current programming practices.

Furthermore, based in large part on the FCC's actions in the DirecTV-News Corp. merger, there is precedent for Congress and the FCC to address the legal and policy concerns raised by the current programming and retransmission consent practices of the media conglomerates. The FCC's analysis and conclusions in the News Corp. Order persuasively establish the market power wielded by owners of "must have" satellite programming and broadcast channels and how that market power can be used to harm consumers. That analysis applies with equal force to other media conglomerates besides News Corp.

Pierce the Programming Veil of Secrecy—End Non-Disclosure and Confidentiality.

Most programming contracts are subject to strict confidentiality and nondisclosure obligations, and my company and ACA members are very concerned about legal retaliation by certain Big Four programmers for violating this confidentiality. Why

does this confidentiality and non-disclosure exist? Who does it benefit? Consumers, Congress, the FCC? I don't think so. Why is this information so secret when much of the infrastructure the media giants benefit from derives from licenses and frequencies granted by the government?

Congress should obtain specific programming contracts and rate information directly from the programmers, either by agreement or under the Committee's subpoena power. That information should then be compiled, at a minimum, to develop a Programming Pricing Index (PPI). The PPI would be a simple yet effective way to gauge how programming rates rise or fall while still protecting the rates, terms, and conditions of the individual contract. By authorizing the FCC to collect this information in a manner that protects the unique details of individual agreements, I cannot see who could object.

Armed with this information, Congress and the FCC would finally be able to gauge whether rising cable rates are due to rising programming prices as we have claimed or whether cable operators have simply used that argument as a ruse. A PPI would finally help everyone get to the bottom of the problems behind higher cable and satellite rates. We at ACA are so convinced that this type of information will aid you in your deliberations that we challenge our colleagues in the programming marketplace to work with us and this Committee to craft a process for the collection of that data.

In short, without disclosure, there is no accountability.

CONCLUSION

In preparing to talk to you today, I have held the following image in my mind from the Wizard of Oz.

If you think things are fine in the World of Television today, then do nothing and live on in Oz.

But if you are worried about how much television costs or why consumers can't receive more of the specific types of programming they want or how they can protect their families from unwanted programs or why diverse programming struggles to get on the air, then you must pull back the curtain. What you will find is a cabal of "wizards" laboring at the levers of programming, using broadcast signals and onerous leverage to gain carriage of other programming that would never make it on its own.

As a smaller, independent businessman who lives in this arena, I can assure you that the market needs your help now to fix these problems. The future IP-based world needs you to act with the wisdom, heart and courage to face down the corporate media wizards that tell you everything is fine in order to have you convey these problems onto the next generation of video services. Do not fall prey to that argument.

EXHIBIT 1—Ownership of the Top 50 Programming Channels

Channel	Ownership
BET	Viacom/CBS
CMT	Viacom/CBS
MTV	Viacom/CBS
Nickelodeon	Viacom/CBS
Spike	Viacom/CBS
TV Land	Viacom/CBS
VH1	Viacom/CBS
Comedy Central	Viacom/CBS
ABC Family	Walt Disney Co./ABC
Disney	Walt Disney Co./ABC
ESPN	Walt Disney Co./ABC
ESPN2	Walt Disney Co./ABC
Lifetime	Walt Disney Co./Hearst
A&E	Hearst/ABC/NBC
History	Hearst/ABC/NBC
CNBC	GE/NBC
MSNBC	GE/NBC
Sci-fi	GE/NBC
USA	GE/NBC
Bravo	GE/NBC
Shop NBC	GE/NBC
Fox News	News Corp.
Fox Sports	News Corp.

EXHIBIT 1—Ownership of the Top 50 Programming Channels—Continued

Channel	Ownership
FX	News Corp.
Speed	News Corp.
TV Guide	News Corp.
CNN	Time Warner/Turner
Headline News	Time Warner/Turner
TBS	Time Warner/Turner
TCM	Time Warner/Turner
TNT	Time Warner/Turner
TOON	Time Warner/Turner
Court TV	Time Warner/Liberty Group
Animal Planet	Liberty Media
Discovery	Liberty Media
Travel	Liberty Media
TLC	Liberty Media
Golf	Comcast Corp.
Outdoor Life	Comcast Corp.
E!	Comcast Corp.
QVC	Comcast Corp.
HGTV	Scripps Company
Food	Scripps Company
AMC	Rainbow/Cablevision Systems
C-Span	National Cable Satellite Corp.
C-Span II	National Cable Satellite Corp.
WGN	Tribune Company
Hallmark	Crown Media Holdings
Weather	Landmark Communications
HSN	IAC/InterActiveCorp.

EXHIBIT 2—Channels Carried Through Retransmission Consent

Program Service	Ownership
FX	News Corp.
Fox News	News Corp.
Speed	News Corp.
National Geographic	News Corp.
Fox Movie Network	News Corp.
Fox Sports World	News Corp.
Fuel	News Corp.
ESPN2	Walt Disney Co./ABC
ESPN Classic	Walt Disney Co./ABC
ESPNews	Walt Disney Co./ABC
Disney from premium to basic	Walt Disney Co./ABC
Toon Disney	Walt Disney Co./ABC
SoapNet	Walt Disney Co./ABC
Lifetime Movie Network	Walt Disney Co./Hearst
Lifetime Real Women	Walt Disney Co./Hearst
MSNBC	GE/NBC
CNBC	GE/NBC
Shop NBC	GE/NBC
Olympic Surcharges for MSNBC/CNBC	GE/NBC
Comedy Central	Viacom/CBS
MTV Espanol	Viacom/CBS
MTV Hits	Viacom/CBS
MTV2	Viacom/CBS
Nick GAS	Viacom/CBS
Nicktoons	Viacom/CBS
Noggin	Viacom/CBS
VH1 Classic	Viacom/CBS
VH1 Country	Viacom/CBS
LOGO	Viacom/CBS

Comparing this with the Top Fifty Channels in Exhibit 1 demonstrates how certain members of the Big Five have used retransmission consent to gain a significant portion of analog and digital channel capacity.

Mr. UPTON. Mr. Perry.

STATEMENT OF JACK PERRY

Mr. PERRY. Good morning. Thank you for the opportunity to testify.

Decisionmark is a media technology company based in Cedar Rapids, Iowa. When I last testified before you in February 1999, I introduced our patented Geneva technology. Today, Geneva rests squarely between the DBS carriers and every local television station in the United States. Geneva provides real-time compliance with SHVA. The most critical component of Geneva being our station-verified broadcast signal area data warehouse Coronado.

During the 5 years of SHVA and now SHVERA, Geneva has answered the compliance question 174 million times, and we have processed 50 million waiver requests for distant network signals. Our consumer product, TitanTV.com, and online EPGPBR, was used 26 million times last year by viewers in search of HD content.

Today I want to talk to you about a new technology we call "Air-To-Web Broadcast Replication." Air-To-Web, we believe, is the solution to a problem that has long faced local broadcasters: how to maintain the ability to serve the local public but over the Internet. The fundamental question has been whether or not the geographic exclusivity of markets, the cornerstone of the American system of free, over-the-air broadcast television, can be replicated for Internet broadcasting. The answer is yes.

Using Air-To-Web, a local broadcaster can deliver local content in real time over the Internet to a wired or wireless device with the same copyright protections currently enjoyed by broadcast cable and satellite delivery. The bottom line is the localization of the Internet.

Air-To-Web will make accurate eligibility determinations in real time using signal strength technology in a broadcaster-verified data warehouse. Air-To-Web will communicate subscriber activity to each of the Nation's local broadcasters, giving them unprecedented real-time ratings data. This reporting will more accurately measure ratings of minority viewers than has been the case with the traditional Nielsen reporting system. Air-To-Web will ensure that the underlying signal area data is always accurate.

The benefits to the consumers and the broadcasters are many. Local broadcasters will be able to bring their programming to the Internet, which will enhance interactivity with their audience. Consumers will have the benefit of gaining access to their local stations in real time over the Web. The net result is more viewers for local programming and more choice for consumers.

Finally, Air-To-Web also represents an opportunity for delivering local broadcast television through non-traditional means. Using Air-To-Web will help foster competition for local television, allowing consumers to have new choice instead of being forced to rely on solely over-the-air, cable, or satellite service.

As you move forward with the legislation addressing the conversion of digital television and rewriting the 1996 Telecommuni-

cations Act, remember that technology does not stand still. Air-To-Web is new today and has endless possibilities, and it is just the beginning of innovations to come.

To illustrate Air-To-Web, I have a demo here. My colleague, Mike Rinehart, will drive while I talk.

[Video.]

Mr. Chairman, I grew up in Grand Rapids, Michigan, so I am from here. So I pre-entered the address——

Mr. UPTON. Be careful about Mr. Stupak. You are missing half of the State.

Mr. PERRY. Okay.

So what my colleague has done is called up Air-To-Web Broadcast Replication technology. And since most devices, as you know, are wireless nowadays, we are able to take the address, enter it in, hit the submit button, and return the channel line-up. What you have there is the exact channel line-up, using Air-To-Web Broadcast Replication, for my former home in Grand Rapids, Michigan. Those are the channels, which are specifically received at that address.

So if we know the location of a device, of course we know the Internet is global, but broadcasting is local. If we know the location of the device, we can make the assumption of what channels are received there. So instead of putting up an antenna, we are able to broadcast using the Internet.

Now in the interest of time and fairness, we have also entered in an address for a Boston location as well. So my colleague will enter that in.

So the point of the technology is that in the very near future, there will be a billion devices that are wired or wireless, which can get high-speed access. The local broadcasters are unable to use that access because of the question of eligibility. And so, using this technology, it is very quick and very easy to say what channels are received here. And so if we can do that, I think we should let viewers and broadcasters meet on the Internet. And so, as you can see, it is very fast. We went out and established the copyright for each television station. We established the eligibility right there. And for EchoStar and DirecTV, we do it at the point of sale, but for Internet broadcasting, we are doing it at the device. That opens up a world of broadcasting over the Internet for local broadcasters and viewers.

Thank you, Mr. Chairman.

[The prepared statement of Jack Perry follows:]

PREPARED STATEMENT OF JACK PERRY, PRESIDENT AND CHIEF OPERATING OFFICER, DECISIONMARK CORP.

Good morning Mr. Chairman and Members of the Committee, I am Jack Perry President and CEO of Decisionmark Corp. I want to thank Chairman Barton and Chairman Upton for extending this invitation to testify.

Decisionmark is a media technology company based in Cedar Rapids, Iowa.—Decisionmark is a leader in providing software and data solutions to television and radio broadcasters and consumers. We have been at the forefront of accurately testing the reach of—local broadcast signals for the satellite industry in order for satellite providers and consumers to be in compliance with the Satellite Home Viewer Act (SHVA) and its updated versions.

We hold an ever-growing number of technology patents and our patented Geneva technology is what enables household-level predictions of broadcast signals. Also, our Coronado Data Warehouse, the industry standard for broadcast signal area and

programming data, have served as the basis for our consumer and broadcaster solutions, including TitanTV.com, CheckHD.com, and ProximityTV.

When I last testified before you in February of 1999, I described our Geneva technology, which is used by all of the major networks, their affiliates and Satellite broadcasters to measure broadcast signal strength to insure compliance with SHIVERA. To date, we have processed more than 50 million waiver requests using getawaiver.com. Today I want to talk to you about a new technology we call Air-To-Web Broadcast Replication (AWBR).

AWBR, we believe, is the solution to a problem that has long faced local broadcasters: how to maintain the ability to serve the local public over the Internet. The fundamental question has been whether or not the geographic exclusivity of markets, the cornerstone of the American system of free-over-the-air broadcast television can be replicated for Internet broadcasting. The answer is, yes.

Using AWBR technology, a local broadcaster can deliver local content in real time over the internet to a wired or wireless device with the same copyright protections currently enjoyed by broadcast, cable and satellite delivery. Bottom line: the localization of the Internet.

How does AWBR work? It works by meeting the four requirements necessary for any system to successfully stream local content 24/7 and be in compliance with a local broadcasters copyright:

AWBR determines what channels/stations a viewer is entitled to receive by using proven local signal area prediction to determine which signals are received for each individual subscriber.

AWBR will make accurate eligibility determinations in real time using signal strength technology and a broadcaster-verified data warehouse. AWBR will communicate subscriber activity to each of the nation's local broadcasters giving them unprecedented, real time ratings data. This reporting will more accurately measure ratings of minority viewers than has been the case with traditional Nielsen reporting. AWBR will also ensure that the underlying signal data is accurate.

The benefits to consumers and broadcasters are many. Local broadcasters will be able to bring their programming to the Internet, which will enhance interactivity with their audience. Consumers will have the benefit of gaining access to their local stations in real time over the Web or via wireless. The net result is more viewers for local programming and more choices for consumers.

Finally, AWBR also presents the opportunity of delivering local broadcast television through non-traditional means. Usage of AWBR will help foster competition for local television, allowing consumers to have a new choice instead of being forced to rely on over-the-air, cable or satellite service.

As you move forward with legislation addressing the conversion to digital television and rewriting the 1996 Telecommunication Act, remember that technology does not stand still. AWBR is new today with endless possibilities and just the beginning of innovations to come.

INTRODUCTION

For some time now it has been technologically feasible to provide television and radio content to consumers in real time via the Internet. According to a study by Leichtman Research Group, about 60% of households in the US subscribe to an online service, and in the past two years broadband providers have added 12.5 million net new subscribers.[1] The same study also indicates that over 30 million U.S. households subscribe to cable or DSL broadband services.[2]

Not only do Americans have unprecedented access to broadband services, they are listening to and viewing content streamed over the Internet in greater numbers than ever before. According to ratings information assembled by Arbitron Inc. and comScore Media Metrix, 4.1 million people a week listen to three major online radio networks.[3] Furthermore, broadband users accessed an average of 15.4 video streams per month during the first half of 2004, up 42.6% over 2003.[4] The audience size and

[1] "Broadband Internet Access and Services to the Home 2004", Leichtman Research, © 2004, www.leichtmanresearch.com

[2] "Broadband Booms in 2004," Sky Report E-news, March 7, 2005, www.skyreport.com

[3] "4.1 Million People a Week Listen to Three Major Online Radio Networks According to comScore Arbitron Online Radio Ratings," Press release, International Webcasters Association, December 6, 2004. http://www.webcasters.org/news/20041206.htm

[4] "AccuStream Report: User Consumption of Broadband Video Streams Up 42% in First Half '04" Press release, AccuStream iMedia Research, http://www.accustreamresearch.com/news/aug17-04.html

the potential opportunity for Internet streaming are both far too large for local broadcasters to ignore.

With this opportunity comes a challenge—how to maintain compliance with copyright regulations within a geographically boundless medium. When granted a license, broadcasters were given the right to transmit their signal to a specific geographic area and called upon to restrict their transmission to this area. Advances in technology have moved the broadcast industry closer to using the Internet as yet another medium to reach their audience. Unfortunately, there are vexing legal issues that have stymied the development of the Internet as a medium for delivery of broadcast television and radio.

Fortunately, Air-to-Web Broadcast Replication (AWBR) technology has now surfaced with a solution to the issue of broadcasters streaming via the Internet. AWBR has been proven in numerous pilot projects with broadcasters and will work in parallel with the intent of the original free American broadcast system. AWBR will help broadcasters maintain the ability to serve the local public—via the Internet.

THE PROBLEM: BROADCAST IS LOCAL; THE INTERNET IS GLOBAL

Free over-the-air American television is based on the network-affiliate distribution system. Networks supply general interest programming and local affiliates supplement with local interest and syndicated programming. A mix of local and national advertising sales funds this system and the territorial exclusivity granted to the local affiliates is crucial to this model.

Prior to cable TV, territorial exclusivity was enforced via transmitter licensing. With the advent of new delivery mechanisms for television, Congress has given cable and satellite TV services permission to retransmit broadcast television channels under a compulsory license to a specific geographic area therefore replicating broadcast television signal areas. Radio has not been subject to such legislation as yet, but the advent of digital satellite radio services has raised issues for local radio stations in protecting their licensed signal areas.

The question remains of whether the geographic exclusivity of markets, that is fundamental to the American system of free-over-the-air broadcast television and radio, can be replicated for Internet broadcasting. Traditionally, the Internet has been a global entity, providing content to all regardless of location. What is needed is a way to provide broadcasts, via the Internet, to replicate what consumers could receive with an antenna—the standard for terrestrial, cable and satellite delivery.

THE SOLUTION: AIR-TO-WEB BROADCAST REPLICATION

Air-to-Web Broadcast Replication (AWBR) is the solution to the problem of delivering television and radio content via the Internet. AWBR can provide the technology and data that will allow television and radio content to be delivered over the Internet with the same copyright protections currently enjoyed by broadcast, cable and satellite delivery. The AWBR solution potentially will provide the means to authorize, monitor and report on all television and radio content streamed over the Internet.

The AWBR solution offers:

- Accurate signal area prediction technology
- Broadcaster-verified data warehouse
- Verification process
- Ability to help broadcasters control streamed content through their online programming guides

Currently, there are 2,350 television stations and 13,810 radio stations broadcasting off-air reaching 104 million households[5]13. Every household is in control of what they watch and listen to off-air by simply putting up an antenna. A broadcaster's signal reach is also their copyright reach, i.e., only those that can get it with an antenna can watch/listen to it with an antenna. By installing an antenna, the household automatically places itself within a broadcaster's copyright area, or it "activates" its ability to receive the broadcaster's signal. With AWBR, streamed TV and radio on the Internet can be almost as straightforward—AWBR is akin to tuning a web-enabled device so that it receives the same programming that an over-the-air reception device would receive. AWBR, along with the appropriate verification mechanism, provides the technology and data that enables geographically-restricted Internet delivery of television and radio programming.

[5] Decisionmark's proprietary broadcast data warehouse as of March 2005.

IMPLEMENTING AIR-TO-WEB

For any system to successfully stream local content 24/7 and be in compliance with local broadcaster's copyright, it must:

Determine what channels/stations a viewer is entitled to receive, i.e. screen for eligibility. AWBR answers this by using proven signal area prediction technology to determine which signals are received for each individual subscriber.

Make accurate eligibility determinations in real time. AWBR's combination of signal strength prediction technology and a broadcaster-verified data warehouse is the only way that eligibility can be accurately predicted in real time.

Communicate subscriber activity to each of the nation's local television affiliates and radio stations. AWBR will connect with every broadcaster so they can know exactly how many viewers or listeners are watching/listening to them via the web—while they are watching/listening. This opportunity for generating real-time ratings data is unprecedented.

Ensure that the underlying signal area data is accurate. Local broadcasters must be able to easily communicate changes in their signal area. They need to easily change and verify their coverage information so that off-air and web broadcasts are ALWAYS identical.

BENEFITS OF AIR-TO-WEB

The broadcast industry, artists and consumers alike stand to benefit from AWBR technology.

Broadcaster benefits

- Potentially avoid additional copyright fees
- Bring their broadcasts to the Internet
- Enhance interactivity with their audience

Artist and content owner benefits

- Promote their works visually while a listener or viewer is tuning in on the Web
- Utilize interactivity that is inherent to the Internet
- Build loyalty in local markets

Consumer benefits

- Listening and viewing devices tuned by Decisionmark
- Gain access to their favorite, free local programming online
- Allows consumers to continue to listen or watch their favorite broadcasts via the Internet

CONCLUSION

AWBR has solved the "Internet is global, broadcast is local" quandary. With AWBR, broadcasters can implement the same geographical parameters for Internet streams as off-air broadcasts. This solution benefits the entire broadcast industry because it expedites the process and acceptance of local streamed media over the Internet, in real time and without copyright infringement. Local broadcasters will have access to their audience via the TV or radio and the desktop and still maintain agreements with local advertisers. Because of the potential to reach consumers who may otherwise have missed the programming, affiliates may be able to achieve better advertising rates. The major benefit to AWBR is the ability to replicate, via the web, any broadcaster's exact signal.

In addition, real-time monitoring by broadcasters for compliance will benefit both broadcasters and consumers. Consumers benefit by having more local programming available and broadcasters benefit by learning more about their viewers and in turn, being able to supply their advertisers with this information. AWBR is the only technology in existence today with the unique ability to bring local streamed media to the Internet.

Mr. UPTON. Well, thank you very much. That was very informative, for sure.

Mr. Ingalls and Ms. Champion, in Comcast's written statement and what they indicated verbally, too, asserted that like services should be treated alike. Is Verizon and SBC's planned video service, in essence, the same as what they would get from a cable company? And if not, how is it different?

Mr. INGALLS. Well, as far as Verizon goes, how we are different is we are deploying a next-generation network, broadband, which really enables both the broadcast or linear programming as well as the interactive content to be delivered over the set-top. We feel that that is different, because of the technology, the bandwidth, that we are able to deliver.

On the other hand, we do believe that to apply the legacy rules to the new technology would be a mistake, because the opportunity to compete and to deliver this choice to the consumer is something that will benefit the consumers and the economy.

Mr. UPTON. Ms. Champion?

Ms. CHAMPION. Yes, Mr. Chairman. We are not building a cable network. There are very distinct differences between Project Lightspeed and the fiber deployment that we have brought to you today. Today, a cable network is defined as a one-way broadcast network. What I have showed you today is the capabilities of providing customers a lot of choice, innovation through providing a single IP connection to their home to deliver an IPTV switched video solution. A switched video solution is entirely different from today's broadcast model, which is the vast majority of the content that is delivered by the cable company today. This switched IP video solution allows interactivity. It allows the consumer to have great control over their content. It also allows them to personalize their services in ways that is not done today with broadcast cable. You can create your own identity on your Web service, on your SBC Yahoo! portal. And then that same identity with your interests for news, sports and entertainment, and music videos can automatically be populated directly onto your platform of the television, giving you a lot of control in your family.

I think you have seen the innovation, through the demonstration today. I think that is just really scratching the surface of how consumers can take an innovative IP-only solution and truly change the communications and entertainment experience by integrating it, making it customized and personal. And that happens with a true IP platform, which is what we are bringing to consumers with our plans.

Mr. UPTON. Well, let me ask this before I come back to Mr. Cohen.

I confess, I am a Comcast subscriber, and I have seen tremendous innovation as a consumer in terms of what they are able to provide. I can get pay-per-view. I can stop it when I go into the kitchen to make popcorn and come back. I have picture-in-picture, so I can scroll through and see a little bit of what I saw here. I know I have been to the cable show in the past, not this year, but I have been able to see, you know, great advancements that are on the way through my scientific America box in terms of what they are able to provide in the future as it relates to computers and that type of thing. And at what point would you say that the services begin to be offered the same?

Ms. CHAMPION. I think you would have to address directly the cable companies as far as what their plans are for investing. I know that from day one, we will be a completely digital solution. As you probably are aware, today there are still many, many analog cable customers out in the marketplace today. All of that just

really tells a story that we move into the marketplace day one as an all-digital, completely IP solution. And that really sets the bar high as far as the capabilities of what our platform can do. So with the approach creating innovation through light touch regulation, we can really begin to lead the way. I think at the end of the day, the opportunity here is to stimulate a competitive business marketplace, and what we are doing is employing the latest and best technology we have seen, the road maps of where Microsoft's IPTV solutions can let us bring new solutions to customers. And I just believe it is just a total leapfrog from where today's, you know, majority of analog cable customers have, I mean, you can just look at the track record there as far as where we are going to be doing from day one.

Mr. UPTON. Let me just ask Mr. Cohen to respond before my time expires.

Mr. COHEN. Sure. Thank you, Mr. Chairman.

Let me start by saying that as a competitor in this marketplace, I mean, we are excited by what Verizon and SBC are doing. I think that the demonstrations, the video and the demonstrations you have seen today have been great. I think it is a demonstration of how we are going to be. We collectively are going to be delivering much more value to all of our customers. I also think it is a pretty compelling demonstration that regulation hasn't exactly gotten in the way of innovation. There is a lot going on here, and I don't think we have really retarded any of that development.

In terms of what is present in the cable world today and the innovation that we are going to be making, the investment that has been made, as I said, the industry has invested almost $100 billion in building an IP-enabled network. Today, that network, which is incredibly robust, has an effective capacity of about 5 billion bits per second. The SBC network, by way of contrast, is going to be significantly less robust. It is going to have an effective capacity of about 20 million bits per second. And because of the slightly less robust network, they are going to be able to deliver a very efficient suite of products that is going to look an awful lot like the suite of products we are delivering and an awful lot like the suite of products that Verizon is delivering, all with slightly different uses of technology. We are all using IP today. You referenced your experience using On Demand, the Video On Demand service of Comcast. That is delivered through IP technology to the head end. We use Mpeg technology today to bring it from the head end to the home, but we are already using IP to bring it to the head end. So that I think if you look at the aggregate suite of products that all of us are going to be delivering to customers in the video world, there is going to be great choice, there is going to be great competition. I think the winners, the real winners here are going to be the consumers.

Mr. UPTON. Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman, very much.

Ms. Champion, Verizon says that their video service, from a legal standpoint, is covered by the same laws which govern cable operators. SBC apparently disagrees with that position. Is SBC's service any different from Verizon's?

Ms. CHAMPION. SBC is building a very robust broadband network.

Mr. MARKEY. Is it different than Verizon's?

Ms. CHAMPION. Verizon would have to specify what they are building, but from very beginning day one, we are very much a pure IPTV solution, and that provides a total different potential versus what I believe what——

Mr. MARKEY. So you are saying it is different from Verizon's?

Ms. CHAMPION. From the day one, yes. We are different. We are providing a completely IP video-based solution from day one, not a traditional broadcast cable——

Mr. MARKEY. Do you agree with that, Mr. Ingalls? Is it a different service that SBC is producing?

Mr. INGALLS. Well, the networks are very different. Our network is both broadcast and IP, so we are providing to the consumer the benefits of both. And the upstream side also provides to the consumer the interactivity and control that the other networks don't have from an upstream point of view.

Mr. MARKEY. So from a consumer perspective, there will be a big difference between the two networks that the two companies are——

Ms. CHAMPION. There is a big difference, yes, sir.

Mr. MARKEY. Would you agree, Mr. Ingalls?

Mr. INGALLS. Yes.

Mr. MARKEY. Okay. Now Ms. Champion, when we passed the Cable Act here in 1992, we provided that all cable programming be made available to competitors. And we also have compulsory licensing laws as well, which benefit companies that provide video service. Now when we do those laws out of the committee, we then attach public interest responsibility to the companies that are going to be the beneficiary of it. Do you think that you should be bound by the public interest obligations that are then shouldered by the companies that provide that video service, or should SBC not be bound by those laws?

Ms. CHAMPION. May I ask you to, perhaps, be a bit more specific about the comments that you are making? I am a business and product person, so I am not very familiar with the 1992 Cable Act.

Mr. MARKEY. Well, the 1992 Cable Act is the basis for your business model, because without that, you would not have access to HBO or Showtime or ESPN. And as a result, we probably would not be sitting here today.

Ms. CHAMPION. Well, clearly we will look forward to working with the programmers in providing customers a complete suite of programming choices. As a matter of fact, the various programmers that we work with in negotiating to provide their content to customers have embraced the idea of the capabilities of this new platform.

Mr. MARKEY. In other words, what I am asking you is do you think you should be bound by the privacy laws that are inside of the Cable Act?

Ms. CHAMPION. Yes, sir. We absolutely recognize, and on the basis of SBC's relationships today, we recognize the need to support the privacy issue.

Mr. MARKEY. So you believe that that should be a law? You would abide by the law——

Ms. CHAMPION. Absolutely. Yes, sir.

Mr. MARKEY. [continuing] on privacy? What other laws do you think, as you sit there, that SBC and the other phone companies should be bound by as they move into this video area?

Ms. CHAMPION. Well, we have already addressed the privacy issue. I believe that we will work with the local channels. I think there has been some representation today to provide the local retransmission of services so that we can bring those services to the——

Mr. MARKEY. How about the must-carry laws? Do you think that you should be bound by the must-carry laws?

Ms. CHAMPION. That is what I am referring to, yes, sir.

Mr. MARKEY. Okay. How many households do you have in the SBC service area?

Ms. CHAMPION. Project Lightspeed will allow us to reach a little over half of our households with——

Mr. MARKEY. No, how many households do you have in your service area?

Ms. CHAMPION. So it is about—so we will reach 18 million households——

Mr. MARKEY. Well, how many households do you have in your whole—in your service area, there are 18 million total homes?

Ms. CHAMPION. And we reach half of the—36 million households——

Mr. MARKEY. So there are 36 million?

Ms. CHAMPION. [continuing] half of them in 3 years. Yes, sir.

Mr. MARKEY. Okay. When are you going to reach the other 18 million?

Ms. CHAMPION. Well, obviously, you know, we want to bring video solutions to customers, that is why today we provide a video solution for customers in our bundles. We do that through a satellite solution.

Mr. MARKEY. No, but when are you going to bring this service to the other 18 million homes?

Ms. CHAMPION. Well, today we have announced the most aggressive build-out of any company in cable.

Mr. MARKEY. No, when are you going to meet the other 18 million homes?

Ms. CHAMPION. And as the technology——

Mr. MARKEY. In a chart, which I have here, of the business plan for SBC, what it says is that in the first phase, that is the first 18 million of the 36 million homes, you are going to do 90 percent of the high-value homes in your region. You are going to do 70 percent of the medium-value households in your region, but you are only going to do 5 percent of the low value. Now we have another word for those 5 percent. We call them our constituents. And so the 5 percent, which you are not going to do, deserve to know what your plan is for them. Those are the 18 million households that you are not providing a plan for, even as you ask to be exempt from many of the laws which govern telecommunications policy. Well, the reason that we are here is that those are the people who need the most protection. I really don't have to worry about the wealthi-

est people in the towns that are being targeted. I have to worry about the people who are in the bottom 50 percentile. Those are the people who need it. So what is your plan for those 18 million households in the SBC area?

Ms. CHAMPION. We are deploying very aggressively. We are making good business decisions about investing early and rapidly to reach the vast majority of our customers. And as technology develops, and as we enter the marketplace and are able to show that we can compete and succeed here, we will be able to evaluate our abilities to go forward. We will have momentum in the marketplace, plus we will have other technology choices available——

Mr. MARKEY. Oh, other technology——

Ms. CHAMPION. May I make one other comment, please? Relative to the ability to serve customers.

Mr. MARKEY. So I think you have two programs, then, it sounds to me. You have Lightspeed for the well-off and "snail speed" for everybody else, that is the bottom 50 percentile. And I haven't heard yet a plan which you have given to us other than, "We will have some other technology for those other people that we will deploy at another time that I am not here capable of testifying as to when they will get the benefit of it."

Ms. CHAMPION. I sit in front of you——

Mr. MARKEY. And that is just not adequate.

Ms. CHAMPION. I sit in front of you as a business person today——

Mr. MARKEY. Right.

Ms. CHAMPION. [continuing] saying that we are going to be investing $2 billion between now and next year, $4 billion between now and the end of 2007. And as any sound business decision has to be made based on the needs of the marketplace and the market's response to your services. Technologies evolved. My friend from Comcast announced that his chairman even two and 3 years ago didn't know about IP. Technology alone will allow us to evaluate other choices. We want to bring consumers choice. We do that today. We provide them solutions for video today. And we will do so tomorrow with very innovative——

Mr. MARKEY. When a cable company goes into a community, they agree to wire every home in that community. I am asking you, when you are going to wire, when you are going to provide the service to the 50 percent, who obviously are not part of any business plan, I have Harvard Business School in my District. You only need a three by five card to know to go to Dover and Weston and Lincoln and Brooklyn. That is not complicated. The complicated part about providing these services is to make sure every citizen gets access to them, and that is what we wanted to hear from you today, Ms. Champion. And we have yet to hear from you when they get the benefit of your request to be exempt from many of the laws which govern all of the other video services in our country.

Ms. CHAMPION. I would point to our track record with DSL, and I would point to our track record with wireless. There was no mandated build-out on either of those. I think the record stands on SBC's intention to bring and compete very aggressively in the consumer market to bring choice against an incumbent cable provider who raises prices against——

Mr. MARKEY. I want your commercial interest and the public interest drive, and today it has yet to do so, and that is your challenge in the years ahead. Otherwise, I think you are not going to have the reception you want in this committee.

I thank you, Mr. Chairman.

Mr. UPTON. Mr. Whitfield.

Mr. WHITFIELD. Thank you, Mr. Chairman.

And I want to thank the panel for being here today and helping us explore these quite interesting issues.

Like many people, I really admired Brian Robert's leadership with Comcast, and I actually did read his speech that he gave out at the U.S. Telecom Association Convention in 2004. At the time, he talked about the issue of regulation and how the telecommunications marketplace needed to have less regulation and a level playing field. But today, I want to ask a question to Mr. Gleason and Mr. Cohen. You can make an argument that, for example, when you find yourselves competing with telephone companies for voice service, you want less regulation. When they compete with you, say, on video services, you make the argument that they need to be regulated. We already know that cable, for example, is subject to local franchise authorities and direct broadcast satellite is not, and they serve nationwide. So I would ask the question, do we need to exempt everyone? Do we need to develop new rules only for the phone companies trying to enter the IP video or do we treat them in a different way? Mr. Gleason, can we start with your comment on that and then Mr. Cohen and then anyone else that would like to address it.

Mr. GLEASON. Sure.

Well, I think it is a great question, because that is really the whole conundrum we find ourselves in here today. And we do have a host of regulations that we have all detailed on the cable side and the telephone companies do on the telephone side. I think to a certain extent, the answer is this committee, with industry, has got to figure out how we reach the happy medium. I don't necessarily fully support phasing in a whole host of regulations on the telephone companies, but what I am saying is that we have got to have at least regulatory parity on the video side of the business. So that may mean that if you want to go down the road of deregulating certain aspects of the Cable Act, which you may or may not want to do, then you are going to have to do it for both sides.

Mr. WHITFIELD. Could you just give us 2 or 3 specific examples?

Mr. GLEASON. Well, I think specifically the most burdensome part of the regulations that we face are local franchising authorities, and with that comes the local franchise fee. And that, in and of itself, makes our product, in essence, more expensive to consumers and does bring on a host of regulatory requirements that go with that. I agree with Mr. Markey is that if you want to get into our end of the business, and I don't care how you deliver it. I mean, I am listening to an all-digital solution, so is that to say that if we were to go ahead and change out set-top boxes and force a set-top box on every one of our customers and we delivered an all-digital solution, now we are a network like theirs? And then we should be out of all of those regulations? I don't think that is where the intent of this whole discussion surely is to lead that because

everybody has a set-top now our network looks like theirs so we get out of franchising requirements. But the franchising burdens are probably the most burdensome. And I would argue that I tend to agree that one of the reasons we have a franchise is to use the easements and rights of ways of a community. And those easements and rights of ways are limited in their capacity. We can't string 40 different cable and telephone companies down every community's easements and rights of ways on poles and underground and what have you and make efficient use of that. So there is going to have to be some way that we all comply with franchising requirements, I think, that are subject to cable onto video products that other providers provide.

Mr. WHITFIELD. What do you say, Mr. Cohen?

Mr. COHEN. I essentially agree with Mr. Gleason, and I think I agree with the general tenure of your question, as well. Let me go back to voice a second, because you referenced Brian's speech, and we have engaged in a dialog with many members of this committee over the past couple of Congresses on the regulation of voice. I will tell you that Comcast, as a company, has never advocated the use of regulation as a sword that we would use against a competitor in the marketplace. So we do not come to you, have never come to you, and said, "Regulate our competitor in order to make it easier for us to be successful in business." And that is not the tenure of the dialog, I think, that we had in voice. I think the complexity of those discussions related to what legacy regulations in the telephone area should still continue to apply in a light regulatory approach to voice. And we have mentioned some of them at this hearing already: E911, CALEA compliance, participation in the Universal Service Fund, I mean, the types of legacy regulation that needed to continue to apply. And I think that we have almost come to a consensus around those points, although we are not quite there yet and we have been working at that for 2½ or 3 years. And I think it takes longer than 2½ or 3 minutes to just glibly say, "IP is IP so we should go and deregulate IP on the video side, because that is what we are doing on the voice side." The question is what are the types of legacy regulations that should continue on the video side, also in a deregulatory discussion and in a deregulatory approach in order to stimulate competition. And again, I think we flagged some of those, but I think we have just touched the surface today. Mr. Markey's questions were in around privacy and must-carry and non-discrimination provisions. I think there are significant issues of localism, which were codified in local franchising requirements, but it was protecting not only the rights of ways but local community interests and concerns. And there are certainly some serious policy questions that are raised as to who is going to protect those issues of localism if you completely take LFA's local franchising authorities out of the business on the video side.

Mr. WHITFIELD. Mr. Cohen, thank you for those comments. I just want to be sure to give Ms. Champion an opportunity, too. I would like to get her comments. And if we have time, Mr. Ingalls, I would like to get your comments.

Ms. CHAMPION. Yes, thank you very much.

I sit in front of you today with the opportunity to bring a brand new solution to the consumers. And the approach that has been

used by the FCC and by the Congress to apply a light touch to Internet services is the approach that has given us the competence and clarity to proceed with our plan to invest into this new network and these new services. And relative to the voice comments, the opportunity of the various providers, pure play VoIP providers as well as cable companies, to enter into the VoIP business and to compete over an IP service environment, I believe is being affected positively and it is one that we have supported because there is one set of single, national rules that are being applied to how these services can be provided and protected for consumers across the United States. And so we believe that that same kind of capability will lead to advancements for the video space as well as we create a complete video solution. So one set of rules, light touch, the same approach that has been used to date for Internet rules, applying that as a new entrant to our ability to enter into the video marketplace.

Mr. WHITFIELD. Mr. Ingalls, could you make a brief comment on the local franchising authority?

Mr. INGALLS. Sure.

Very briefly, we have actually gotten franchised in five communities. We recognize the localism, as Mr. Cohen mentioned, and have gone to hundreds of local communities. So franchising is a very cumbersome process. We estimate that we have, just in the neighborhood like the Philadelphia community, over 250 franchises we have to get in order to offer video service in that metropolitan area. So we look for a streamlined process. I like what I hear, as a marketing person, about a light touch regulation. I think it is about the marketplace. And we support the local franchise process but would like to see a national process to circumvent that. And we are not opposed. We have built into our business case, you know, paying the franchise fees to the local communities.

Mr. WHITFIELD. Okay. Thank you.

Mr. UPTON. Mr. Doyle.

Mr. DOYLE. Thank you, Mr. Chairman.

While it is true that many consumers want these new bells and whistles along with their voice, data, and video services, I can't tell you how many times I hear from people back in my District that what they want is simply lower bills. Do any of you here on the panel believe that IP-enabled services will promote enough competition in which to say a basic tier of cable gets cheaper or a basic phone plan gets cheaper? I mean, I understand the new and improved features, but what about good, old fashioned, cheaper rates?

Mr. GLEASON. Well, I would like to address that, because I think in my comments I noted that one of the questions is exactly that. Right now, and we hear this all of the time, and I hear the same thing from our customers. You know. They say, "I don't really want MTV." Well, but in our store, we are not like a grocery store or a bookstore. In our store, our wholesale providers force us to sell you all of this host of channels onto an expanded basic platform, and so if you want to get Nickelodeon, you have to take MTV. And so I am not sure that the IP discussion here is going to change the fact that, for the most part, four companies control all of the channels on the cable network. At some point, in order to address costs, you have got to address wholesale costs. But a company like New

Wave or the association that we are a part of, American Cable Association, certainly does not have the market power to ever affect that change. So my opinion is, until we come up with a way, and we have a suggestion that we have suggested to the FCC of coming up with a programming price index that would be submitted to the FCC every year on which programmers would supply them with their rates for each cable operator and what that price index changes every year. We believe if we had something like that, or other ideas, that that would rein in wholesale price increases. But I don't think those pricing phenomenons are going to change until wholesale prices change.

Mr. INGALLS. And if I could make a comment. And responsibility for the consumer market within the Verizon territory, I have seen what competition can do to pricing. Clearly, if you just look at the history of long distance pricing or local pricing, it has come down. Competition brings many benefits: choice, value, simplicity to the consumer. But something that is very important, as you said, to your constituents, is price. There is a GAO study that I was made aware of that showed when wired competition was brought to cable, it actually shows that in that 2 percent of instances where it occurred, prices were actually 15 percent lower. When we have built and announced FiOS in the Tampa area, the incumbent cable company actually, in response, has lowered their rates and offered new and creative packages.

So competition really is going to help the constituents. And they may not want the interactive, because that is really what we are bringing. We are bringing a network that is going to provide mainstream services to those that just want broadcast or the interactive services that are looking for the integrated converged solution.

Mr. DOYLE. Ms. Champion.

Ms. CHAMPION. Yes, thank you very much.

Yes, I absolutely believe the consumers will benefit from lower prices. Competition in a business marketplace allows consumers to have choice, and that puts the spotlight on an incumbent cable provider, in this example, to have to respond to the dynamics of the marketplace by a new product, a brand new service coming in and entering. I think the key thing that I would like to make a comment there is that the incumbent cable provider clearly has a lower cost structure. Our ability to move into a marketplace aggressively, very quickly, and being able to scale, being able to serve millions of households, will allow us to get in, improve our operating capabilities, and continue to help us work to drive prices and our cost structure so that we can compete as a new entrant in the video space with IPTV.

Mr. DOYLE. Thank you.

Mr. Cohen, I want to ask you. I read in your testimony that you said you believe the state of competition in the cable video industry is so strong that portions of Title VI of the communications act may no longer be necessary. I wonder if you want to expand on this statement and highlight portions of the act that you feel, in fact, may not be necessary any longer.

Mr. COHEN. Well, I think we have actually already touched on a number of these today. I mean, I think it is, as this committee looks at the telecommunications act, and by the way, I think we

are of the school that a targeted rewrite is probably of greater wisdom than an complete and total rewrite. But looking at burdens in the act, looking at burdens around franchising, by way of example, is certainly a productive exercise. Looking at some of the other rules and regulatory burdens that apply in a unique way in Title VI as opposed to the balance of the telecommunications act. I think as you go through this inquiry, and you have heard from this panel today, you have a very different marketplace and a very different dynamic occurring that in either 1992 or 1996, the latest two revisions of the telecommunications act, and I think that that justifies a different regulatory approach, or at least consideration of a different regulatory approach.

Mr. DOYLE. Thank you, Mr. Chairman.

Mr. UPTON. Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman.

And I am glad my colleague mentioned that, because that is really the question I was going to ask, you know, the communication act here. And my focus was going to be on how do you change the bureau focus, because really, what we are looking at now is a whole new world versus the way the FCC was designed and the different bureaus. And you know, you have got the communications laws in, you know, 1927, 1934, 1984, 1992, 1993. A lot of the members here were there in 1996. I was running that year, and I remember all of the lobbyists going to all of the members' offices. But even those who were the authors of that 1996 rewrite, I mean, based upon 9 years of being on this subcommittee, you couldn't envision where we were heading. So I think what would be helpful, too, and that is part of this testimony is how do we restructure the FCC to meet the new technological age? Now that may not be a surgeon approach to what some of the deficiency is. But I mean, there just makes no sense today that, you know, when we have competitive prices in the cellular industry, prices are going down, I mean, where are they in the telecommunications act? And how do we get, when there is convergence, and we have VoIP, how do we justify a different regulatory scheme when you have the convergence of broadband that you all will be competing with? So I am just going to throw that up as a generic question. Actually, Mike asked it very similarly. But I would rather, you know, you all come to our offices and really look at the FCC and its organization, based upon the law, and help us make sense of how we then rewrite this so that we have pure competition in, really, in essence, what we are calling as the broadband arena of delivering a multitude of services over various different pipes. Let me just stop there. Does anyone agree or disagree or if I said something really——

Ms. CHAMPION. I just want to say I accept your opportunity to come talk with you about how technologies are changing. I think the reality is there, and you nailed it, was that customers' needs are changing. They are looking for new technology. They are time shifting, place shifting all of their communications and entertainment. And that means that, you know, in the past two or 3 years, and what will happen in the future, really needs to be considered. I think that will happen by business and government working hand-in-hand to create a uniform approach to address these issues

today. So I appreciate your invitation and look forward to doing that.

Mr. SHIMKUS. Well, go see Ray Fitzgerald. Write his name down.

Ms. CHAMPION. Okay. Very good. Very good.

Mr. SHIMKUS. Start there.

Anyone else want to comment on that?

Mr. COHEN. Congressman, I mean, I think, again, you really did nail the issue there, and I mean, I would reiterate what I think the principles of that review should be, which is to keep in mind the purpose of regulation. It should not be to pick winners or losers. It should be to foster facilities-based competition to treat like services alike and to create an overall competitive environment that benefits consumers while preserving those aspects of legacy regulation that implicate important social considerations and that need to be protected.

Mr. SCHMIDT. Congressman.

Mr. SHIMKUS. Yes.

Mr. SCHMIDT. The most important content to your constituents is local news, weather, and sports. And we saw a number of demonstrations this morning, which were very slick, if I might say, but they didn't include local broadcasting. So I think any video play, you have to take into account local broadcasting and get that there. And putting free, over-the-air TV free over-the-Web creates competition.

Mr. SHIMKUS. Right. And obviously, those that have followed this committee for many, many years, know that I have been a strong advocate for the local broadcasters because of the safety concerns. And I always point to the 1993 flood that happened in the Midwest. And who was there reporting on the levies that are breaking and getting people out of the flood plain? It was the local broadcasts. And but that is all part of this debate. Same regulations, same requirements across the board. But there was a comment made that, you know, we are very schizophrenic as Members of Congress, you know what I am talking about. Let us level the playing field. But then the comment was made legacy regulations that are in the public good, I represent a large rural area, so we know what we are talking about with legacy regulations, which is making sure that rural areas have the same access to this technology as anyone else does.

Anyone want to add to that in that comment?

Mr. INGALLS. If I could make a couple comments. One, I think you have touched upon the wireless model as a model of lower prices and choices. I mean, technology is still being developed. There are no regulations driving it. We see Verizon Wireless deploying EVDO across the United States at a very fast rate, so broadband is available in that way.

As far as the rural comment, we also are committed, as we build out a fiber network, which is not a short bill, we are going to pass about 35 to 40,000 homes a week and keep ramping up. So we don't have an 18 million plan. We are just building. But in the rural communities, we are testing today broadband access in a wireless way using Y-max and Y-fi technology. So we are very supportive of providing broadband access, video access, and from the local programming point of view, we also believe local broadcast.

We are very supportive of that from a retransmission consent. So I think it is not a surgical thing, as you said. It is a significant change. Because on the other side, to enter voice, nobody is applying for any franchises. For us to enter video, we have to apply for franchise. That is a big difference. And I think leveling that playing field, looking at the whole gamut, is probably very valuable.

Mr. GLEASON. I would just add, since you brought up the rural aspect, and our association represents a lot of rural cable operators, our membership, just to keep in mind, has done a phenomenal job over the last 4 years of deploying broadband services in very small rural communities. I know I am headquartered in Sikeston, Missouri and so is Galaxy, which serves a town like Carrier Mills in your area that has broadband services.

Mr. SHIMKUS. Good research.

Mr. GLEASON. Thank you.

Well, I am not very far away. But our membership has been very aggressive in deploying broadband services to rural areas, so those services are available there now.

Mr. SHIMKUS. Great.

Thank you, Mr. Chairman. I yield back my time.

Mr. UPTON. Ms. Eshoo.

Ms. ESHOO. Thank you, Mr. Chairman, for holding this important hearing.

I have two questions.

The first to SBC and Verizon. I absolutely agree that we should approach any regulation of the Internet carefully. And I have often argued against cumbersome rules for new technologies. But I can certainly understand why your prospective competitors object to your entering the game on an uneven playing field. How do you suggest that we address their legitimate questions about fairness while still permitting you the leeway to innovate and bring new services to customers?

And my second question, and I want to get it in now so that we divvy up the time, is for Microsoft. Your company has done a lot of work in the area of standards and interoperability. And you have battled with your competitors and, in some cases, the government over how to make the Internet even more open and more accessible to all technologies and services. The television industry has had an even more difficult time creating interoperable standards for electronics. And my question to you is will the advent of television on the Internet exacerbate these problems or help to solve them.

So why don't we start with SBC, Verizon, and then go to Microsoft? Thank you.

Ms. CHAMPION. Thank you very much.

Your comment was regarding the playing field, and I would like to just reply to that by saying what we are looking for is one playing field where Internet innovation and Internet technologies can be treated the same. When we bring services to your home, there is going to be one Internet pie to bringing all bits together: voice, video, and data. Relative to VoIP entry, the cable companies are clearly eating into our core business, and with VoIP, the cable companies and pure play providers have been provided one single set of national rules to enter into the marketplace and are being treated as a new entrant with Voice over IP and without telephone leg-

acy rules and regulations. And I also want to add about the voice comment, with very little incremental investment. So we have got one playing field, uniform rules, being able to enter into a new business as a new entrant without any of the legacy rules associated to providing essential services for voice. So those aren't being applied. What we are asking for is one playing field where we can apply the same kind of light touch regulatory rules to the entry of video where we are making significant business investments to accomplish such.

Ms. ESHOO. Mr. Cohen, do you want——

Mr. INGALLS. And my comment——

Ms. ESHOO. Just before Microsoft gets in, Mr. Cohen, did you want to say something—no? All right.

Mr. INGALLS. Did you want—if I could.

Ms. ESHOO. Yes.

Mr. INGALLS. You know, the level of the playing field, from my point of view, is exactly what we are looking for, and frankly, I am not advocating that we apply legacy telephone rules to the Voice over IP market, but as Ms. Champion said, I think there are new entrants here that are coming in without applying for a franchise, as I mentioned, and so they are entering the market. So leveling the playing field, to us, is to kind of equalize the ability to enter into the other's businesses.

Let me give you a specific example of what I mean.

Applying for a franchise is now applying into a boundary that is a cable franchise boundary. We are structured as a network based upon the way the telephone network was built, so we could build fiber to the home, FiOS, in a central office, and it could encompass five different franchises of which are not all served by that central office. So franchise requirements are an unnatural overlay to our network topology. So we are just looking for a way to streamline the franchise process so that it fits with our legacy network as cable is obviously taking their legacy network and made it fit to the telephone world without any rules being overlaid as to where they go or don't go.

Mr. MITCHELL. So the short answer to your question is that it is explicitly our objective to make sure that that doesn't happen when it comes to developing the software solutions that enable Video-over IP. There are several different components of that. One is simply the fact that the Internet itself has been able to be very successful by having an explicit protocol approach that enables the evolution of other forms of services on top of the network. So for the last 10 years, you have seen the Internet take on many different types of applications because there is a common base of accepted standards. In terms of the video case, you have to look at rights management and security and on the encoding schemes. In all of these areas, we are working to ensure that the software solutions effectively have replaceable components that can evolve over time, so that the same type of evolution that you are able to see on the Internet works.

And finally, I would just add that it is, for us, in terms of developing the IPTV solution, for example, that SBC is deploying, it is explicitly our objective to ensure that we enable the ability of retail devices from many manufacturers within the next few years once

all of the technology is sorted out. It has been, from the beginning, part of our design approach.

Ms. ESHOO. Thank you. I am going to yield back, Mr. Chairman.

Mr. UPTON. Mr. Walden.

Mr. WALDEN. Thank you very much, Mr. Chairman.

Mr. Cohen, you said something that I thought really hit the nail on the head on what we are trying to sort out, and that is that we need to review all of the rules for all of the providers. And as I sit here and listen to all of your testimony and kind of think about this, you know, the world really has changed so rapidly, and I am a broadcaster, a radio broadcaster by profession, 19 years in the business, and you know, it is phenomenal to me how things are changing and how, you know, the 1934 act requires us to do certain things, and then other people come along and compete in my community that doesn't have to do any of those things, and yet I am supposed to do all of these community standards, you know, which I think is actually going to be the survival of community broadcasting. But it does raise some really difficult challenging questions about how you provide content to people who want it while also dealing with this issue of serving the community and allowing those who are charged with that as part of their obligation to survive economically. I mean, that is kind of cutting to the chase.

And I am curious. I think it was Ms. Champion who talked about your system was unique in that it was switched IP video, a whole digital system and that would be unlike cable and it is two-way, not one-way, if I got you right. And so I am curious, for the cable providers on our panel, because I have got digital cable, aren't you also getting into a two-way system and digital capability as well? So how are you really going to be different? I mean, maybe you are right now, but 6 months from now, 3 hours from now, are you going to be that much different?

Mr. COHEN. I think your question says it exactly right. I think not only is there going to be convergence among platforms, there is going to be convergence among services. As I said, we are already two-way. We already use a significant amount of IP in our system. We will inevitably use a switched video component to the delivery of our service in the very near future. The platform is already enabled for that. I think, as I said in response to a previous question, the SBC model uses switched video because it is an efficient use of the particular platform that they are building out, which happens to have much less overall capacity than the platform that cable has built out. But there are clear advantages to interactivity and being able to deliver personal——

Mr. WALDEN. And you were talking about the difference between the bandwidth of your platform versus Ms. Champion's, right?

Mr. COHEN. Right. Our platform has an effective available capacity of 5 billion bits per second whereas the SBC platform has an effective capacity of about 20 million bits per second.

Mr. WALDEN. So you would have, like, plenty of capacity to do multi-channel must-carry, then?

Mr. COHEN. I should have seen that coming. I mean, of course the issue——

Mr. WALDEN. I just wondered if you had the capacity. I sort of sense maybe you do.

Mr. COHEN. And of course the answer to that question is that the capacity that we have built——

Mr. WALDEN. Yes.

Mr. COHEN. [continuing] that we have developed needs to be available for the services that our customers want to receive.

Mr. WALDEN. Right.

Mr. COHEN. And we would have capacity——

Mr. WALDEN. I sort of anticipated that answer, too.

Mr. COHEN. We have capacity to carry loads of extra channels, but they should be channels that our customers want, not just those——

Mr. WALDEN. Now let me go to that point. And I understand that argument. But let me go to that point, because public television has some pretty remarkable agreements on multi-channel must-carry. What is the difference, from your industry's perspective, about that agreement versus what over-the-air broadcasters are trying to require as well? Is the difference that one has advertising and one doesn't?

Mr. COHEN. No, actually, it isn't. I think it is a difference of whether government should mandate the carriage or whether there should be commercial negotiations and discussions——

Mr. WALDEN. Are you all engaged in commercial negotiations and discussions?

Mr. COHEN. With many different broadcasters.

Mr. WALDEN. Okay.

Mr. COHEN. We just announced a deal with NBC for some multi-cast.

Mr. WALDEN. All right.

Mr. COHEN. And so we are engaged with the networks and with local broadcasters in those discussions.

Mr. WALDEN. Perfect.

Mr. COHEN. And what we want to have, and let me just give one fact——

Mr. WALDEN. Yeah, sure.

Mr. COHEN. [continuing] because it is incredible. If you apply multi-casting must-carry, we have must-carry obligations with 23 broadcasters in Los Angeles.

Mr. WALDEN. Right.

Mr. COHEN. So imagine that we might have to carry 23 weather channels of the broadcasters having cameras pointing out their window looking at the weather.

Mr. WALDEN. But given none of those ever is right, maybe having 23 options——

Mr. COHEN. Right. It is comparable weather, put it that way.

Mr. WALDEN. All right. Well, but I want to make another point, which is sort of off this point, but it is all in this together, because some of our colleagues in the Senate then want a mandate on over-the-air broadcasters that they cover us "holier than thou" candidates when we are running for office, if you are a commercial broadcaster, but not if you are a cable caster or Verizon or SBC, to give free air time and free access. Can you imagine if the same burden applied to video providers and audio providers in Los Angeles and New York? Can I get 100 minutes of free time on your system?

Mr. COHEN. I am not sure about 100 minutes, but——

Mr. WALDEN. Ninety-nine? Can we——

Mr. COHEN. You should know. I think we have talked with many of you, Comcast pioneered something last year called "Candidates on Demand" where we provided——

Mr. WALDEN. And nobody clicked.

Mr. COHEN. Actually, you would be surprised. We——

Mr. WALDEN. Well, you understand what I am saying, and that is part of the——

Mr. COHEN. The Senate race, it was wildly popular. We gave, basically, 35 minutes to each candidate, seven issues, 5-minute videos. We put it up on our On Demand platform for free.

Mr. WALDEN. Okay.

Mr. COHEN. And it actually was fairly popular, and it is something that we intend to roll out——

Mr. WALDEN. And I commend you for it. But that is also one of those legacy requirements that it out there on some providers of video content and audio content that is not on others.

I want to go to the issue of retransmission consent and all, because I sensed a slight disagreement between Mr. Gleason and Mr. Schmidt, I believe. What do you do where you are in a legacy, call it an "old line business", if you want to call it that, where you have an agreement that says, "I have got market exclusivity for this program." Should we open up that program to anybody, because we have a new technology to deliver it, or is there still this legacy right that, as the provider and contracted provider for that program, you should have that right in your market to have exclusivity?

Mr. SCHMIDT. Well, Mr. Walden, obviously, we believe that if you have the contractual right, you should have the ability to enforce it, and the point that goes to your earlier comments about the importance of localism is that the rules, that we did not emphasize in the testimony, are primarily aimed at protecting smaller markets who not only would be vulnerable to an international threat, but even from their adjacent markets. Would Grand Rapids broadcasters buy exclusivity versus Traverse City? Probably, if we could. And the same issue is large on the Internet. So the syndicated exclusivity and the network non-duplicative rules are really intended to preserve the universal availability of local news, weather, and sports, which are the beneficiaries of the rest of the system. So in this instance, I don't think there is any doubt, really, that these are quasi-intellectual property rules, but they are also intended to preserve the local reach. And while I see that the label up here on this thing is "twisted pair", which I assume refers to Mr. Gleason and me, we really are bound together. And I think his beef is actually more with Mr. Cohen than it is with the broadcasters, particularly the small market broadcasters. And I fear that the solutions that he proposed to eliminate these protections will harm local broadcasters and the local content, which is, in significant part, what drives his business as it is today. So I think the enemies are not the small, local broadcasters with whom he is negotiating retransmission consent and having to occasionally carry and must-carry.

Mr. GLEASON. Well, let me be clear about my comments, too, on retransmission consent agreements. I completely agree that we

need to carry local broadcast channels in our markets, and they are a very important part of our product offering in our areas. And I think we should be carrying those, and I think that that opportunity is already there for broadcasters to make sure they are carried, and it is called must-carry. But what I have suggested in my comments is that where this dynamic changes, when a broadcaster elects retransmission consent and now wants cash for carriage that is obviously going to fall straight to the consumer for a free, over-the-air broadcast channel, then that has changed the negotiating dynamic, particularly for small market cable systems where we don't affect enough eyeballs in a particular market. So if that channel is dropped, we don't have enough effect for the broadcaster to notice, thereby giving them much more market leverage, because we can't go import an out-of-market station. So——

Mr. WALDEN. But you do charge your viewers, because they have to pay a subscription in order to be able to watch the program that the over-the-air broadcasters are giving to you or now negotiating a price for, right?

Mr. GLEASON. We do charge a nominal charge for limited basic service——

Mr. WALDEN. Yeah.

Mr. GLEASON. [continuing] which is generally that broadcast basic service——

Mr. WALDEN. Sure.

Mr. GLEASON. [continuing] that is getting cable out to those homes, and I would argue in most cases, extending broadcasters' reach.

Mr. WALDEN. Sure. It is a partnership.

Mr. GLEASON. But that is usually a very low-cost level of service and generally pays for the cost of delivering the service. But if we are now going to layer on specific fees per customer to watch those broadcast stations, then that changes that dynamic of that level of service. And our argument is that if you do decide to charge, then we should be given the option to shop.

Mr. WALDEN. I see.

Ms. CHAMPION. Mr. Congressman, may I reply to the comment related to the bandwidth that is involved here?

Mr. WALDEN. Yeah, you are going to do multi-channel must-carry?

Ms. CHAMPION. Well, no, sir. But the point that was made by Mr. Cohen here is really an apples to oranges comparison. As you know, a cable company shares their bandwidth across all of the users in their area. And what we are talking about is a dedicated connection providing a very secure and private connection for that individual home, that dedicated bandwidth that is available to them versus an environment that is shared.

And I would also like to say I sympathize with your request regarding having free time. I would just like for the various cable companies to allow us to advertise some of our services relative to what we want to present into the marketplaces, which today they do deny us that opportunity on many, many, many occasions.

So I appreciate your request for the free time.

Mr. WALDEN. You can always buy radio advertising.

Ms. CHAMPION. Yes, we do. Thank you very much.

Mr. UPTON. Especially in Oregon.

Mr. Boucher.

Mr. BOUCHER. Thank you, Mr. Chairman.

I also want to thank this panel for sharing with us today what I think is a very stimulating discussion of highly relevant issues.

Let me take the opportunity, Mr. Ingalls and Ms. Champion, to have you clarify the extent of which you are willing to accept Title VI obligations. Let me just tick off a couple of things, and I would like both of your responses as to whether or not you are willing to accept this, as you offer your multi-channel video service. You might just note these as I go down, and you could respond to all of them collectively, no need to respond to each one: retransmission consent, network non-duplication, syndicated exclusivity, the must-carry requirements, sports blackout, the program access requirements, which basically say if you are originating your own content, there are circumstances under which other multi-channel video providers should have non-discriminatory access to your content, privacy for customer information, and set-top box interoperability. There may be some other elements of Title VI. I think this captures most of it.

Mr. Ingalls, would you like to respond first?

Mr. INGALLS. It is a long list. I couldn't write fast enough, but I will try to hit a few of them.

First, privacy is something that, as a common carrier, we operate under today. So from a privacy requirement, there is no question that that is something we support and we clearly endorse. I mean, I think the key point here is that, you know, entering the video market that we are entering, as the new entrant, we are looking to take this playing field and level it. Things like must-carrys, sports blackout, those are issues that I think are to be discussed. I guess I have the benefit of being a businessperson focused on the business market, trying to get customers, so I am not, you know, deeply familiar with the rules that you mentioned, but I will say Verizon has demonstrated in our negotiations to get into this business that many of the things that you referenced, we are negotiating with the appropriate authorities trying to make sure we comply as we enter the business, the local franchising authorities being an example.

Mr. BOUCHER. So your answer is some of these but not necessarily all.

Mr. INGALLS. I can't tick off one by one. Again, I didn't write fast enough, but——

Mr. BOUCHER. All right. Ms. Champion, would you like to respond?

Ms. CHAMPION. Yes, sir. Thank you.

As a multi-channel video provider, as a satellite company is, we would endorse and follow the same requirements as they have adopted and the same rules have been applied to a satellite provider.

Mr. BOUCHER. Okay. Well, that is a clear answer. So you would basically take the set of rules applicable to satellite multi-channel video providers and say that you are willing to accept those?

Ms. CHAMPION. That is correct.

Mr. BOUCHER. All right. Let me address the questions relating to franchise, because we are going to have a debate here about this, I can see that coming. And this is truly interesting.

Mr. Ingalls, I detected in some of your answers to questions posed by other members a general willingness on the part of Verizon as it offers its service to pay the franchise fee. I also have seen other statements made by Verizon suggesting that you would be willing to abide by the public access channel requirements that attend franchise agreements. But are there elements of the franchise agreement that you think should not be applied to your service as it is introduced into local communities?

Mr. INGALLS. Well, yes, I did say we are willing to pay the franchise fees. We have negotiated five franchises and are in the middle of negotiating hundreds. As part of those franchise agreements, we are negotiating public access, educational, government channels. We are willing to provide that. I think the issue here is the process by which you get franchising authority. The cable industry built their business based on a monopoly franchise in local communities. And as we look at the market as really the fourth entrant now with two satellite providers doing reasonably well in every market, we are looking for a more streamlined process, so is a State-level franchise or even a Federal-level franchise the right way to level this playing field? So simplifying the process to get a franchise is something we clearly want.

Mr. BOUCHER. What are you asking us to do?

Mr. INGALLS. I think this committee, we would very much appreciate looking at the franchise and rules, looking at a national franchising policy that would apply some of the local franchise conditions that have existed, which we have demonstrated the willingness to support so that we could enter the market. As I said earlier, in a given community like Philadelphia, 250 franchises to serve the Philadelphia marketplace.

Mr. BOUCHER. And so are you going to propose to us elements of what this national franchise model should be?

Mr. INGALLS. We would love to sit down with you and lay out for you exactly how we think the franchise——

Mr. BOUCHER. All right.

Mr. INGALLS. [continuing] model and process should look.

Mr. BOUCHER. Ms. Champion, could you speak to how SBC's position with regard to local franchising might differ from what Verizon has said?

Ms. CHAMPION. The intention of SBC to build the 18 million households between now and 2007 would mean that we would be proceeding against over 2,200 unique franchise negotiations and processes. As an IP-based service, we believe we should be treated as a new entrant under the light touch IP rules of the Internet. Specifically related to build out, that is the——

Mr. BOUCHER. Well, let me ask you this. Are you asking us to adopt a kind of a national franchise model along the lines of what Verizon is suggesting or are you saying that we should——

Ms. CHAMPION. Yes, sir.

Mr. BOUCHER. [continuing] basically—oh, you are?

Ms. CHAMPION. Yes, sir, that is exactly—one set of national rules, unified rules to help overcome this patchwork of, you know, varieties of rules and regulations across the——

Mr. BOUCHER. Okay. I am trespassing on others' time, but two quick questions.

Would you be willing to pay the local franchise fee?

Ms. CHAMPION. We will absolutely be willing to work with them. We live in these communities. We want to equalize across the players.

Mr. BOUCHER. Okay. I take that as a yes.

And would you be willing to abide by public access channel requirements? I mean, these are two things which Verizon says it is willing——

Ms. CHAMPION. The must-carry——

Mr. BOUCHER. No, no, local access. You know, you have paid channels on cable and, you know, educational purposes covering the town council, that kind of thing.

Ms. CHAMPION. The whole nature of this platform is different than traditional services are, so we have a lot of flexibility to provide public interest features and services to the communities, so——

Mr. BOUCHER. So I take it the answer is generally yes.

Mr. MARKEY. Would the gentleman quickly yield?

Mr. BOUCHER. I would be happy to yield.

Mr. MARKEY. Okay. You said that you would be willing to abide by the rules that the satellite companies abide by?

Ms. CHAMPION. Multi-channel provider satellite rules.

Mr. MARKEY. All right. Does that include the turning over of 5 percent of capacity to non-commercial, unaffiliated programmers? That is one of the rules that was part of the satellite package.

Ms. CHAMPION. Oh. I would have to look into that. I am not sure I understand what all of the specifics are of that rule.

Mr. MARKEY. Okay. Does it include the obligation to provide test signals throughout the entirety of a broadcaster's local signal area?

Ms. CHAMPION. As I stated earlier, we would follow the same guidelines as the satellite providers, so if that is one of the stipulations, then——

Mr. MARKEY. Those are the satellite rules. So you would abide by those satellite rules that I just gave to you?

Ms. CHAMPION. Yes.

Mr. MARKEY. Okay. Thank you.

Ms. CHAMPION. Yes.

Mr. MARKEY. Thank you.

Ms. CHAMPION. You are welcome.

Mr. BOUCHER. All right. Thank you very much, Mr. Chairman. I yield back.

Mr. UPTON. Mr. Ferguson.

Mr. FERGUSON. Thank you, Mr. Chairman.

I have a few questions, and I want to try and get through these quickly.

A quick question for Mr. Ingalls.

I am very interested in the issue of a level playing field, particularly as you roll out your fiber network and others as we get into this particular issue and how competitive that playing field will be.

I know you have already addressed this issue a little bit, but I want to ask you more specifically. How much are you spending on your fiber development and your deployment and how does that compare with some other folks in the industry in terms of your rollout?

Mr. INGALLS. Yeah, we are building, as I said earlier, really a next-generation network. We spent $1 billion in 2004 to pass approximately 1 million premises. And we have announced that we have committed to do 2 million premises in 2005. Our capital budget has increased. As a combined company, it is about $11.3 billion this year, not just on fiber, but you can work backwards. If 1 million is $1 billion, 2 million this year is close to $2 billion. So we are investing heavily. It is about the capability of the network.

And if I could just add one more comment that hasn't been clear. The network really is a combination, so when we talk about 100 megabits downstream and 15 megabits upstream, that is just the data connection. We still are providing hundreds of digital channels coincident with that. So it is not constrained. So we really have the capacity here that can deliver.

Mr. FERGUSON. How does that compare with some of the other companies? Are you tops in terms of the money you are spending right now in deployment? Are you——

Mr. INGALLS. I believe we are spending as much—I really don't know everybody's checkbook, but I think we are spending as much or more as anybody.

Mr. FERGUSON. How do you decide where you are going to deploy?

Mr. INGALLS. Our decisions on deployment are based upon multiple factors. One, I have responsibility for over 30 million households. So we look at the market we have announced in 14 States. We are deploying in every major market initially. We have only announced plans, as of right now, to about 100 central offices or communities. We have plans built now through the early part of 2006. This is a very evolving plan, so we have not announced everywhere that we are going over the next 5 years, but as I said, we are building at the rate of about 35 to 40,000 a week and ramping it up, so we should be accelerating it. The decision on where we build is based upon the market, the opportunity, and frankly, partly on the competitive intensity, because today we have cable companies announcing they are entering the telephone business without applying for the franchise, which they don't have to, and we have to provide that same package of services. So we are really looking at competitive intensity as one of the big drivers of where we go.

Mr. FERGUSON. When you decide to deploy in an area, is it economically feasible for you to hit 100 percent of that community in the first year?

Mr. INGALLS. Not in the first year. It is pretty hard. If, you know, you look at metropolitan markets like New York City or even the Washington market or Boston, it is a pretty large community, so it is really a 2 or 3-year plan to cover a market. So when we choose to go into a market, a metropolitan area, we really look at the efficiency of building it, the efficiency of marketing, because the big benefit here is to be able to market to the whole community, not to have what I would call like a Swiss cheese approach where we

are only in certain neighborhoods. So our intent is to build out the whole area as we go to a market.

Mr. FERGUSON. But it is sometimes economically not feasible to do it in the first year?

Mr. INGALLS. No, it is really a matter of physical ability as well as economics. We can't pass millions of homes in 1 year, so that is why, in the first year, it is difficult. But as I said, over a two or 3-year period, we plan on covering a market that we have chosen to go into.

Mr. FERGUSON. Okay. Thank you.

For Mr. Cohen, Comcast now offers data, voice, and video services, which have traditionally been regulated under Titles I and II and VI of the act. Practically speaking, how does this sort of regulation work for a company like yours, which offers many different services to many different customers in many different States, as you do?

Mr. COHEN. Well, I don't want to repeat what people have been saying today, but I mean, I guess the question puts your finger on some of the complexity that exists in the current structure of the communications act. And in particular, we have a VoIP product that, as all of you know, falls somewhere between Title I and Title II and aspects of it can be regulated under both of those titles. I think that where the communications act creates confusion and retards competitive entry, it needs to be reexamined. I think that, generally speaking, on a philosophical level, we believe that lesser regulation is better than more regulation, but we believe that regulation should not be used to pick winners or losers, to favor particular technologies, and that, generally speaking, like services should be treated alike in the regulatory treatment.

I think our concern, having gone through several years of work with members of this committee and others, just on the VoIP side, just on the Voice over Internet Protocol side, when I think where we were two or 3 years ago in terms of restructuring the regulatory approach and all of the mistakes we would have made by the first look at it, I get a little nervous when we talk about just a meat ax approach on the video side where we say because it is an IP network and because we are using IP technology to deliver this service, no regulation is necessary. And so I think the dialog that we have all had here today, frankly, the multiple invitations to continue the dialog and to make sure that we create a regulatory approach that fosters all of the objectives that we have talked about, which I think, generally speaking, are shared by all of the members on the panel, will result in a restructuring of the 1996 act in a way that will benefit consumers and benefit competition but preserve critical aspects of legacy regulation that are necessary to promote important social policies.

Mr. FERGUSON. I think you would find a lot of people on this panel who would agree with that.

Thank you, Mr. Chairman.

Mr. UPTON. Mr. Gonzalez.

Mr. GONZALEZ. Thank you very much, Mr. Chairman.

I guess my first observation, and I apologize, I was absent during some of the questioning that would be very relevant to what I want to speak to, and the first assumption, I think, is always that I

think individuals, the witnesses, and many of the individuals in the audience go back to their offices later and I think they actually say things like, "These guys really don't understand the technology, the members of this committee." And then they say, "Gee, and we know they don't understand sound business practices." Well, you may be right, but it doesn't mean that we are not going to regulate. So be really careful what you ask for. The amount of specificity and detail, you know, we hear it from that end and then you get it from us, because we are trying to obligate you on all sorts of stuff that may or may not lend itself when you get in there into the real practice. So I guess, you know, this is just, you know, beware. All of us should beware of what we are trying to do. We are trying to accommodate changing technology, right? And we have traditional companies, the wire line companies, that are moving into these new technologies. We have got to figure out how that is going to happen, how we will foster competition, and how we will be in a position to actually enhance and promote this technology. And I know I wasn't here, I think, when Mr. Markey eluded to is SBC, or anyone else similarly situated, more or less redlining or whatever.

And I guess my question to Ms. Champion, I just always assume certain things, if I look at cable companies and I look at Time Warner in San Antonio in the 20th District. You know. They have Voice over Internet Protocol available now. They have always had their cable lines there. I know when SBC went into broadband, well, you know, we had our phone line coming in. But what we are talking about here is something a little different, and you are expanding and going into something different as well as other companies. Do you all look at markets and fear, as you start off, in order to remain competitive and make a profit, which is still a legitimate business goal in America today, do you look at a customer profile and say, "This is where we are going to go," get off the ground, and then see where else we go? Because I really believe you have to do that to survive, and then to expand, and maybe into certain communities that, at one time, maybe weren't as attractive or such. I mean, that is just kind of a common sense approach that I have always felt about everything. I may be completely wrong, and I would ask that you please address that particular view or concern of mine.

Ms. CHAMPION. To survive, you must apply sound business practices. And that means that you have to start and build. The course that we have ahead of us is a very challenging course to enter as a new video provider, an IP-based solution for our customers. So yes, we have to start and then build on our capabilities and create momentum. We are competing against the incumbent providers, and as much as they entered our business, they entered into the voice business and are entering into the voice business without the legacy constraints and the legacy rules of an incumbent voice provider. So the path forward for SBC is absolutely we want to serve our customers. We have the most aggressive, 50 percent plus, than anyone sitting, other than at this table, you know, that is talking about reaching 18 million subscribers. So our goal is absolutely to get there. And as technology evolves, we will have even more capabilities. But the key for us is to enter this marketplace, to make

these investments, let these capabilities develop, and then let us work through that process very quickly over the next several years to determine, just as we did with DSL and just as has been done with wireless technology, where both of them have grown rapidly without mandates on building areas to serve customers and provide customers with the solutions that they want. Customers, at the end of the day, are what is going to dictate the sound business choices that SBC makes relative to the investments of billions of dollars of shareholders' money. And so what we are looking for is the ability, with a light touch entry, to enter this marketplace with a new solution and a powerful solution that allows us to serve customers.

Mr. GONZALEZ. Thank you.

The way I see the big question, and I think the way it has been presented by committee staff to me during the briefings, is really how we categorize different service and providers: voice, data, video, what will they be subject to, what is still fair to carry on as far as certain obligations in the way of contribution by existing companies and so on. And if we could just rather stay focused on those things. I think Mr. Gleason had something on retransmission, the problems we have with that. We know from the broadcasters on multi-cast, we know the problems with digital and high-definition whether this will be carried or not carried. And I would like that we would be able to address those things. But I would rather that the industries themselves come to some sort of an agreement so that it doesn't require us to move forward or allow any regulatory agency to take that particular issue over. But those are my observations. But we do appreciate that you have come forward, that you provide us the insight regarding the change in technologies and trying to explain it to us. You know, believe it or not, we are capable of understanding, when we listen. And also, there is nothing wrong with bringing out the market dynamics and explaining those in detail sometimes to us.

But again, I would yield back at this time.

Thank you, Mr. Chairman.

Mr. UPTON. Mr. Pickering.

Mr. PICKERING. Mr. Chairman, thank you.

Let me really quickly give what I think is the context of the decisions before us as policymakers where there is consensus and then what our objectives should be as we examine our policy decisions. The context, the 1996 act has been fully implemented and the old world is over. There is no longer long distance and local. As we see the mergers and acquisitions, we are going to concentration. Probably in the next 2 years, where there are four Bells, I wouldn't be surprised if there are only two Bells: Bell East and Bell West. There is a concentration occurring in wireless from seven national probably down to three or four. Cable is experiencing the same thing.

As we see the completion of the act and then we see the concentration of the industries, all sectors, and that is not necessarily a negative thing, it leads us to convergence, which is one of the objectives of the 1996 act. What we are talking about today is the quadruple play or the four play that you can offer data, video, voice, wireless and then offer consumers that. That is, I think, a good outcome. But it is very critical that as we go into concentra-

tion and convergence that we still maintain the core objective of the 1996 act. Even though the 1996 act now deserves reform or revision or modification, I think the objectives of the act should be the same and that is to maximize competition, maximize choice, because when you do that, you maximize investment, capital investment into new applications, new technologies, and that core objective is what we should consider.

The other objective is that we are competitively neutral, that we don't favor Bells over cable, or cable over Bells, or wireless or other new entrants, that we should try to find a way, even though I do not think it is possible at this point to have regulatory parity, it is possible to have fairness. And I have said this before, when you are raising children, I have five boys, you treat your children at different stages differently, but you hope you treat them fairly, so at the end of their youth, as a mature adult, you can release them into deregulatory parity.

So that, I believe, is what our objective should be. There is a danger with concentration that we could have not a monopoly, but in a lot of our markets, duopolies. I do not think that would be a good outcome. I think that we want to see three to five competitors in each segment or each sector of our markets. And so as we look at our decisions, we should say, one, we are going to be competitively neutral, we are going to maximize competition, and we want to try to maintain three to five competitors in each of our markets.

So having said that, if those are objectives we can agree on as a committee, then where are the consensus points that we have reached? I think on IP-related services, the consensus points are that IP-related services should primarily be regulated at the Federal level. I think that is a consensus. Now there are partnerships with States and localities even under that, but in general, their primary jurisdiction should be Federal. I think that there is consensus on the social obligations: USF, E911, law enforcement, CALEA, in concept, not in detail. I think that there is consensus that we should do intercarrier comp as we go forward.

Now where we have remaining questions or concerns are how do we treat networks, incumbent networks, and how do we treat content, access to content. And how we choose those two answers will determine if we reach our policy objectives. So in that context, I would like to ask my questions.

Ms. Champion, you testified earlier that as you enter into video, that you would like to see legacy regulations removed. Is that your position?

Ms. CHAMPION. We are building a new network that is an entirely IP-based solution, so yes, the legacy rules, as a new entrant, should not be applied.

Mr. PICKERING. Now is that the same position you take at FCC?

Ms. CHAMPION. Yes.

Mr. PICKERING. According to your proceeding to the FCC that is now pending currently, your petition says a declaration that IP platform services are not subject to Title II will not affect the applicability of Title II to legacy telecommunication services and networks. So before the FCC, you are saying it would in no way affect existing regulation of legacy networks and services by either State or Federal regulation. The other point that you make is that serv-

ices may remain unregulated but will have no effect on rights of access to legacy non-IP-based services and certain facilities that support them. And it goes on to basically say that as we have seen the completion of the act and competition emerge, we have had FCC action to deregulate the network, the broadband decision, those beginnings of deregulating the network as competition emerges but still maintaining minimal regulation of legacy networks. You are testifying differently than how I read your proceeding at the FCC and the outcome as far as maximizing competition.

For example, I would like to ask Mr. Cohen this question, if you remove legacy regulations to networks, cable right now partners with C-LEC's to offer VoIP, is that correct?

Mr. COHEN. We do have to partner with C-LEC's to offer VoIP, because we need the connections to customers off of our basic network.

Mr. PICKERING. And so if C-LEC's no longer can have access to loops and transports, can you offer VoIP, the voice service today?

Mr. COHEN. I think we would need different partnerships, but we would have to structure different business relationships with some different players.

Mr. PICKERING. And what partner could now, that exists today, if no partner can get access to loops and transports, how could you offer VoIP? Where are you going to find this partner?

Mr. COHEN. We will find a partner at this table.

Mr. PICKERING. Oh, you are talking about here?

Mr. COHEN. Yeah.

Mr. PICKERING. But I am talking about if we were to do as SBC testified and that we took away all access to the incumbent network, how would ISPs and cable offer voice today? I think the answer is you would not be able to.

Mr. COHEN. I think that we would not be able to in the way you have raised the question.

Mr. PICKERING. Yeah.

Mr. COHEN. That is correct.

Mr. PICKERING. And then the question is——

Mr. COHEN. I am not sure I understand, but——

Mr. PICKERING. Now let us go back to the objective. We want to maximize competition in voice. Now I am going to come back and I am going to say what the Bells would probably want me to say as they enter your market, and this gets back to fairness, not parity but fairness. If we want to maximize voice competition and your quadruple play as you enter into their market, you need access to their networks, is that not correct? Or your partners need access, at least the minimal elements of the network, is that correct?

Mr. COHEN. I think that is correct.

Mr. PICKERING. Now on a preemption policy, you had testified earlier, Mr. Cohen, that you would want them to go through the same franchising, city by city. Is that correct?

Mr. COHEN. I think what I testified to was that under current law, I believe that is what the requirement is. And I allowed that as this committee looks at and evaluates the competitive marketplace and weighs all of the factors, one of the factors this committee should look at, I think it was in response to Mr. Doyle's

question, was the applicability of franchise requirements not only to the Bells but also to incumbent cable providers.

Mr. PICKERING. But if we followed that policy, it would not be consistent with a primary Federal jurisdiction, and it could actually act to slow competition in video and the investment, the capital investment, and IP video. And so what I would like to do is work with everyone to find those areas where we could preempt, remove all basic barriers to entry so that we can speed competition and investment in both video while maintaining competitive choices in voice and the ability of everyone to compete in both markets. There will be different treatment but the same objective in both markets.

And so I would look forward to working with the chairman of this committee to find additional points of consensus as we try to maximize competition in all markets.

Thank you.

Mr. UPTON. Mr. Inslee.

Mr. INSLEE. Thank you. And I share Mr. Pickering's goal that ultimately we will come out with a bill that leads to an industry that is just as well behaved as the Pickering children. So we set the bar kind of high here, but I hope we are going to get it.

I want to thank Mr. Mitchell for joining us and thank you all for seeing the wisdom for using Microsoft products in this effort as well. It is the hometown team, and I appreciate that.

Mr. Ingalls, I wanted to ask you how important are video services in your, sort of, business plan, and what do you really consider the major hurdle to full implementation that we should be knowledgeable about?

Mr. INGALLS. Yeah, as far as our business plan goes, I think Mr. Pickering eluded to it, whether you call it the triple play or the quadruple play, the market is converging. It is about voice, video, and data. And as we sit and look at the market evolving, we are losing market share on our legacy business to providers of the triple play where we have partnered with DirecTV, as an example, to offer a bundle. We believe to compete, our business model requires us to deliver a high-end network, which we are building with FiOS, that will really differentiate us from both what SBC and Comcast have talked about today, because we really are providing a very unique business and capability to our customers. The upstream capability is not to be diminished. And our basic offering, it is two megabits upstream. There is a lot of capability there that will be offered to the consumer, you know, and I alluded to it in my testimony talking about just the idea of sharing media with your friends and family. So Mr. Pickering has five kids. My guess is at some point in time he is going to share his album over the network as opposed to on pictures. And to do that with two megabits upstream instead of, you know, something less, like 768, is a significantly different experience.

So building that network is critical, because we really made the decision to go all of the way to the home, because we know speed is really one of the key issues and requirements of our customers.

On the other side, what is the biggest roadblock to getting into the business? I have said it several times today. The No. 1 issue in trying to roll out to the market is negotiating hundreds, if not thousands, of franchises across all of the local communities, and we

really are talking about thousands. And so we have many people deployed today who are sitting in rooms negotiating in these hundreds of cities. We only have five franchises. We have been at it for over a year trying to get there. So that is a huge issue. And as I stated earlier to Mr. Boucher's statement, yes, we would like to see a policy that does streamline that. I do understand the fairness issue, but I also understand the value of competition. And I think competition is going to drive investment and investment, as you all know, will drive jobs. We are going to hire 3,000 to 5,000 new people this year just to build the fiber network across our footprint.

Mr. INSLEE. Thank you.

Mr. Gleason, you mentioned something intriguing, and I wanted to make sure I understood it, on retransmission rights. You said something to the effect that you would like to see a right to bid competitively for other, as I understand it, geographic areas for syndication purposes. Could you elaborate on that on how you see that as a solution?

Mr. GLEASON. Sure. As we have discussed, right now, if a broadcaster elects retransmission consent, we have to negotiate to come to an agreement to carry that broadcast station that we want to do. But at the same time, that broadcast station is given network non-duplication rights, meaning that if they are an NBC affiliate, for example, we have to negotiate to get retransmission consent for that NBC affiliate within our given market. But we also can not import an NBC affiliate from a neighboring DMA or over satellite, for example. And we have got no problem with must-carry or a station that elects retransmission consent, but now when they want to charge for that free, over-the-air signal, we are in a no negotiating type of position in that there is no competition for that that establishes the price that that station may want to charge. So our position is that we should be able to import an out-of-market station, or in essence, how we have put it with the FCC, give us the right to shop for a better deal, and we think that that will more clearly establish what the value that station places on their retransmission consent price.

Mr. INSLEE. And from the broadcasters, how would you respond to their criticism how that affects their locality of the broadcast content?

Mr. GLEASON. Well, I can say I think localism is extremely important, and we want to carry the local broadcast stations, and that is why we have must-carry. And that is why it is free, over-the-air broadcast, and the station can elect must-carry and the local programming will be on the cable system.

Mr. INSLEE. Okay.

Thank you.

Mr. UPTON. Ms. Cubin.

Ms. CUBIN. Thank you, Mr. Chairman.

You know, I think most everybody up here has said that we have some objectives in what we are doing, and you all know that, too. And that is maximize competition, maximize choice on a competitively neutral platform. But I would like to add one other objective, and that is that rural America gets served. And you know, that is going to be the basis for every decision that I make. And I say that

I am a little bit cynical about a lot of things that I hear, although I know that they are true, but they don't necessarily apply to Wyoming. For example, when I was traveling around the State a few weeks ago, you know, we were driving, and for 50 minutes, we didn't even have cell phone service in Wyoming. So I feel like we are being left behind in a lot of the promises that are being made. And to me, that is just not acceptable. So I just want you to know that every decision I make will be based on whether rural America is being served and really being served in a true way.

So my first question will be first for Mr. Schmidt and then response by Mr. Gleason.

With the prospect of so many new companies providing video to consumers, what mechanisms are in place to ensure that smaller co-ops, like those in Wyoming, will have access to programming? And do you think that they will just lose out in negotiations and that we will see a big increase in exclusive agreements like the NFL has with DirecTV?

Mr. SCHMIDT. Well, there is a major issue, a major problem for broadcasting that has come up indirectly today, and that is the problem that we are required by law to be open, unencrypted, and available to everyone. So unless we are carried on a secondary basis through a subscriber-based system, we get none of those revenues. You may have noticed this weekend that there was a major development on the sports front where ESPN obtained Monday Night Football. ESPN is going to pay twice as much as ABC could pay and probably get 60 percent of the audience. That basic calculus is what is playing out through the video marketplace everywhere: high-quality programming, high-value programming is migrating away from the local broadcast system and on to the subscription services. We can share, in a small way, through the retransmission consent mechanism, where when people are charging for our product we can get some percentage of what they charge.

The problem I have with the bidding system that Mr. Gleason is proposing is that he is going to be pitting Cheyenne against Denver, and I don't think that battle is a fair battle. Denver is going to win it. The cities are going to win over the rural areas. They may not win it directly, but eventually, the Denver stations will be able to pay more.

Ms. CUBIN. Absolutely.

Mr. SCHMIDT. The networks will decide to go through the Denver stations, because it is more efficient, and we will lose the localism at the edges of the service in exactly the areas you are talking about.

Mr. GLEASON. And I have said repeatedly to protect localism, elect must-carry and then that way that local station is guaranteed to be on that network. You know. I would argue on the sports rights fees, that is the whole heart of the rest of our argument is that we have a problem, the smaller cable operators, like many that would serve in your area in Wyoming, if ESPN is going to pay double what ABC was paying, do our customers really care that it is not on channel 7 and it is now on channel 17? I don't think they do. And that is why we believe we need to have the ability to tier certain types of programming on cable so that, again, the four major media conglomerates don't control the entire dial. It is not

all shoved onto expanded basic. We have got to come up with the ability to sell consumers the types of services that they want to get, and I think if that ability were there, you may not have seen that recent development.

Mr. SCHMIDT. I don't disagree that your problem is that you are paying too much for cable programming, but you are paying too little for broadcast programming, for free, over-the-air broadcasting.

Ms. CUBIN. And this subject of franchising has been discussed. I just want to go on a little bit more about it. I am a direct person. I need really direct answers.

Mr. Cohen, from what I have heard today, the way I understand it is that you want to be able to offer Voice over IP, but you don't want phone companies to have IP video legislation. You feel, once again, if I understand this correctly, that there is enough video competition with satellite and that is one of the reasons for that. Playing devil's advocate, I would suggest that wireless competition exists for phone companies, and the problem, as I see it, is that franchise areas are not necessarily geographically in the same place as phone service areas. So why is it we shouldn't fix this in an IP title in the communications act? Because it seems to me that that would help increase competition and therefore the number and quality of services in rural America.

Mr. COHEN. With all due respect, I don't agree with the characterization of what I have said today.

Ms. CUBIN. Okay. Well, that is why I am asking.

Mr. COHEN. I think on the voice side, I have endorsed the consensus that I think we have been working toward, and by we I mean the entire telecommunications industry with members of this committee, over the past two or 3 years, and I think we are almost to the finish line there and think that the appropriate balances have been struck in those compromises. I absolutely have repeatedly said that we welcome the competition from the Bells in the video marketplace. I think it makes our product better, and I think it improves the experience for customers. And I have not and will not defend the current franchising status quo. As the largest cable company in America, I will guarantee you that we have experienced more of the pain and suffering that you experience through the local franchising process than anyone who you have heard from today.

And what I have said, however, is that before you go in and simply say, "Let us eliminate franchising," let us recognize some of the important public policies that were designed to be protected by the franchising process, issues of localism, issues of non-discrimination, issues that we have talked about here, issues of franchising fees and local revenues, and pegged channels and public access television. I mean, I think, by the way, collectively, and I know that there is a huge amount of disagreement about this, that as you restructure the obligations that are imposed on competitors in the 1996 act, that we make sure, No. 1, that we are truly fostering competition; No. 2, that even light regulation is not picking winners or losers; No. 3, that we are stimulating facilities-based competition, which is what all of us endorse and believe in; No. 4, that we treat like services alike; and No. 5, that we make sure that the ultimate regulatory scheme protects important legacy social policies

and regulations that I think everyone would agree are important to protect. And I think that is the tough task of this committee, and I think the dialog today has helped to expose where some of the friction points are going to be as you go through that analysis.

Ms. CUBIN. Thank you, Mr. Chairman.

Mr. UPTON. Mr. Radanovich.

Mr. RADANOVICH. Thank you, Mr. Chairman.

Most of the questions, I think, that I have had have been answered, but I would like to pose a couple of questions, too.

Mr. Cohen, I appreciated your comments about what ought to be the objectives of any telecom rewrite, and I just want to do my best to make sure that there is regulatory parity in what we do. And with that in mind, it seems to me the toughest part of the rewrite will be on the franchise issue. And there has been some discussion amongst Verizon and SBC about the willingness to look at things like national franchising or State franchising. I would be interested to know what your thoughts are on that, whether that is, you know, a common meeting ground area.

Mr. COHEN. Yeah, I think that is going to be one of the questions we all have to work our way through. I think everyone has to remember that the local franchising requirements in Title VI didn't just appear in Title VI because somebody wanted to empower local governments to extort from cable companies. And that was not the public policy objective that was present. And I was not around then, but I think what happened was that there were a series of important issues around localism and local interests and that the Congress determined that the best way to protect those interests was by having local franchising requirements and let the local governments protect those interests.

I am a little concerned when we talk about Federal franchising, because I wonder who then is going to be charged with protecting whatever localism and local interests that we might all agree deserve to be protected. I mean, is this committee going to sit and make franchise fee determinations? Is the FCC going to do that? When you move to the State level, you are getting closer to the local issues, and there may be a better opportunity to do that. By the same token, I mean, I want to say that I hear from Verizon and SBC that the way in which they provide service doesn't fit neatly within the way in which local franchise areas are drawn, and I hear and share their pain with the administrative burden and inconvenience of local franchising regulations.

So I think it is those types of issues that we have to discuss to be able to find the accommodation where we have got a model that works for their business model that provides fair, and I will adopt Congressman Pickering's word, a fair sharing of regulatory burdens on all competitors in the marketplace, but by the same token, it provides a structure where important issues of localism can be protected going forward.

Mr. RADANOVICH. Right. Right. All right. Thank you.

You mentioned something earlier, too, about your problem in Los Angeles with the 23 stations on the must-carry provision. How would you solve that? I mean, is there a way to solve that problem?

Mr. COHEN. Well, I think Mr. Gleason's testimony and comments are very interesting on the must-carry issue. I didn't really come

here today prepared to discuss it in full. I mean, when you have 23 must-carry stations in a single market, and obviously I picked the market in the country with the largest number of must-carry stations.

Mr. RADANOVICH. Right. Right.

Mr. COHEN. I think I make the point really to drive home the tremendous problems and issues that would be put in place by having multi-casting must-carry, because you are taking those 23 must-carry stations and giving them three, four, or five extra channels, and all of a sudden you have now got 100 must-carry stations in a single market. I mean, I think if you are going to address, in a particular market, the number of must-carry stations, you could probably address that issue, which really doesn't go to Mr. Gleason's issues, by tweaking the definition of what you have to do in order to be a must-carry station, which might reduce the number of stations that have those rights in a regulatory environment.

Mr. SCHMIDT. I might point out, Mr. Radanovich——

Mr. RADANOVICH. Yes. Sure.

Mr. SCHMIDT. [continuing] that we are talking bandwidth here. You can divide it up into tiny little slices, but really the bandwidth load is no greater, because the station is six megahertz digital than it is six megahertz analog.

Mr. RADANOVICH. Got it. Thank you. Thank you.

Ms. Champion, I want to ask you, on the issues, you have been grilled a lot, I think, on SBC's willingness to service rural areas as part of any discussion on a telecom rewrite. And I am curious to know a little bit more about your thoughts on achieving that. It has got to be part of our concerns on this part of the table to make sure that people are served, both that they are served but also served cost-effectively. Give me your thoughts on that, on rural delivery, but also on your willingness to abide by indecency standards that are imposed upon the cable producers.

Ms. CHAMPION. Yes. Regarding the rule question, our position is basically this. We have to enter the marketplace and begin to expand our capabilities. That means investments will be made into new technologies. And as this IPTV platform becomes available in the marketplace, there is absolutely, as we see in the technological advances recently, there will be solutions that I believe will help us solve some of the density issues around many of the rural areas. It is a physical situation today. And so as technologies evolve, we read every day about advancements with wireless technology, Y-max, et cetera, I believe there is a combination of technologies that will let us achieve our goal to serving our customers across our footprint, and we will adopt those technologies to provide customers solutions. The day there are physical and economic situations that really——

Mr. RADANOVICH. Maybe I can ask you, would you be willing to abide by any standard that is set up in a telecom rewrite to make sure that those areas are provided?

Ms. CHAMPION. Well, my preference is that you would have a light touch approach to this. Just as with wireless and with DSL, we have been able to make investments and expand our footprint. So I wouldn't be looking for mandates that would specify that. I

would be looking for the ability for us to deploy technologies and to make investments——

Mr. RADANOVICH. Okay.

Ms. CHAMPION. [continuing] based on sound business practices to serve customers across the footprint.

Mr. RADANOVICH. How about the indecency deal?

Ms. CHAMPION. Well, we absolutely will abide by the rules of the FCC and other Congress issues related to managing the content that is available to subscribers.

Mr. RADANOVICH. Thank you.

Thank you, Mr. Chairman.

Mr. UPTON. Ms. Blackburn.

Ms. BLACKBURN. Thank you, Mr. Chairman.

I want to thank all of you for your patience and for being here today. I know it has been a long hearing, and as we got the schedule of who was going to be here today, I thought, "My heavens, seven people on a panel." You know. But it is such a great conversation, and it is helpful to me, and I am sure to many of my colleagues, to listen to the exchange between you all and your thoughts on how you approach this. I am out of Tennessee, and I represent a lot of the content producers, whether it be music, whether it be television, whether it be film, and of course, there is tremendous interest in what is going to happen with this bill. And today, we have heard a lot about infrastructure and we have heard about finances and franchises and taxation and competition and regulation and what it means to your business.

But I want to go back to something. Mr. Ingalls had touched on it, and Mr. Cohen had touched on it. And this is the compliance cost. As you look at dealing with the local franchises is you look at the Federal regulation. And Mr. Ingalls, and then Mr. Cohen, if you will each answer, Mr. Ingalls, for the cost to Verizon to comply with the local franchising authority, and then Mr. Cohen, if you would address that for Comcast. What is it costing you as you go in and you negotiate these local franchise agreements and the amount of time that you are spending on that? What is the cost of compliance for that, if you will address that?

Mr. INGALLS. Well, I think the biggest cost will be the franchise fee, which we fully understand we will pay, and it ranges, you know, 2 to 5 percent, depending on the jurisdiction. In terms of resources, it is cost a fair amount of resources, so I can't put the budget on that, but we have dozens of people deployed across the country negotiating with local jurisdictions. So the real cost is franchise fees. And then when you look at building the network that we are building, we don't really feel there is a cost with the must-carry issues or the peg channels, because we are building a network. And that is one of the points that is really important here is I think this isn't just about IP. This is really about the network, and it is voice, video, and data. And so we are building a network that has the capacity to accommodate the local programming requirements. So those are not big costs. It really is the franchise fee.

Ms. BLACKBURN. Okay.

Mr. Cohen?

Mr. COHEN. I am sorry. I was coughing before. I didn't want to cough into the microphone.

I think I would certainly agree with Mr. Ingalls. The largest cost is the franchise fee. We probably have several hundred people who are engaged in franchising. Our rough franchise number, you will all have a heart attack when you hear this, we have over 5,000 franchises and average length is about 10 years, which means that every year, about 10 percent of them are being re-negotiated. So that means we are doing a new franchise agreement, basically, more than once a day on an annual basis somewhere in the country. And I might be able to give you some more specific numbers, which I would be happy to forward on, if we go back and do a little analysis of them.

Ms. BLACKBURN. That would be great. I think it would be helpful to us, you know, to look at not only the dollar costs of the franchise fee but the human capital cost and the agreements and the maintenance of those agreements.

Mr. COHEN. I am sure we can put together some numbers, which we will get to the committee.

Ms. BLACKBURN. That would be helpful. Thank you.

Quickly to Ms. Champion and Mr. Ingalls. Competition and looking at content. My content providers are very concerned about what they see as the peer-to-peer file swapping, and——

Mr. INGALLS. I am sorry. I couldn't hear you.

Ms. BLACKBURN. The peer-to-peer file swapping.

Mr. INGALLS. Oh, okay.

Ms. BLACKBURN. And we are concerned about the Internet traffic and peer-to-peer file swapping, the copyright infringements that are there to our songwriters to our content producers. So in light of the discussion of the file swapping and the copyright infringements, it seems to many of my content producers that facilitating or enabling Video-over IP might further contribute to the significant online piracy problem that they are addressing every single day. And in your opinion, do you think that this committee should explore mechanisms for ensuring that Video-over IP does not exacerbate this problem?

Ms. CHAMPION. I believe this platform has the ability to really simplify and solve some of those issues and being able to introduce for those various content providers a way to bring their content to users and then users to be able to legally purchase, providing them choices and options that maybe didn't exist before, even on a pay-per-use or on a pay-per-selection process. You know, part of this process here is about building a very robust back-office system and capabilities that will help fundamentally support various content owners to reach more customers and to monetize that in effective ways. So I believe there are some great capability here to bring growth and management of their content.

Ms. BLACKBURN. And you all are taking steps?

Ms. CHAMPION. Our platform is being built. You know, there is a very significant investment, $4 billion. A big chunk of that is about our back offices and being able to support use and sensitive type services for digital consumption. And that is the nature of what this platform is about. It really unleashes a whole capability that we haven't even gotten to today about fundamentally allowing new consumption legally whereas options today may not be as easily and readily available to consumers. So it is about creating a

whole new platform for digital content consumption, which can really help various providers.

Mr. INGALLS. If I could just add on, you know, as Ms. Champion said, the platform really is the key enabler, and I think the back office is a key component. But we are, today, negotiating with content providers. It is one of the key questions as we have attempted to close those negotiations, and we have committed to stand behind the digital rights management and protection for the content providers. And it really is the systems. We are in a new generation now, and so the capabilities that we are building into this multibillion dollar investment do just as Ms. Champion said provide protection and hopefully put in the hands of the content providers a new revenue source through, whether it be subscription or pay-per-use.

Ms. BLACKBURN. Thank you. Thank you.

Mr. UPTON. Thank you.

Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman. I didn't do my opening statement. By unanimous consent, I would just like to put it as part of the record.

Mr. UPTON. All members were allowed to do that.

Mr. STEARNS. Okay. You know, I think, as many of us are aware, and I think as Mr. Boucher and I both adopt a bill sort of classifying this new IP-enabled services with a new definition, "advanced Internet communication services." And so we are trying to really break out of the inflexibility of the regulatory titles, because we don't have anything in Title I or II or even Title VI of the telecom act, which really describes what we are trying to do. So we are attempting to promote a regulatory certainty, which encourages investment in these areas and so to get the flexibility. I think there are two questions I have. Mr. Mitchell will search in his testimony that where "subject to regulation, IP services should be exclusively within Federal jurisdiction." I guess the question for all of the witnesses, does everybody agree with that or disagree? And maybe if you disagree with it, you might comment, and I will assume everybody else agrees with it.

Okay. The second question I have is, Mr. Cohen, you indicated today that you do not support different rules for IP video services. But what about a two-way interactive service, regardless of how they are provided, that, let us say, arguably today, perhaps could not be defined as cable services. So that is the question for you.

Mr. COHEN. Well, I mean, I think that was a subcomment of my view, my general view that like services should be treated alike. And I would note that in our On Demand platform today, we are providing a robust, two-way, interactive service, which is not unlike the two-way, interactive service that SBC and Verizon will be providing over their networks. The comparability is much closer than the lack of comparability.

Mr. STEARNS. So you would define that as a typical cable service then?

Mr. COHEN. Whether it is a typical cable service, it is enabled in 90 percent of the households across the Comcast footprint. I think over a relatively short period of time, it will be comparably available across all cable company footprints in the country.

Mr. STEARNS. So you don't support different rules then?

Mr. COHEN. I think the answer is that we don't support different regulatory treatment for like services.

Mr. STEARNS. Okay. And this is a follow-up with one of the questions, I think, dealing with indecency. And this is for Mr. Perry. How will your technology enable parents to better control indecent material on television?

Mr. PERRY. Well, the No. 1 thing that our technology does is it makes sure the right content gets to the right viewers, so we preserve the local broadcaster's copyright. In doing that, we are opening up broadcasting to a PC. And PCs can be used then to set filters. In fact, of our 500,000 users of TitanTV today, we have many users that have customized their interactive program guide to only show those channels that they wish their family to see. So the fact that we are broadcasting to a PC opens up a whole host of possibilities for controlling indecency.

Mr. STEARNS. I have got another minute, Mr. Chairman, before, and I think we can still make the vote.

I think, Mr. Cohen, you have answered this, but I wasn't here when you answered it. You assert that additional competition would be presented by the Bells "warrants a comprehensive reexamination of existing regulatory framework adopted when the video marketplace was far less competitive." And I think, did you point out the rules then that Congress should change for this whole video industry?

Mr. COHEN. We do endorse the work of this committee. We think that the competitive environment has changed since 1996 and it is absolutely appropriate to review the rules and regulations that apply. And I have given a couple of specific areas, including VoIP and the local franchising area and some of the other regulatory parity that may exist in other titles of the existing communications act but is not in Title VI today.

Mr. STEARNS. Thank you.

Mr. UPTON. As much as I would like to give a lengthy closing statement, looking at the clock, and we have a couple of minutes on a series of votes. All of us appreciate your testimony today and look forward to working with you in the months ahead. Thank you.

[Whereupon, at 1:11 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

RESPONSE FOR THE RECORD BY JAMES M. GLEASON, PRESIDENT, NEWWAVE COMMUNICATIONS, AND CHAIRMAN, AMERICAN CABLE ASSOCIATION

Question: Do you believe that the concept of "net neutrality," as we have seen in the area of IP-voice services, will eventually become relevant when it comes to the field of IP-Video? In other words, does anyone foresee a time when network operators will have the opportunity to block the services of other video providers? And if so, how do you think such a problem should be remedied? By some sort of preemptive legislation or a sort of post-hoc reaction by the FCC to each case?

Answer: Net neutrality is less relevant in the video world because of the difference of the product offering. A voice product delivered by any provider is the same product no matter what network it is offered through. In the video world it is harder to create a product that would be "net neutral." There are five major programming conglomerates that control of 80% or more of the available television video content in America. These conglomerates will dictate what the video product will look like whether it is carried on telephone, satellite or traditional cable backbone, and no matter the retail provider. Congress should address the issue of video programming tying, bundling and control of video content by the five major media

conglomerates, including retransmission consent, if Congress' intent is ensuring continued growth in the video IP sector for the American public. Cable and phone providers will provide access to their networks if Congress can give them back control over their bandwidth. If Congress goes down a path of restriction/access on a networks bandwidth, then Congress will be picking winners and losers rather than allowing the marketplace to function as it does best.

The key from a legislative perspective is to treat like services alike. Rather than focusing on specific issues such as, "net neutrality" and bandwidth restrictive measures, Congress should not create blanket laws in regard to IP-enabled services. Rather, Congress should address each product category separately and create common laws within the specific product category across all platforms of providers. This would ensure a "level playing field" for all providers and network owners.

Timothy P. McKone
Senior Vice President
Federal Relations

SBC Services, Inc.
1401 I Street, N.W.
Suite 1100
Washington D.C. 20005
Phone 202 326-8820
Fax 202 408-4808

May 24, 2005

The Honorable Fred Upton
Chairman, Subcommittee on Telecommunications and the Internet
United States House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Attn.: Anh Nguyen

Re: Response to Written Questions from Committee Members

Dear Chairman Upton:

Enclosed please find SBC Communications Inc.'s responses to the written questions submitted by Committee members under cover of your letter dated May 10, 2005. Pursuant to the instructions in your letter, a copy of these responses will also be faxed to (202) 225-1919, and sent electronically to the following email address: Anh.Nguyen@mail.house.gov.

We appreciate the opportunity to more fully explore these issues. Please let us know if the Committee requires additional information.

Very truly yours,

Tim McKone

Response to Question from Representative Engel:

Q. The world has changed since we last looked at telecommunications legislation. At that time we still lived in a world of long distance and local companies for voice services and sought to boost competition in that framework. Since then the wireless industry has exploded. The cable industry is now also making strong inroads with VOIP. So, the 1996 Act didn't turn out as we expected.

We have spent a great deal of time discussing the need to update the voice parts. It is now apparent that we will need to update the video parts as well.

To remain competitive in the digital era, will the traditional phone companies need to provide video as well or can they survive as a voice service alone?

A. We see an undeniable and growing trend: customers wish to obtain their communications services in affordable, robust bundles from a single provider. At first, customers enjoyed the convenience and competitive pricing associated with bundling. But now they see that bundling really means integration, that is, the ability to obtain from a single provider, over a converged network, multiple services – voice, data, video, wireless – that communicate and interoperate, thus making each service more functional than it would be standing alone. A technological revolution, and the willingness of providers like SBC to invest in it, is enabling this integration.

Our decision to deploy advanced, Internet protocol ("IP") networks and offer video entertainment services in competition with incumbent cable operators, then, is one part of a larger effort to meet our customers' demand for an integrated suite of next-generation, broadband-enabled services. This move away from being a voice-only provider is not about survival; it is about offering all customers, residential and business alike, what they want.

Response to Question from Representative Stearns:

Q. Do you believe that the concept of "net neutrality," as we have seen in the area of IP-voice services, will eventually become relevant when it comes to the field of IP-video? In other words, does anyone foresee a time when network operators will have the opportunity to block the services of other video providers? And if so, how do you think such a problem should be remedied? By some sort of pre-emptive legislation or a sort of post-hoc reaction by the FCC to each case?

A. In an IP environment, voice packets and video packets are intermingled; they are converted, utilized and transported in the same fashion along with all other IP-enabled applications. Accordingly, the "net neutrality" issue

is not, even today, voice-specific; it is relevant to all IP platforms and services.

Accordingly, SBC believes consumers should enjoy the full range of IP services in an open an unfettered way. Consumers should obtain access to their choice of Internet content; be able to run, on the publicly accessible Internet, applications of their choosing – whether voice, video or data; and be able to attach devices to their broadband connection. All of these rights, of course, should be exercised consistent with customers' Internet service plans and in a way that does not harm the provider's network. In addition, consumers should benefit from a full range of differentiated services, i.e., customized, value-added applications that reflect unique partnerships among different entities in the IP sphere.

Fortunately, this vision is reality today. Broadband platforms are proliferating; virtually all broadband services allow customers click-through access to the public Internet and the endless and varied content that resides there; and different players in the chain are teaming up to offer consumers ever more customized content (e.g., wireless providers have partnered with AOL, Yahoo!, MSN and others to offer subscribers customized instant messaging, email and Internet connections). In other words, there should be little concern over blocking because consumers demand the exact opposite: easy access to the public Internet and partnership among otherwise competing providers.

Against this backdrop, it would make little sense to impose rigid net neutrality or non-discrimination mandates, or other forms of prescriptive regulation. Doing so would foreclose the unique, commercial arrangements that are leading to product differentiation and greater consumer choice. Instead, regulators should have an oversight and monitoring role; only if that monitoring reveals market defects that can properly be corrected by regulation should regulation be imposed, and then in only the most limited manner.

Comcast Corporation
2001 Pennsylvania Ave., NW
Suite 500
Washington, DC 20006
202 379 7100 Tel
202 466 7718 Fax
www.comcast.com

May 18, 2005

The Honorable Fred Upton, Chairman
Subcommittee on Telecommunications and the Internet
Committee on Energy and Commerce
United States House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515-6115

Dear Congressman Upton:

Thank you for your letter of May 10.

It was a pleasure to appear before your Subcommittee in April. I appreciated the opportunity to speak with you and your colleagues about the intense and growing competition in the marketplace for multichannel video services. I look forward to working with you and the Subcommittee as you continue to consider what changes may be warranted in the legislative framework for cable services, whether provided by established cable operators or by new entrants like Verizon and SBC.

You sent follow-up questions from Congressmen Terry and Stearns. Consistent with the Committee's rules, my answers are attached on separate pages.

I hope you will not hesitate to contact me if you have additional questions, and I look forward to working with you in the months and years to come.

Sincerely,

David L. Cohen

cc: The Honorable Ed Markey, Ranking Member
The Honorable Cliff Stearns
The Honorable Lee Terry

Attachments

Answer to Question from the Honorable Lee Terry

Question: My area of concern is Universal Service and as we move forward, I have heard you all mention that IP services are what all Americans need. With the ideal of Universal Service being access to basic requirements to all and now IP being that basic service, my question is how should you contribute to USF?

As a threshold matter, I did not mean to suggest that IP services are what all Americans need; after all, many of the services that can be delivered using IP can also be delivered without using IP. My main point was that like services should be regulated (or deregulated) alike, consistent with the policies of regulatory parity and technological neutrality. Whether and to what extent a given provider uses IP to deliver a particular service should be determined by marketplace factors, not governmental preferences for a particular technology (or, in this case, a particular transmission protocol). This is one area in which the marketplace is functioning extraordinarily well.

Turning to the heart of your question, I certainly share your sentiment regarding the importance of universal service. Thus, to the extent that IP is used to provide telephony services that compete directly with "plain old telephone service" ("POTS"), Comcast's view is that those telephony services should be subject to universal service assessments in the same manner that POTS is. The FCC has the authority under existing law to require universal service contributions from "[e]very telecommunications carrier that provides interstate telecommunications services," and from "[a]ny other provider of interstate telecommunications . . . if the public interest so requires." Thus, the FCC has the discretion to reach the conclusion that voice-over-Internet-Protocol services should be subject to universal service assessments.

The appellate court's decision that requires that a universal service assessment methodology based on revenues focus solely on interstate and international revenues creates anomalies and regulatory distortions. The allocation of revenues between the intrastate and interstate jurisdictions is inherently arbitrary, especially when (as is increasingly common) the customer pays a fixed price for a "bucket" of minutes (as with many wireless calling plans) or for unlimited local and long distance calling (as with Comcast's Digital Voice service).

For these reasons, universal service assessments should not be based on revenues. There are alternative ways in which universal service support could be collected without the problems associated with a revenue-based scheme. For example, one approach would be to impose a charge for each telephone number used; a charge of $1 per month per residential phone number and $2 per month per business phone number could raise very substantial sums while avoiding the problems inherent in a revenue-based methodology. The FCC has the latitude to change its assessment methodology in this manner under existing law, and it currently is considering a notice of proposed rulemaking to do just that.

Answer to Question from the Honorable Cliff Stearns

Question: Do you believe that the concept of "net neutrality," as we have seen in the area of IP-voice services, will eventually become relevant when it comes to the field of IP-video? In other words, does anyone foresee a time when network operators will have the opportunity to block the services of other video providers? And if so, how do you think such a problem should be remedied? By some sort of pre-emptive legislation or a sort of post-hoc reaction by the FCC to each case?

It is essential to distinguish between the *ability* of a network operator to block content or applications and the *incentive* of a network operator to do so. Network operators may well have the ability to block content or applications, but they would rarely if ever have the incentive to do so in an anticompetitive manner.

The provision of high-speed Internet services is a competitive business and is growing more so. Telephone companies and cable companies compete head-to-head for broadband customers, and increasingly consumers have additional options from 3G wireless services, unlicensed wireless services like Wi-Fi, Wi-Max, and ultra wideband, satellite-delivered broadband, and broadband over power lines.

In this environment, any network operator that unreasonably interferes with consumers' ability to access the content or use the applications they desire runs the risk of driving the customer into the arms of a competitor. This is especially true for providers of high-speed cable Internet, which is a superior service that commands a premium price.

Concerns about blocking of content or applications are far more theoretical than real. So far, one small telephone company is the only company out of more than a thousand telephone companies that has been identified as having blocked VoIP calls, and once that company's name was revealed it immediately stopped blocking those calls. Market forces probably would have ensured this result even if the FCC had not stepped in.

At the same time, it is essential that network operators retain the flexibility to manage their networks to prevent spam, viruses, and other harms. They also need to ensure a fair allocation of bandwidth among users and among services. In an area of rapid technological change, and in an environment characterized by intense competition, the marketplace ought to be permitted to work -- without the danger that any given network management decision can be second-guessed by the FCC.

Robert E. Ingalls, Jr.
President
Retail Markets Group

1095 Avenue of the Americas, Room 3917
New York, NY 10036
212-395-1112
Fax 212-597-2982

May 24, 2005

Chairman Fred Upton
Chairman, Subcommittee on Telecommunications and the Internet
United States House of Representatives
Attn: Anh Nguyen
2125 Rayburn House Office Building
Washington, DC 20515-6115

Dear Chairman Upton:

Thank you very much for allowing me to appear before the Subcommittee on Telecommunications and the Internet at the hearing entitled "How Internet Protocol-Enabled Services Are Changing the Face of Communications: A Look at Video and Data Services" on Wednesday April 20, 2005. I appreciate the chance to discuss the opportunities and challenges facing Verizon and others in light of the technological shifts that are reshaping the telecommunications industry. Attached please find my answers to the follow-up questions posed by Congressman Eliot Engel and Congressman Cliff Stearns. If I can be of any further assistance to these or any other members of the subcommittee, please do not hesitate to contact me.

Sincerely,

Robert E. Ingalls, Jr.

<u>To the Honorable Eliot Engel</u>

The world has changed since we last looked at telecommunications legislation. At that time we still lived in a world of long distance and local companies for voice services and sought to boost competition in that framework. Since then the wireless industry has exploded. The cable industry is now also making strong inroads with VOIP. So, the 1996 Act didn't turn out as we expected.

We have spent a great deal of time discussing the need to update the voice parts. It is now apparent that we will need to update the video parts as well.

To remain competitive in the digital era, will the traditional phone companies need to provide video as well or can they survive as a voice service alone?

It is probably not the case that all traditional telephone companies will find it necessary to offer video services in order to survive in the future. It is certainly true, however, that as digital convergence continues, the lines between voice, video, and other forms of data services will become increasingly blurred, and in some respects video will become just another data application. In order to retain old customers and attract new ones, many traditional telephone companies, and particularly those deploying broadband networks, may choose to expand customer choice by offering video services – just like many cable companies have moved into voice services. As this happens, many customers may find it preferable to receive video, voice, data and possibly other services from a single provider, whether that company traditionally has had a telecommunications, cable, or some other focus. In any event, consumers will be the primary beneficiaries of the increased competition that will result from this process. This competition between traditional telephone companies, cable companies, and others will provide consumers with more choices available to them for all communications services, and will lead to the introduction of innovative new services that meet consumers' needs. During this time of convergence, it is essential that Congress allow market forces, technological innovation, and customer demand – not outdated regulatory classifications – to determine which services a communications company chooses to offer.

I was very pleased to be at the NAB Convention and hear Verizon's CEO, Ivan Seidenberg, keynote speech. He mentioned the importance of protecting intellectual property transmitted by broadcasters over digital platforms. Are you able to elaborate on the kinds of things Verizon and other broadband providers of video programming might be able to do to enhance the protection of digital video content from piracy? For example, is Verizon prepared to work with the content community on developing and implementing redistribution controls, such as has already taken place with the Broadcast Flag, to prevent unauthorized, indiscriminate redistribution of broadcast programming over the Internet?

Verizon understands and strongly supports the content industry's goal of protecting copyrighted works from unauthorized distribution, and will continue working with the content industry, copyright holders, consumer electronics manufacturers and others

<u>To the Honorable Cliff Stearns</u>

Do you believe that the concept of "net neutrality," as we have seen in the area of IP-voice services, will eventually become relevant when it comes to the field of IP-video? In other words, does anyone foresee a time when networks operators will have the opportunity to block the services of other video providers? And if so, how do you think such a problem should be remedied? By some sort of pre-emptive legislation or a sort of post-hoc reaction by the FCC to each case?

Competition among providers of broadband is intense, and is marked by competition from multiple technological platforms, with additional forms of competition on the way. Given the substantial and growing competition for broadband customers – and the need of broadband providers to keep their customers on their networks in order to recover the huge cost of network-building – all broadband providers share a strong incentive to provide customers with access to the legal content that they want, including video content. Indeed, any attempt to deny customers access to the content they want would serve only to cause the customers to switch to alternative providers.

Moreover, given the larger capacity and higher speeds offered by the next-generation fiber-to-the-premises network that Verizon is deploying, consumers will have much more video content available to them than they currently do. As a result of the increased capacity made available by this technology, Verizon will be less constrained than its competitors in the amount of video content that can be transmitted over its network, meaning more video content to more people. From a business standpoint, this is an important selling point that distinguishes Verizon's services from those of other competitors, while from a customer's standpoint this provides the ability to obtain access to a far broader array of innovative content services than are available today.

Given the fierce competition for broadband customers, Verizon believes it would be a mistake to engage in preemptive regulation of competitive broadband or video services. Any anticipatory regulation would necessarily impose significant costs on broadband providers, and those costs ultimately would be passed on to consumers. Moreover, these increased regulatory costs would deter both investment and innovation in broadband networks and services, thereby making broadband less available and less useful for all. Congress should instead reserve its regulatory hand until, if ever, experience reveals the need for such action, and even then any response should narrowly target the demonstrated problem. And in place of preemptive regulation, all broadband providers should voluntarily embrace – as Verizon has previously done – the High Tech Broadband Coalition's broadband connectivity principles.

Microsoft Corporation
One Microsoft Way
Redmond, WA 98052-6399

Tel 425 882 8080
Fax 425 936 7329
http://www.microsoft.com/

May 24, 2005

The Honorable Fred Upton
Chairman
Subcommittee on Telecommunications & the Internet
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Upton:

Thank you for the opportunity to respond to questions from Congressmen Lee Terry and Cliff Stearns as a follow-up to my testimony before your Subcommittee on issues surrounding IP-enabled services.

Congressman Terry noted that we are moving to a time where Internet access is considered to be the equivalent of basic telephone service and asked how companies should contribute to the universal service system in this new environment. Microsoft believes that the policy of universal service has served our country well from an economic and social perspective. However, the universal service fund today is under enormous pressure because it is funded by interstate telecom revenues, which have been declining for numerous reasons, while demand for the subsidy has grown. Many who are closer to this issue than I am have concluded that the current situation is not sustainable in the long term. As a result, we encourage Congress to consider alternative funding mechanisms to support universal service, such as an assessment on each connection from the home or business to the larger communications network. Congress might also consider a numbers approach. However, a connections approach likely offers a more sustainable, long-term solution. There are important policy questions embedded in the debate on universal service reform, such as intercarrier compensation and what level of service the fund should support, and we hope the Subcommittee proceeds with care in setting policies that could have a lasting impact on various aspects of the communications and information technology industries.

Congressman Stearns asked about network neutrality, as it has been used to ensure nondiscriminatory access to VoIP providers, and how network neutrality will operate when providers offer IP-video services. He asked whether network operators should be barred from blocking a competitor's IPTV service and whether legislation is needed in that regard.

Microsoft Corporation is an equal opportunity employer.

In a speech last year, former FCC Chairman Michael Powell outlined four "Internet Consumer Freedoms" for the treatment of broadband network connections. (Remarks at Voice on the Net Conference, October 19, 2004.) The Freedoms highlight the importance of consumers being able to access content, use applications, and attach devices to their broadband Internet connections. Narrowband network freedoms, which are embodied in Title II of the Communications Act, fostered the Internet's growth in the dial-up age. These principles should be carried forward so that those persons who are connected to the Internet over a broadband connection can enjoy unfettered access to content and services. Internet content providers need confidence that they can reach consumers if they are going to invest in content; and consumers similarly need confidence that they can reach content on the Internet with their Internet broadband connection. Importantly, I wish to point out that adherence to these principles with respect to a broadband Internet connection would not prevent a network operator from providing a premium IP-video service over a managed connection that, for example, runs parallel to the broadband Internet connection. Legislation will ensure that the FCC has authority to address these issues and can give both Internet consumers and providers the necessary level of confidence to invest in the Internet broadband future.

I hope that this response assists the Members of the Subcommittee and please do not hesitate to contact me as other questions arise.

Sincerely,

Paul Mitchell

Paul Mitchell

cc: Hon. Edward J. Markey
Ranking Minority Member

05/17/2005 09:55 FAX 319 365 5694 DECISIONMARK 002

decisionmark

818 Dows Road SE
Suite 200
Cedar Rapids, IA
52403-7000

Decisionmark Corporation
319 365.5597
Fax 319.365.5694
www.decisionmark.com

May 17, 2005

Fred Upton
Subcommittee on Telecommunications and the Internet
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Cliff Stearns,

Q. Do you believe that the concept of "net neutrality," as we have seen in the area of IP-voice services, will eventually become relevant when it comes to the field of IP-video? In other words, does anyone foresee a time when network operators will have the opportunity to block the services of other video providers? And if so, how do you think such a problem should be remedied? By some sort of pre-emptive legislation or a sort of post-hoc reaction by the FCC to each case?

A. Thank you for the opportunity to answer this question. I firmly believe in the concept of net neutrality and can pledge that my company will work tirelessly to ensure that all Americans will have access to free-over-the-air television whether they receive it with an antenna or with IPTV. I believe any provider; cable, telco or otherwise should not be allowed to block the valuable content provided free to constituents by our nation's 1,733 local television affiliates.

Sincerely,

Jack Perry
President & CEO

1771 N Street, NW • Washington, DC 20036-2800
(202) 429-5300 • www.nab.org

To: The Honorable Fred Upton
Chairman of Subcommittee on Telecommunications and the Internet

From: Greg Schmidt
Vice President of New Development and General Counsel
LIN Television Corporation

Date: 5/23/2005

Re: Question submitted by Congressman Cliff Stearns after the hearing entitled "How Internet Protocol-Enabled Services are changing the Face of Communications, dated April 20, 2005

Enclosed please find my answer to a question submitted from Congressman Cliff Stearns.

Thank you.

"HOW INTERNET-PROTOCOL ENABLE SERVICES ARE CHANGING THE FACE OF COMMUNICATIONS: A LOOK AT THE VIDEO AND DATA SERVICES"
April 20, 2005
Subcommittee on Telecommunications and the Internet Follow-Up Questions

Mr. Schmidt
From the Honorable Cliff Stearns

Do you believe that the concept of "net neutrality," as we have seen in the area of IP voice services, will eventually become relevant when it comes to the field of IP video? In other words, does anyone foresee a time when network operators will have the opportunity to block the services of other video providers? And if so, how do you think such a problem should be remedied? By some sort of pre-emptive legislation or a sort of post-hoc reaction by the FCC to each case?

Answer:

As I indicated in my testimony before the Committee, local broadcasters are very enthusiastic about the promise of innovative Internet services such as video over IP. Such service has the potential to offer much needed competition into the multi-channel programming distribution marketplace. Because the exact parameters of this service are still evolving, however, it is difficult to predict whether and how any access concerns such as those that have spurred discussion of "net neutrality" would be relevant to video over IP services or how those concerns might be remedied.

"Net neutrality" concerns could arise if the cable and telco broadband operators used their control of broadband networks to block consumer's access to Internet content that the consumer would be legally entitled to obtain. On the other hand, it would be contrary to public policy if "net neutrality" rules somehow prevented operators from deploying technology to block access to content that a user is not legally entitled to obtain. Such technologies, for example SPAM blockers, exist today, and could be used to promote the pro-competitive diversity and intellectual property rights regimes that apply to current multi-channel video platforms. Local broadcasters continue to believe that the national policies designed to promote public access to a healthy, free-over-the-air broadcast system must be maintained and should apply to new technologies such as video over IP.

In sum, any legislation in this area must balance all factors to ensure open access to the Internet and at the same time protect the rights of content owners.

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