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TO: Cal Horton, Town of Chapel Hill

FROM: Adrian Herbst

DATE: September 28, 2005

RE: Federal Legislation Threatening Local Cable Television Authority

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We have attached a brief update titled, "Current Events in Communications Reform Affecting Localities." Additionally, we have included a Resolution for consideration by your community.

Recent events have made it clear that local governments must take a stand if they are to protect their interests and authority with regard to cable television and related services.

Localities have the authority under current federal law, including the federal Cable Acts, to establish requirements for cable service operators using public right-of-way for development and operation of cable systems. As part of this authority, localities receive franchise fees, have authority to establish customer service standards, develop standards and requirements to protect the use of public rights-of-way and issues concerning public safety, require community benefits including channels for public, educational, and governmental use as well as funding, facilities, and equipment for those purposes, and, in addition, capacity on cable systems for governmental and educational purposes.

Current and pending federal legislation as outlined in the attached paper, including S.1504, S.1349, and HR.3146, will have the affect of either eliminating or substantially reducing the rights of local governments to franchise cable operators, severely limit franchise fees paid to a locality for use of public right-of-way, limit the public, educational, and governmental access channels and funding for those purposes, and requirements for dedicated capacity on the system for public use. Additionally, localities may be severely limited in its authority with regard to the management and control of right-of-way use.

It is absolutely essential that local governments take a stand now to preserve their rights and to make known to their elected officials in Congress that the Bills that are pending in Congress are vigorously opposed by local government, not in the best interest of communities, and by way of resolution or other means, insist that the elected Congressional members representing the community listen to local officials and stand up for the rights of local government and the preservation of the current franchising scheme. It is clear to us that the only reason why Congress is considering change is due to the interests of big telecom companies that want the right to offer competitive cable services, but also want to skip having a franchising process with local government. This is most unfortunate inasmuch as localities are currently able to negotiate franchises that meet their community needs and interests and over the years since initially franchising cable operators, localities have developed positive relationships with cable providers that demonstrate that the current system of franchising and rights and interests of localities has worked well and has made possible that the unique and differing interests of localities throughout the country can be met without undue hardship to the providers. There is no reason why this same structure or scheme of development of cable services cannot also be reasonably applied to new entrants such as the large telecom providers who would now like to compete with the incumbent cable operators.

The attached Resolution is most urgent. Your elected representatives in Congress must be made aware now of your interests and concerns and you as a community leader must insist that they either meet with you or discuss this most serious matter. If the pending legislation is passed, not only will your community stand to lose substantial revenues from franchise fees, it will also lose a very valuable local communication service that your community has the right to have a part in ensuring that your special needs will be met.

I have been asked by many of my clients to educate local governing bodies about what is taking place and what they can do. I would be pleased to provide you with this assistance. Additionally, it would be most appreciated if you will copy me on any transmittal of a Resolution adopted by your community so that I can monitor on behalf of you and others the response to this letter and the actions taken by communities. This will also be helpful for me to be in a position to inform the leaders of national organizations for municipalities about local support and to provide them with information and resolutions of communities who have taken steps to let Congress know about their concerns.

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TELECOMMUNICATIONS REFORM AND YOUR COMMUNITY: WHAT YOU REALLY NEED TO KNOW!

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Adrian E. Herbst heads the Minneapolis office of The Baller Herbst Law Group. For more than 25 years he has been on the cutting edge of cable and telecommunications matters, providing regular consulting and legal assistance to municipalities throughout the United States. This has included the initial franchising processes for cable communications as well as renewals, transfers of ownership, and a wide-range of administrative enforcement matters and development of local programming and issues related to local programming. Recently, his work has expanded with the broadband services offered in cable and telecommunications systems to include planning, competition policy, and internet services.

He has served as a key member of many national organizations in programs to provide assistance to local governments, including International Municipal Lawyers Association (IMLA), National Association of Telecommunications Officers and Advisors (NATOA), the Alliance for Community Media and the National League of Cities (NLC). He has served in many capacities on behalf of these national organizations, including developing model ordinances for IMLA and chairing a specialized rights-of-way taskforce for NATOA that developed policies and guidelines for local units of governments throughout the country. He has served as President of the Minnesota Trial Lawyers Association and Vice President of the League of Minnesota Cities and is also a member of various other legal organizations including the Federal Communications Bar Association, and the Telecommunications Committee of the Minnesota State Bar Association.

Mr. Herbst has a unique background in municipal and governmental law and policy, having been a full-time City Attorney and elected City Councilman for 16 years for the City of Bloomington, Minnesota. While serving as City Attorney, Mr. Herbst led a group that was instrumental in the development of the initial franchises for cable services. As a result of this experience, he advised many municipal organizations both on the state and national level to help initiate procedures and guidelines for cable franchising. Further, because of this unique background, he was selected to serve as General Counsel for the Economic Development Authority for the City of Bloomington, Minnesota and was instrumental in the acquisition of land for development, public financing, and spearheaded the creation, development, and negotiation of a development agreement that led to the development of the Mall of America, the largest single shopping mall and attraction center in the country.

Mr. Herbst has been a recognized national leader in municipal law matters and, in particular, cable and telecommunications and as such has been a regular presenter on behalf of various organizations. He has recently spoken at the regional and national conferences for NATOA, IMLA, MACTA, as well as in workshops and seminars for The Pennsylvania League, The Kansas City Webmasters Conference, The Minnesota Municipal Utilities Association and the League of Minnesota Cities.

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CURRENT EVENTS IN COMMUNICATIONS REFORM AFFECTING LOCALITIES

I. Introduction

For anyone involved in the world of telecommunications, cable and broadband, this is a tumultuous time, to say the least. Against an uncertain backdrop of looming telecom reform in Congress, state and federal regulators are struggling with how best to promote the deployment of robust broadband nationwide, to protect the concept of universal service, to reduce regulatory barriers to competitive entry, and, with regard to the offering of video services by traditional telcos, whether the traditional local role in cable franchise administration will exist at all in the future.

This briefing paper attempts to provide an overview of the most important developments over the past year from the perspective of local government administrators. We focus in particular on the recent push in some states and in Congress to abolish local franchising of cable video services in favor of "one size fits all" franchising at the state or federal level. These efforts amount to a direct threat to local authority, and to the locality's traditional role as the regulator and administrator of the public rights of way. More concretely, these measures would almost certainly reduce local revenue, in some cases by a substantial amount.

In addition to challenges to local franchising, we provide a brief overview of a number of other topics of interest, including a high-level review of federal telecommunications reform efforts, an update on efforts to thwart – and to allow – municipal provision of broadband services, the transition to digital television, the current status of "multicast must-carry," and the implications of the *Brand X* case.

II. State and Federal Threats to Local Franchising Authority

While telecommunications companies such as Verizon have long talked about entering the video service business, only in the past 18 months has Verizon (and, to a lesser extent, SBC, BellSouth and other incumbents) done so to an appreciable degree. Verizon and SBC promptly drew state and federal lawmakers' attention to the fact that, before they may offer video service in a given local area, the Cable Act of 1992 requires that they first obtain a franchise from the local government. To this point, Verizon has obtained at least ten local franchises nationwide for its video service. Nevertheless, Verizon and SBC maintain that local franchising for the deployment of video services is untenable to the telco incumbents. The cable industry, which has operated under such a requirement for decades, opposes their efforts vociferously.

SBC in fact has taken a harder line than Verizon, insisting that its IPTV service is not subject to the Cable Act's local franchising requirement at all. On September 14, 2005 SBC filed a petition with the FCC to make a ruling to that effect. Unlike Verizon, SBC has not yet pursued any local franchise for the delivery of its video service.

In the name of promoting the rapid deployment of competitive service and reducing regulatory overhead (Verizon has claimed it would take 50+ years to obtain the necessary franchises nationwide), the telco incumbents have found plenty of sympathetic lawmakers at the state and federal levels.

A. State Initiatives

Texas

At the state level, the most recent and highest profile battle was in the state of Texas. SBC and Verizon promoted a bill to abolish local franchising in favor of a single statewide franchising regime, to be administered by the Texas Public Utility Commission. SBC reportedly had 124 lobbyists involved at the Texas Statehouse. On the other was the cable industry, together with some local government groups. SBC and Verizon ultimately prevailed, and Governor Perry signed the bill abolishing local franchising in Texas into law on September 7, 2005.

The Texas law is a crucial development in that it provides additional impetus and clout for the incumbent telcos to pursue similar measures in other states. It also strengthens their hand with regard to their push in Congress for national video franchise legislation.

Other States

Immediately after SBC succeeded in Texas, BellSouth in North Carolina brazenly attempted to accomplish the same thing by inserting language in a "technical corrections" bill (normally used to fix punctuation and typos), introduced near the close of the North Carolina legislative session. It would have relieved BellSouth of all cable-related franchise requirements. The cable industry and local governments raised a furor, and the North Carolina Senate committee excised the language. Observers expect BellSouth to try again next session.

A debate about one-size-fits-all statewide franchising has been underway in New Jersey for nearly a year. The New Jersey Municipal League has indicated that it is working closely with all parties, and that it does not necessarily oppose statewide franchising. Verizon, in an effort to sweeten the deal, has said it would pay 3% of gross revenues for statewide franchise in New Jersey, instead of the 2% it would be obligated to pay under most local franchises. While there is as of yet no legislation pending, Verizon is expected to cause legislation to be introduced sometime after the November elections in New Jersey.

The notion of statewide franchising is not entirely new, and Texas is not the first state to have adopted that approach. For some time the state of Florida has franchised video providers at the state level, as does Puerto Rico.

B. Federal Initiatives

There are currently three pieces of legislation within Congress that directly threaten the role of localities in cable franchising and right of way administration. To various degrees, these bills (S.1504 (Ensign/McCain), HR.3146 (Blackburn/Wynn), and S.1349 (Smith/Rockefeller)) would

completely gut local authority to administer the right of way, at least insofar as it related to the deployment and offering of communication services. The legislation would reduce revenue available to localities, would potentially eliminate funding for PEG channels, would remove any incentive to provide institutional networks or other in-kind services, and would place customer service regulation in the hands of the FCC (with enforcement to occur at the state level).

On the brighter side, draft legislation was recently released by the House Commerce Committee staff which, while reflecting the same general concepts as the other three bills, appears to provide a more balanced approach.

It is crucial to note that the following bills are only a starting point, and reflect the state of the debate only at this moment. Other legislation will undoubtedly be introduced, modifications will be made and compromises reached as the "sausage factory" kicks into high gear over the next 18 months.

S.1504 (Ensign / McCain):
"Broadband Investment and Consumer Choice Act of 2005"

The Broadband Investment and Consumer Choice Act of 2005 is the first Congressional foray into comprehensive telecom reform. It is 75 pages long and covers a great deal of territory in addition to cable service franchising, including municipal broadband, telecom price regulation, and program access. It is a highly deregulatory bill, and is backed enthusiastically by the incumbent telecommunications companies.

From the perspective of local governments, it is a nightmare. The following are some of the main points of S.1504 relating to local franchising:

- Inconsistent terms of existing franchises are preempted.
- All state and local franchise regulation not expressly allowed by the bill is prohibited.
- Specifically prohibits any regulation of build-out / redlining: "A video service provider may not be required . . . to build out its video distribution system in any particular manner."
- Franchise fees may still technically be imposed by state or local government, but would be limited to "cost of compensating such local government for the costs that it incurs in managing the public rights-of-way used by such provider."
- Does not provide for franchise fee audit.
- No fees may be charged providers for work in the rights of way.
- Restricts meaning of "gross revenue" to revenue received directly from video subscribers, excluding non-subscriber revenue such as launch fees, home shopping commissions, and advertising. Prohibits telecommunications service revenue from being used in "gross revenue" calculation.
- PEG: limits locality to no more than four PEG channels, but provides no funding for them. (Current cable franchises typically include provision for funding.) Location and grouping of channels left to the operator.
- Does not provide for common "in-kind" services, such as institutional networks and local emergency alert systems.

- Customer service. No local regulation – that gets shifted to the FCC. FCC would be required to adopt new customer service standards, to be enforced by states, not local units of government (although there is a provision for a "local contact" whose sole duty apparently is to pass along any complaints or issues to the state commission). States may not impose standards higher than those adopted by the FCC.
- Locality may not charge for construction permits for work in the right of way. If an "emergency," the provider may proceed with the work without notifying the local or state government.
- Perpetual franchise. There is no term limit. No ability for locality to revisit needs, examine changes in technology, and alter requirements for future franchises accordingly.
- Other important requirements that directly affect the locality, and that are normally included in local franchise agreements, are mentioned in the Ensign bill (and thus arguably prohibited). Potentially could be included in an FCC rulemaking on customer service, but no assurances that they will be addressed adequately:
    - Safety code compliance
    - Local office requirement
    - Insurance and indemnity requirement
    - Requirement to restore private property damaged by providers
    - Requiring personnel to carry ID badges, and trucks to be clearly marked

Reaction to the Ensign bill by local governments has been critical, to say the least. The National League of Cities estimates that the Ensign bill would cost municipalities nationwide approximately $3 billion on lost revenues from cable and telephone companies. It also prevents local governments from regulating the price, terms and quality of service.

The bill also poses a direct threat to public access television. The Ensign bill's sole treatment of PEG channels is to limit the locality to four of them. It allows the cable operator to choose where the channels may be located on the lineup, and how they may be grouped. It contains no provision for the cable operator to fund the PEG channels. The Association for Community Media (ACM) has produced an extensive criticism of the bill, located at http://www.alliancecm.org/index.php?page_id=201.

HR.3146 (Blackburn / Wynn) / S.1349 (Smith / Rockefeller): "Video Choice Act of 2005"

Unlike the Ensign bill outlined above, these companion bills in the House and Senate do not attempt to reform telecommunications law generally. Their purpose is restricted to the concept of nationalizing the cable franchising process. They parallel the Ensign bill's franchise nationalization provisions in a number of respects, and from the perspective of local officials, the bills' shortcomings are similar. Key points of the legislation include:

- Creates a new regulatory category for "competitive video service provider," excluding them from all other provisions of Title VI (but specifically retaining certain obligations, i.e., retransmission consent, must-carry, etc.). Defined as "any provider of video programming, interactive on-demand services, other programming services, or any other video services who has any right, permission, or authority to access

public rights-of-way independent of any cable franchise." Essentially refers to existing providers of telephony services that wish to provide video.

- No requirement for additional franchise. Existing users of right of way would be exempt from obtaining additional franchise for the provision of video services.
- Franchise fees would still exist and would be paid to the locality, calculated with reference to gross revenues "attributable to the provision of such service within the provider's service area."
- No rate regulation by local, state or federal bodies.
- Existing franchise agreements with competitive video service providers "shall be exempt from the provisions of this Act for the term of such agreement."
- No provision for carriage of PEG channels by competitive video service providers nor PEG financial support.
- Bill imposes minimal obligations on competitive video providers, which may prompt incumbent cable operators to file suit on level playing field grounds.
- No build-out or anti-redlining requirements, arguably.
- No provision for franchise fee audits.
- No provision for institutional networks or in-kind compensation.

House Commerce Committee Staff Draft Legislation (Dingell/Barton)

On Thursday, September 15 the House Commerce Committee staff released consensus draft legislation that, like the Ensign bill, is an attempt to enact wholesale reforms to the Communications Act. The following are the key points of the bill's treatment of video services and video franchising:

- Provides for exclusive federal jurisdiction over "broadband video service providers."
- Prohibits rate regulation, including the basic tier.
- Eliminates the notion of local franchise negotiation and local franchise agreements for broadband video service providers.
- Broadband video service providers must register with the FCC, the state commission, and any local franchising area in which it seeks to offer services.
- After FCC notifies locality that registration statement has been accepted by it, the franchise becomes effective 15 days after the local franchising authority receives from the provider:
  - a franchise bond payment, if required,
  - a statement by the provider "agreeing to any public, educational, and governmental use designated by the local franchising authority under section 304(b) of this Act", and
  - a designation of a local agent
- Franchises to be of uniform duration, to be set by the FCC, and FCC is to establish procedures for transfer, renewal, and extension.
- Franchise fees up to 5% of gross revenues may be assessed by a local franchising authority.
- "Gross revenues" defined relatively broadly.

- Franchise permits construction in right of way, but provider is responsible for "safety, functioning, and appearance" of property, and the provider must bear the cost of construction, repair, and compensation to affected property owners.
- Local franchise authority is permitted to impose "reasonable time, place and manner restrictions" on construction and maintenance in the right of way.
- PEG capacity: local franchise authority "may designate broadband video service provider capacity for public, educational, or governmental use in the local franchising area, so long as such use is comparable to the obligations the local franchising authority applies" to existing cable operators and other broadband service providers in the area.
- Institutional networks: a local franchise authority "may designate or use" broadband video service provider "capacity" for public, educational and governmental use, but cannot require the construction of networks.
- Redlining: FCC is to adopt regulations prohibiting income-based redlining.
- Build-out requirements: the draft legislation includes a blank placeholder for "Build-out."
- Program access: includes non-discrimination and exclusivity provisions.
- Consumer protection: FCC is tasked with adopting national consumer protection standards. States may enforce but may not expand them.

III. Telecommunications Reform

For several years now, industry observers have recognized that the Telecommunications Act of 1996 is not well-suited to the reasonable and predictable regulation of modern broadband communications systems. Some say it has failed miserably from the get-go. While others may not be as harsh, the clear consensus at this point is that something needs to be done to update federal telecommunications laws to deal with IP-enabled services.

There appears to be a growing consensus that the "silo" approach of the Telecommunications Act of 1996, in which various services are placed into "telecommunications service" and "information service" boxes, with profound regulatory implications based on that categorization, is probably not the best way to deal with the current world of IP-enabled communications services, in which various services are now simply applications running over any number of kinds of IP-enabled pipes. MCI and others are promoting a "layers" approach to telecom reform, where the regulation would be guided by what level of the network layer the service or facility in question lies, and not by what services are in fact delivered to the consumer. Voice-over-IP, for instance, would conceivably fall within an "applications" layer, while a broadband connection itself may be regulated as a "services" or perhaps a "transport" layer. Fiber optic, copper, and coaxial cable could be regulated at a "facilities" layer.

In any event, the debate is raging. Key externalities that promise to affect the outcome include universal service reform (who pays into it, who receives it), intercarrier compensation (whether access charges and reciprocal compensation are retained), and, potentially, obligations to comply with federal wiretapping laws (CALEA).

All indications are that no meaningful telecommunications reform bill will be passed this year. Doing so by the end of 2006 is more realistic, but even that may be optimistic.

As mentioned above, Sen. Ensign's S.1504 is the first legislative attempt to tackle telecom reform. It is a highly deregulatory bill – backed by the incumbent telecommunications industry – the stated purpose of which is to "establish a market driven telecommunications marketplace, to eliminate government managed competition of existing communication service, and to provide parity between functionally equivalent services." It has been referred to as a "wish list" of the incumbent telecommunications providers.

Notably, the bill defines "broadband communication service" as "a communications service enabling the trans- mission of communications at a capacity greater than 64 kilobits per second," which is even less than the FCC's much-maligned definition of 200kbps.

There is no indication that the Ensign bill is going anywhere soon. There have been no hearings yet in the Senate on the bill, and companion legislation has not introduced in the House.

As also mentioned above, the House Commerce Committee staff recently released draft telecom reform legislation. It, too, is highly deregulatory, at least in terms of broadband providers. It prohibits rate regulation of "Broadband Internet Transmission Services", VoIP, and broadband video service providers. It does, however, require such providers to register with the FCC and state commissions before providing service.

The draft House staff bill also imposes interconnection obligations on BITS and VoIP providers, tasks the FCC with a rulemaking relating to universal service, contains provisions relating to consumer privacy, and numerous other provisions

IV. Municipal Provision of Broadband Services

Until the past year, the question of whether municipalities can be prohibited from providing communications network services was solely a state issue. Following the U.S. Supreme Court's decision in *Nixon v. Missouri Municipal League,* in which it held that states may permissibly prohibit localities from providing such services, there has been a flurry of incumbent-backed efforts to thwart municipal broadband in statehouses around the nation. Multiple initiatives to restrict or prohibit municipal networks were introduced in fourteen states over the past year, and, to the great credit of backers of municipal broadband, all but a handful were defeated. Those that did pass were often weakened enough to be more or less workable for municipalities.

Now the battle has moved to the federal level as well. Clearly, incumbent providers increasingly view municipal communications networks as a competitive threat. In addition to the statehouses, incumbents are now lobbying for enactment at the federal level of legislation restricting or outright prohibiting municipal networks.

H.R.2726 (Rep. Sessions): "Preserving Innovation in Telecom Act of 2005"

Rep. Pete Sessions, a Texas Republican who worked for SBC for 16 years, and who has over $500,000 worth of SBC stock options, and whose wife still works for the company, sponsored legislation the effect of which would be to utterly eliminate any competitive municipal broadband efforts. H.R. 2726 – the "Preserving Innovation in Telecom Act of 2005" – succinctly states that "neither any State or local government, nor any entity affiliated with such a government, shall provide any telecommunications, telecommunications service, information service, or cable service in any geographic area within the jurisdiction of such government in which a corporation or other private entity that is not affiliated with any State or local government is offering a substantially similar service." The term "substantially similar" is left undefined.

S.1504 (Sen. Ensign):
"Broadband Investment and Consumer Choice Act of 2005"

Sen. Ensign's telecom deregulation bill also includes a provision that restricts municipal broadband services. While not an outright prohibition along the lines of the Sessions bill, the Ensign bill presumes that local governments possess competitive advantages that it should not. and that it is appropriate to transfer any such public advantages to the established providers, without also subjecting them to the corresponding duties and accountability in serving the public interest that apply to local governments. (A more complete analysis of the Ensign bill's provision restricting municipal broadband networks is available at http://www.baller.com/pdfs/Baller_Response_Sen_Ensign.pdf.)

S.1294 (Lautenberg/McCain): "Community Broadband Act of 2005"

In response to the Sessions and Ensign bills, a broad-based consortium of local government groups, consumer interest organizations, and technology companies have backed the introduction of legislation specifically allowing the creation of municipal broadband networks, should a locality choose to do so. Sen. Frank Lautenberg and Sen. John McCain introduced the "Community Broadband Act of 2005" (S.1294) which provides: "No State statute, regulation, or other State legal requirement may prohibit or have the effect of prohibiting any public provider from providing, to any person or any public or private entity, advanced telecommunications capability or any service that utilizes the advanced telecommunications capability provided by such provider." In addition, the Lautenberg/McCain bill obligates localities to apply its regulatory ordinances and rules to any public provider of communications, without discrimination.

House Commerce Committee Staff Draft Legislation

In addition, the recently-released House Commerce Committee draft telecom reform legislation contains a provision friendly to municipal broadband. Similar to the Lautenberg/McCain bill, the House draft legislation states: Neither the 1934 Act nor any State statute, regulation, or other State legal requirement may prohibit or have the effect of prohibiting any public provider of BITS, VOIP services, or broadband video services from providing such services to any person or

entity." It also obligates local governments to apply its ordinances and regulations equally to any municipal provider of broadband services.

V. Conclusions and Recommendations

The $64,000 question is, "What shall local governments do?" There is a great deal of uncertainty as to the continuing role of local government and the regulation and oversight of cable services. Primarily, this has been brought about by the large telecom providers' desire to provide competitive services to cable operators. They argue that they should be entitled to skip the local franchising process on the basis that the franchising process is too time-consuming, too expensive, and would likely impose build-out requirements that may not be conducive to the provider's desire to maximize short-term revenue. Meeting local requirements of serving entire franchise areas can create a dilemma.

Further, the telecom providers argue, and we believe have convinced members of Congress and the FCC, that with broadband local or even state control is no longer appropriate, and that all regulation of broadband-related matters should be handled at the federal level.

At the beginning of cable franchising, visionaries recognized that public rights-of-way were a valuable resource, and the grant of a franchise to a cable provider should be made with the understanding that the provider would provide certain benefits for the community in exchange for availing itself of that resource. This led to locally-imposed obligations to provide diversity of programming, opportunities for community expression, educational services, government communication services, and a range of other benefits.

Many local governments have expended tremendous public dollars to build relationships with cable providers to meet their local needs, and in many instances community access and PEG programming has evolved thanks to the contribution of significant public expenditures, not to mention the time and talent of persons and resources within individual communities. This should not be taken away. No two communities are exactly the same. Each has a separate personality and the needs and interests of communities vary considerably. Having the authority to negotiate franchise agreements that meet community needs must be preserved to carry on with the opportunity for community benefit. Much of this may be lost if federal legislation prescribes a "one-size-fits-all" approach. [Under the House bill, a prospective competitive franchisee has to agree to PEG guidelines produced by the LFA before it is awarded a franchise. Where is the loss of local control and localized decisions in that case?]

Some voices in Washington claim that competition alone will protect the interests of communities and consumers. We do not believe that. Competition between providers may have some impact, but there is little doubt in that it will not bring about the preservation of the community benefits now derived from the rights communities have in franchise negotiations with cable providers. Moreover, with the ongoing mega-mergers and vertical integration in the industry, the idea that meaningful, effective competition exists in the communications and video programming realm is becoming less and less tied to reality.

The above Bills may be rewritten and changed numerous times before finalization. Now is the time for local action.

We recommend the adoption by local governments of a resolution expressing their sense about the importance of local control and local interests in these matters. Local governments must demand that their Congressional delegation listen to them, and that they understand the importance and interests of their communities A resolution is a considerably stronger form of expression than a simple letter, and would be likely to receive due attention at each community's Congressional delegation. We also suggest that communities go beyond this, and insist that their elected leaders and political persons with contacts provide the information necessary to ensure that the elected Congressional delegation will stand up for the rights of local governments, and preserve local interests and the franchising process that is now in place.