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U.S. House of Representatives
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June 5, 2006

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**Don't Leave Consumers Having to COPE with Worse Cable Service
A Different View of the COPE Act (H.R. 5252)**

Dear Colleague:

Recently, you received a Dear Colleague making certain claims regarding H.R. 5252, the Communications Opportunity, Promotion and Enhancement (COPE) Act. Although we support much-needed competition in the cable television marketplace, the COPE Act will not result in its widely-advertised consumer benefits, as explained below.

Claim: The COPE Act will bring "lower prices" for video services.

Comment:

Recent comments by telephone company executives call into question whether the COPE Act will lead to lower cable rates. Richard Lindner, CFO of AT&T, is reported to have stated on an earnings conference call to investors that AT&T's Project Lightspeed IPTV services *probably will be priced somewhat higher than the average cable TV subscription*. Other AT&T executives have reportedly said "we don't have to be the low-price guy in the market"; "our business plan is not built around extreme price cuts"; and that AT&T's IPTV service is "a high-end service." Likewise, Verizon will price its FiOS service "competitively, but *not at a discount*," according to Thomas Maguire, Verizon Director-Federal Public Affairs. ("AT&T Earnings Higher than Expected," XChange Magazine, April 25; Communications Daily, April 25 at 13, April 28 at 7, emphasis added).

Claim: The COPE Act will "bring more choices" and "better video services."

Comment:

The truth is that many consumers could end up worse off after the COPE Act. For instance, people living in areas bypassed by competition could see higher prices and worse service. The head of a major cable industry association testified on the COPE Act that if the phone companies are allowed to enter only parts of franchise areas without a requirement to serve the full franchise area, the cable industry would not pledge that cable operators (1) would not withdraw service in certain areas, (2) would continue to upgrade technology and service throughout a franchise area rather than only to competitive neighborhoods, or (3) would not increase rates in some areas to subsidize lower rates in competitive areas. So consumers living in those neighborhoods where the phone company has decided not to deploy could face even higher cable rates, see their customer service or service quality erode, or lose their only provider of cable service.

Claim: The COPE Act will "bring faster broadband in more places, especially in rural areas."

Comment:

Neither AT&T nor Verizon has promised to broadly target rural areas with their new wireline video services. In fact, the Congressional Budget Office (CBO) recently estimated financial losses to local governments under the COPE Act based upon its assessment that the telephone companies would only enter "10 percent to 20 percent of franchise areas by 2011." (CBO Cost Estimate for H.R. 5252, May 3, at 6).

Claim: Under the COPE Act local authorities "still receive a five-percent franchise fee and an additional one-percent fee for infrastructure maintenance and public access channels."

Comment:

This claim leaves the misimpression that the COPE Act will keep local governments financially whole – it won't. Many communities currently receive more than 1 percent fee revenue for support of institutional networks often used for police, fire, and emergency communications or public access channels. The COPE Act allows cable operators to abrogate existing franchise contracts if a wireline competitor serves a single customer in the franchise area. So many communities will lose fee revenue above 1 percent that they negotiated and expected to receive under those long-term contracts. According to CBO, the COPE Act contains several intergovernmental mandates, as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the net direct costs of these mandates on State and local governments would grow over time, and would likely fall between \$100 million and \$350 million per year by 2011 – exceeding the threshold established in UMRA in at least one of the first five years. (CBO Cost Estimate for H.R. 5252, May 3, at 6). Such losses undermine the ability of communities to support police, fire, emergency, or educational commitments premised upon the expected revenue from contracts that may be terminated after the COPE Act.

Claim: The COPE Act “preserves protections for cities and counties to retain authority over rights-of-way.”

Comment:

The COPE Act changes the rights-of-way authority of local governments by imposing a new standard, making all rights-of-way decisions of local governments reviewable at the Federal Communications Commission (FCC). The FCC has no expertise in regulating local streets, sidewalks, public safety issues, or traffic patterns, yet local communities may have to come to Washington, DC to justify every rights-of-way decision they make before the FCC.

Claim: The COPE Act will “preserve net neutrality by allowing the Federal Communications Commission explicit power to go after companies that violate network neutrality principles.”

Comment:

The broadly-worded FCC “principles” do not mention or directly address discrimination or the imposition of new broadband fees on web-based businesses and will fail to ensure market predictability and openness for continued online innovation. The Internet became the open network it is today under historic, government-backed protections preventing telecommunications carriers from discriminating among competitors and content. These protections were eliminated by the FCC in August 2005. Moreover, the COPE Act hamstringing the FCC by denying it the ability to solicit public input or address problems on an industry-wide basis, even widely-acknowledged anti-competitive behavior, such as blocking or impairing a competitor's web service.

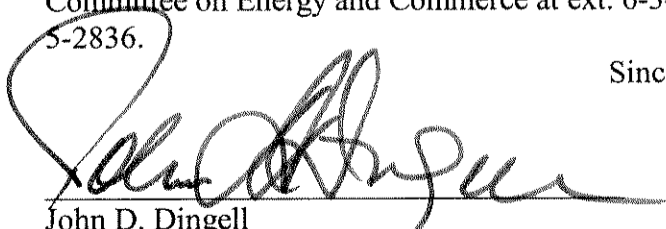
Claim: The COPE Act will “bring more jobs and make U.S. more competitive.”

Comment:

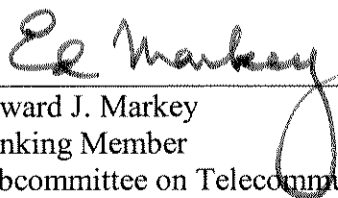
Because the telephone companies do not plan to deploy new wireline broadband and video services throughout their telephone service territories, only select neighborhoods or communities will gain access to these services. This limits the potential for job growth and competitive enhancement to those targeted areas. For this reason, the Communications Workers of America (CWA) recommends that the COPE Act be changed to include buildout requirements to ensure universal access to affordable high-speed broadband. (CWA letter to the Hon. John D. Dingell, April 25, 2006.)

We urge you to consider these and other additional perspectives on the effects of the COPE Act on consumers, on our communities, and on citizens and commercial users of the Internet. Please direct any questions to Johanna Shelton of the Democratic staff of the Committee on Energy and Commerce at ext. 6-3400 or Colin Crowell with Rep. Markey at ext. 5-2836.

Sincerely,



John D. Dingell
Ranking Member
Committee on Energy and Commerce



Edward J. Markey
Ranking Member
Subcommittee on Telecommunications
and the Internet
Committee on Energy and Commerce