Texas Video Competition: Senate Bill 5 Highlights
Commissioner Barry T. Smitherman
The Public Utility Commission of Texas
February 10, 2006

- Video Provisions of Senate Bill 5 (new Chapter 66 of PURA, eff. Sept. 1, 2005)
    - State-issued franchises
        - Incumbent local-franchise holders may apply for state franchises upon expiration of their current local franchises
            - Exception: Overbuilders such as Grande Communications may switch to state franchises immediately
        - PUC must issue a franchise within 16 days of receipt of a complete application
        - Applicants define the franchise territories they seek
        - No build-out requirements, *but* economic redlining within chosen franchise territories is forbidden
            - Alternative technologies (e.g., satellite) may be used to satisfy the non-discrimination requirements
        - PEG (Public, Educational, Government) Channels
            - State-franchised providers must offer at least as many PEG channels as existing (cable) providers
            - Cities must deliver PEG broadcasts in “transmission-ready” format
            - New entrants must provide transport beyond 200 feet from the PEG distribution point to the new entrant’s location (not a change from existing law for local-franchised cable companies)
        - State-franchise holders must pay a franchise fee to each municipality in which they operate
            - Fee is 5% of gross revenues attributable to that municipality
            - Definition of gross revenues is standardized in the statute
        - Video providers are permitted to flow all franchise fees and payments through to subscribers
    - Municipalities retain police-power authority to manage rights-of-way
        - *But* municipalities may not discriminate against state franchisees by denying access to access to the public right-of-way
    - Application statistics thus far (As of February 2, 2006)
        - 16 companies have sought franchises for a total of 144 unique communities
            - Grande: 27 communities
            - Verizon: 22
            - Time Warner: 22
            - AT&T: 21
            - ETS Cablevision: 21
            - Guadalupe Valley: 20

- Customer Protection
    - FCC customer-service standards (47 C.F.R. § 76.309(c)) apply in any municipality until there are two or more providers (including satellite providers) offering service in that municipality
    - PUCT began tracking cable complaints January 1, 2006
    - 34 complaints logged in 2006 thus far; all have been referred to municipalities and/or service providers
    - Exactly who, if anyone, should receive complaints about state-franchised video providers is an open question
- Study
    - The PUCT, and a Telecommunications Competitiveness Legislative Oversight Committee, will issue a joint report on how Senate Bill 5 is working by December 31, 2006
- Legal Challenges
    - The Texas Cable and Telecommunications Association (TCTA) has two challenges pending, one in federal court and one in state court

- Other Provisions of Senate Bill 5
    - Tiered deregulation of local telephone exchanges
        - Exchanges > 100,000 population = Deregulated
        - Exchanges < 100,000 but > 30,000 subject to market test
            - Three competitors: One certificated, one CMRS, one facilities-based
        - Exchanges < 30,000: May be deregulated, or not, per standards in forthcoming Commission rule
    - Review of universal service funding
    - Intrastate switched access rates reduced over a period of years to parity with interstate access rates

Fort Worth Mayor Mike Moncrief
Testimony before the FCC
Friday, February 10, 2006
Keller Pointe Community Center, 405 Rufe Snow

REMARKS
First and foremost, I want to welcome you to North Texas and to the DFW area. I hope you enjoy your visit to our state and to Tarrant County.

Keller, Texas is a beautiful place to live and a great neighbor to Fort Worth. I enjoy working with my colleague, Mayor Tandy, on local issues.

So we welcome you.

Secondly, I appreciate the opportunity to appear before this prestigious Commission…and the opportunity to share "the city" perspective regarding cable franchise reform.

I find it appropriate for the Federal Communications Commission to visit Texas given all the hard work and effort we have already invested in this issue. As you know, we passed a piece of legislation all sides can live with. I believe the new Texas law is a great model for your Commission's deliberations.

To begin, I want to be clear: The City of Fort Worth, and Texas cities in general, support competition in the cable market. In fact, we want competition in the cable market. As you know, competition brings innovation to the market. New technology translates into a host of positive developments. New technologies mean new jobs. It means new investment. It means more choice and lower rates for our citizens.

In Fort Worth, the cable rates have increased 38 percent over the last five years and I believe this is because there is no competition in the local market.

Bottom line, competition makes for an attractive business environment and benefits the citizens. In short, cities support competition just as I know your Commission does.

Unfortunately the previous regulatory system in Texas was not spurring competition. That said, in my remaining time, I want to share a few observations that stem from the debate we had last Spring.

As you know, Texas has been very proactive regarding the issue of cable franchising reform. I think it is important for you to understand from the outset of my comments, that it was not easy for us to pass a bill that cities could live with.

However, I am proud to share with you that we did. Cities across Texas worked with our state legislature to finally produce a compromise piece of legislation known as Senate Bill 5.

Although cities opposed several versions of this bill—and, I will confess, that the opposition was sometimes at my urging—the final version of SB 5 was a bill that Texas cities accepted as a balanced compromise that protected the key city issues.

I would like to share those key city issues with you to convey what Texas cities need in order to support federal cable reform. Specifically, Texas cities need three main protections within any franchise reform bill.

First, we need a bill that protects city right-of-way revenues. Cities need to be ensured that any cable franchise reform will not create a fiscal hardship on them or their citizens. I do not know how it works in other states, but cities in Texas are bound by our state constitution to collect fair market value for the use of public lands by a private entity. As a result of this legal requirement, cities receive "rental" payments when utility companies locate their wires and equipment on public land. These rental payments are a fundamental part of the cities' budget and helps fund the basic city services we are expected to provide our citizens. Any proposed change to the right-of-way compensation system that puts cities at a financial disadvantage or that creates a financial hardship for our taxpayers would be met with stern opposition.

And to be clear, the "compensation system" includes in-kind compensation as well as direct rental payments. We must account for items such as cable drops to our libraries and network equipment for the police departments in order to make cities financially whole.

Secondly, cities need to be ensured that the physical management of the public rights-of-way remains a local responsibility. We absolutely must maintain local control of our public lands in order to protect the health, safety, and welfare of our citizens. During the SB 5 debate, local elected officials were adamant that we maintained our long-standing control of the local right-of-way. The bottom line is that cities cannot cede any management authority of the public lands within our cities to a state or federal agency.

And lastly, we need a bill that protects what I call "the social obligations". For example, we need to ensure that public access channels are still offered to our citizens. Additionally, we need to ensure that cities have the proper recourse if it is shown that providers are discriminating on the basis of income. These social obligations are common in local cable franchises and cities enforce them vigorously. If the state, or the federal government, takes over the franchising process, then these obligations must be accounted for.

Commissioners, those three objectives—revenue neutrality, local control of the public rights-of-way, and protecting the social obligations—are the most important issues to Texas cities. I am proud to say you can find all three principles in the language of SB 5.

Cities were made financially whole in SB5. Cities maintained police power control of the local rights-of-way in SB 5. And finally, SB 5 afforded cities the protections they needed to ensure basic social obligations were met.

Again, it is important to state there were provisions in SB 5 that cities were less than enthusiastic about. I am sure, there were provisions the phone and cable industry also objected to. However, taken as a whole, SB 5 offers a very balanced compromise to a very complicated issue.

As a former state Senator, I understand the give-and-take of the legislative process. During my 11 years in the Texas Senate, I always believed the best bill was one all sides had something they liked and disliked. I am proud to say we were able to pass a bill that nearly everyone could live with.

Commissioners, in closing, I appreciate the opportunity to go on record as testifying that SB 5 represents an excellent model for Congress and the FCC as you begin reforming the cable and telecommunications laws.

Please know, from the cities' perspective in Texas, SB 5 is the basis upon which we will judge all future proposals. Since this bill also gained widespread support from the telecommunications industry, it would be hard for Texas cities to accept a step backward from the protections and provisions afforded in SB 5.

So I urge you, the FCC, and I urge my friends in Congress like Chairman Barton and my dear friend Senator Hutchison to use SB 5 as the model to shape the federal debate.

I wish you luck and I appreciate the opportunity to be here this afternoon.

I hope you will call on me if we can be of assistance as you continue to address this important issue.

Thank you.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

ANNUAL ASSESSMENT OF THE STATUS OF

COMPETITION FOR THE DELIVERY

OF VIDEO PROGRAMMING

MB Docket No. 05-255

TESTIMONY OF LORI PANZINO-TILLERY

ON BEHALF OF THE

NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS,

NATIONAL LEAGUE OF CITIES,

UNITED STATES CONFERENCE OF MAYORS,

NATIONAL ASSOCIATION OF COUNTIES,

FEBRUARY 10, 2006

KELLER, TEXAS

Good morning, Chairman Martin, and members of the Commission.

As the chairman mentioned, I'm wearing many hats today – or, since we're in Texas, perhaps I should say I'm wearing one big ten-gallon hat that covers a lot of organizations.

In any event, I appreciate the opportunity to appear before you today to share the views of local government officials from every state in the union about the status of competition for the delivery of video programming to households all across America.

I want to make clear from the outset that local government in the United States favors robust competition for video franchises. We believe that competition helps control prices, improve service, and broaden access to video programming. Local franchising authorities nationwide welcome competition and are eager to issue additional franchises to compete with existing cable operators.

Unfortunately, as you know, competition with traditional cable operators has been slow to grow. The reasons for this are numerous – and some of them are even true. But one reason which some have advanced is demonstrably not true. The franchising process of local governments – recognized in Title VI of the Communications Act – are not and have not been a drag on competition.

Instead, we believe there is ample evidence to suggest that what has caused this lag in the growth of competition is the insistence by new applicants for franchise terms that are often materially different from those in existing cable franchises and are frequently contrary to municipal code.

We find it somewhat ironic that certain potential video franchisers who are clamoring for competition are simultaneously seeking changes in the law that would distort the very meaning of the word competition. Providing certain potential franchisers with advantages their competitors don't enjoy is not competition, it's favoritism.

I also believe that those who suggest that local governments impede the growth of competition for video programming, are ignoring the simple fact that local government and local economies will benefit from such competition. The economies of rural America will not be vibrant without access to broadband, and local governments are there to ensure our communities are not left out. We want to see great access to broadband, not only because it provides greater choice to consumers, but also because it can be a driver of economic growth

Contrast our position with that of those who seek to curtail or even remove local franchising authorities from the process. They are seeking what we see as an unfair, and undeserved, advantage over their competition.

It's worth noting that for most of the time since the Telecommunications Act of 1996 was passed, many of the Regional Bell Operating Companies made no new effort to enter the multichannel video market. In fact, many cable franchises which were held by these entities were abandoned or sold off as being an unattractive nuisance. And while that decision was theirs to make, they should not then turn around and blame the local franchising process for the slow pace of competition. That's a bit like the lottery player who complains that the game must be rigged because he never wins, even though he never buys a ticket. You can't compete if you throw your ticket away or don't even take the field.

I cannot cover in the time allotted the numerous other reasons why competition in the delivery of video programming has not expanded as quickly as any of us hoped. As has been noted by many who responded to the Commission's Notice of Inquiry, issues such as program access, exclusive contracts and regulatory loopholes are significant barriers to true video competition. What I can report, however, as we sit here today in Keller, Texas amidst video competitors, is that no provider has been denied a franchise for the delivery of competitive services and, as of yet there is no evidence that local government involvement in the granting of such franchises has stifled or slowed competition.

In fact, in the 20 years since the passage of the Communications Act of 1984, Title VI has provided real benefits to residents of cities and towns across America, including through much-needed public, educational, and governmental access capacity for community use. Indeed, right here in Keller, meetings of the City Council along with those of various boards and commissions are televised on Charter Cable's Municipal Channel 7. We look forward to Verizon carrying those same channels out to the consumers who are able to take their competitive offering.

Mr. Chairman and members of the Commission: as you prepare your annual report to Congress on competition in the video broadcasting area, I urge you to ignore the red herring which some are waving before you and look instead at the long record of success which the local franchising process has ensured those who have stepped up to the plate.

We are not an impediment to competition as some have alleged; we embrace it. I know you do, as well.

Thank you.

ALLIANCE FOR COMMUNITY MEDIA

NATIONAL OFFICE
666 11th Street, NW,
Suite 740
Washington, DC
20001-4542

Voice: 202.393.2650
Fax: 202.393.2653
E-mail:
raiseeveryvoice@yahoo.com

Testimony of
Sharon King, Alliance for Community Media

Before the

Federal Communications Commission

Annual Assessment of the Status of Competition For the Delivery of Video Programming

MB Docket No. 05-255

February 10, 2006
Keller, Texas

My name is Sharon S. King. I am the President and CEO of Dallas Community Television, the Public Access facility in Dallas, TX. I also serve as the Southwest Regional Chair on the National Board of the Alliance for Community Media. I want to thank Chairman Martin for inviting me to testify today on behalf of the Alliance, a national membership organization representing 3,000 public, educational and governmental (PEG) cable television access centers across the nation. Those centers include 1.2 million volunteers and 250,000 community organizations that provide PEG Access television programming in local communities across the United States. Local PEG programmers produce 20,000 hours of new programs per week – that's more new programming than all of the broadcast networks combined.

The Alliance for Community Media recognizes that there is a potential community value in encouraging competition in the delivery of video services. Operating in Texas, we have first hand experience in one of the first national experiments in elimination of local franchising authority. We feel that our experience here may offer some insight into what to expect—and not expect—from changes enacted in hopes of speeding competitive entry.

Under existing law, there are many PEG success stories. Founded in 1972 by college students, Austin Community Television has been instrumental in the recognition of Austin as the live music capital of the nation. Tejano music was little known outside the small Latin clubs in Austin until producers Isidoro Lopez and Jerry Avala began their Public Access television show. Lopez is 67 years old and disabled, but full of energy. His show fully involves the Hispanic community, including bands, local businesses and volunteers. Isidoro says, *"Without the Public Access Channels, no one would have known about this kind of music. The public greatly enjoys this service and wouldn't find it anywhere else."*

Recently, large numbers of Hurricane Katrina survivors have poured into Austin-- homeless, voiceless, alone. Many have found help and their own their voices on ACTV – and they believe they may have found a new home.

At Dallas Community Television, we offer direct service to more than 400 organizations per year. At least 40 of them are non-profit, service-based, client-directed organizations which provide end-user services to the community. DCTV produces a technically polished program for each, promoting their available services to more than 225,000 homes. Each show represents about $2,000 worth of in-kind services. We are building capacity for these organizations across metro-Dallas. The groups served are both emerging and established, including:

- **Women's Haven Outreach**, a shelter for battered women;
- **New Hope, New Life**, a program which helps women escape prostitution;
- **Girls Incorporated**, a national organization empowering low-income girls and women;
- **Jonathan's House**, a safe haven for abused children.

Following the Texas legislation, the Dallas City Manager called us in to discuss the implications. We were told that if she is not able to quickly access local franchise dollars, we will be gone. There is no way she can replace that funding out of Dallas general fund. Fifty-percent of our operating budget is from local cable franchise fees. In the atmosphere surrounding the legislation, our budget was cut by 22% for FY 2006. The other 50% comes from membership fees, training fees, special events, grants, fundraising and garage sales.

Time Warner was in renegotiation with San Antonio at the end of last year, when their existing franchise expired. Time Warner broke negotiations, and applied for and received a state-wide franchise. They announced with little warning that they would no longer provide the studio, staffing or other support for Public Access that had been required under the local franchise, but which was not required under the new state-wide franchise. This had the immediate result of diminishing the resources of the people who owned the PROW. However, its effects, unintended by the statute's authors, went much further. In the few days between the announcement of the change and its implementation by Time Warner, the City was unable to acquire equipment, allocate funding and put the equipment in place. The channel went dark. Time Warner then invoked fallow time provisions which allowed them to take the channel back for their own programming use. The City of San Antonio and its citizens are forced to patch together enough production resources to program the minimum number of hours required under the state franchise law to regain the channel they had operated for years.

The law was intended to keep existing PEG resources whole. It was intended to allow those without PEG resources a reasonable process to secure them. Its very first implementation led to a loss of existing resources, both financial and channel capacity.

The Alliance is in favor of competition. But the FCC must be extraordinarily careful in changing rules which have successfully provided the tools of democracy to our communities. We want to see competition add active new participants in PEG Access. Competition should not merely carve up an existing pool of video watchers. Competition should not be for the hope of saving a few dollars per year on a cable bill at the expense of priceless community involvement in expression, education or personal engagement in government.

Competition should not be used as an excuse to lower or escape existing and reasonable public obligations. PEG channel capacity should grow and change as the technology changes and community-need increases. PEG funding should be secured at reasonable levels over and above the 5% franchise fees.

We want competition which allows the community to retain communications capacity. We believe competition can flourish in a system which respects a community's right to determine how best to use that capacity. We believe that the people who own the PROW deserve to collect fair payment from companies gaining huge fortunes through their use.

I want to thank the Members of the Commission for inviting us and your staff for their kind help. I will be happy to answer your questions—or help to find the answers for you at any time.

Marilyn O'Connell
Senior Vice President –Video Solutions
Verizon Communications

FCC Open Meeting, Keller Texas

February 10, 2006

Chairman Martin and members of the Commission, thank you for the opportunity to speak today. My name is Marilyn O'Connell, and I am the Senior Vice President of Video Solutions at Verizon. I am responsible for strategy, development and implementation of Verizon's new fiber-optic television service called FiOS TV.

Welcome to Keller, Texas, the broadband capital of the United States. Keller was the first market for the revolutionary fiber-optic broadband services we call FiOS. And it's where consumers have demonstrated that they value real choice and competition for broadband services. FiOS TV is a direct result of Verizon Chairman Ivan Seidenberg's vision to build a fiber-to-the-premises network to deliver leading-edge broadband services to customers now and in the future.

Verizon is building this advanced fiber network in some 800 communities in 16 states. At the end of 2005, our fiber network passed 3 million homes. By the end of '06, we intend to double that, to 6 million or around 20 percent of our current Verizon households.

Our fiber network has two-way capabilities and multi-megabit speeds that digital customers want. Our Internet-over-fiber service, called FiOS, delivers broadband speeds of up to 30 megabits downstream and 5 megabits upstream, and customer response is strong.

In markets where we have been selling FiOS Internet Service for at least nine months, the average penetration rate is 14%. This includes more than 35 central offices throughout our footprint that compete with all the major cable players.

But FiOS Internet Service isn't the only Verizon broadband service that has customers talking, and the cable industry reacting. Two years ago, we began planning a digital TV service that would be both familiar and revolutionary. It would ride on streams of light along our fiber network and delight our customers with its abundance of high-definition programming, simple packages, interactive features, and tremendous value.

In less than 18 months, the Verizon team designed the service, upgraded a network, negotiated and secured more than 300 channels of programming, negotiated local franchises, and launched a new business. On Sept. 22, 2005, we gathered in this same room we're in today to tell the world that FiOS TV had arrived, and Verizon was officially in the entertainment business.

And, based on the customer response, it appears we got it right.

Customers love FiOS TV. Here in Keller, Texas, our first FiOS TV market, more than 20 percent of eligible households bought FiOS TV in the first three months it was available. But this enthusiasm isn't confined to Keller or even to the 13 other North Texas communities where FiOS TV is available. We're seeing strong response in the other markets we serve.

From Temple Terrace in Florida, to Herndon, Va., and up the Atlantic Coast to Woburn, Massachusetts, and Massapequa Park, New York, customers are signing up for the service as fast as we can install it. Just this week, we announced that FiOS TV is now available to customers in Beaumont, California, and we're planning more launches in the next several months.

FiOS TV provides consumers with a video experience that's different from anything they have today. Fiber delivers a stunningly vivid picture with brilliant colors. And digital sound that's so clear you'd swear you're in a theater and not in your family room.

The tremendous capacity of the fiber system gives us all kinds of room for digital video channels, local programming, high-definition and on-demand content. Today, we deliver around 400 total channels and more than 20 high definition channels. We also offer access to close to 2,000 video-on-demand titles. And we carry dozens of channels for our multicultural customers, including many in Spanish, and 15 international channels. We also carry a number of new and smaller networks that have

not been successful at getting wide distribution due to cable's limited capacity. We can give these entrepreneurial networks a chance to connect with audiences that otherwise wouldn't see their programming.

We can do all this while we also deliver a best-in-the country Internet service. Verizon alone offers consumers speeds of 15 or even 30 mbps.

But that's just the beginning. This year, we'll begin adding capabilities like a multi-room digital recorder that will enable FiOS TV customers to control and personalize their TV viewing. Down the road, we'll integrate Internet and TV services in new and exciting ways that our all-fiber network makes possible.

As great as this is, FiOS TV also provides another benefit that customers have been craving for years. It gives customers a true choice for their video provider based on competitors' services and prices.

FCC studies have shown that cable price hikes are a predictable part of cable service. The most recent FCC study – released last year – found that from 1998 through 2003, cable rates rose more than 3.5 times faster than the rate of inflation.

In the few places around the country where cable has competition from another wireline video provider, the total price for cable is over 15 percent lower, and the price per channel is more than 27 percent lower, according to the FCC report. Yet fewer than 2 percent of communities today get the benefits of this type of wireline competition.

And, a recent Bank of America study found that cable companies are dropping prices in response to FiOS TV in the markets where it is available. Cable companies aren't advertising these prices, but they're offering discounts to advertised prices of 20 percent or more in the areas where FiOS TV competes with them. For example, right here in Keller, Texas, our first market, the cable company ran a 50 percent promotional discount for a bundled offering when we entered the market.

This is great news for consumers, who now have a new choice of providers as well as competitive prices. But beyond that, customers are choosing FiOS TV because it's a great value, and they are eagerly switching from cable to FiOS TV where it's available.

We'd like more customers to have a choice of TV providers, but we continue to face some challenges in getting local franchises. To date, we've secured some initial local franchises, but the numbers are daunting going forward.

We've have a few notably positive experiences in negotiating franchises. It was a pleasure to work with the local franchise authority in Beaumont, California, which understood the value of having a competing TV service in market and awarded us our very first franchise last year. Here in Keller, our successful negotiations with the LFA enabled us to launch FiOS TV to the same market of broadband- savvy consumers who first embraced FiOS Internet Service.

As much as we appreciate the opportunities to serve customers in these and other cities, our experience so far has shown us that the local franchising process is a major barrier to entering the video market on a wide scale.

First, the process simply takes too long–sometimes as the result of inattentiveness or complicated procedural requirements, but often as a result of cable industry efforts to delay the process and to force a would-be competitor to agree to unreasonable, and even unlawful, terms.

Second, in some locations, we have faced unreasonable build-out requirements. These requirements would force us to build to imposed locations on an arbitrary schedule, even requiring building to the *incumbent cable provider's* service area or to the local authority's jurisdictional boundaries, rather than to our own. Such requirements can make deployment uneconomic.

Finally, sometimes the franchise process is used to try to force would-be competitors to finance unrelated projects or pay additional fees that go beyond what is permitted by the Cable Act. All of these problems increase the costs, delay competitive entry, and create barriers to new entry in the video market, thus denying consumers the benefits of new competitive service. And they create an unlevel playing field for new entrants with no market share who must compete against an entrenched incumbent.

We are pleased that the FCC has initiated a rulemaking to address these types of abuse at a national level. We believe the FCC can address these practices that prevent widespread video competition and inhibit more investment in broadband deployment. By addressing these features of the current franchise process, the Commission can help to create a streamlined and efficient process that fosters much-needed choice and competition in the video market, while protecting any legitimate local interests.

We've shown that we can move quickly when granted franchise relief. We accelerated our deployment of FiOS TV to consumers in North Texas as a result of a state-issued franchise in 2005. Within weeks of the enactment of the Texas franchise law, we filed for, and were granted, a state-issued franchise for 21 communities in addition to the four we had directly negotiated. As I mentioned, FiOS TV is available in 14 North Texas communities today, and we'll expand to the remaining communities this year.

We're encouraged by progress toward a statewide video entry package in Virginia, which the Virginia Cable Television Association endorsed. Nonetheless, a state by state approach to reform is very time consuming, uncertain, and not a panacea.

Where roadblocks to competitive entry are removed, consumers benefit. In the less than four months since the launch of FiOS TV,

customers have shown us that they embrace competition and are more than willing to switch when FiOS TV enters their market. We're off to a strong start with FiOS TV, and we're encouraged by our customers' reaction to the service. In my 20-plus years in the telecommunications business, I've never been associated with services – both FiOS Internet Service and FiOS TV -- that have resonated with customers this deeply and this quickly. We're not only transforming the way people watch TV, we're unleashing competition in the video marketplace. And customers are clearly the winners.

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

# # #

Commission Open Meeting
Keller, Texas
February 10, 2006

Testimony of Vernon Drewa
Customer, Verizon FiOS TV and FiOS Internet Service

Good Morning.

Chairman Martin and members of the Federal Communications Commission, welcome to Keller, Texas.

I would like to thank Verizon as my **FIOS** service provider for letting me participate in this hearing.

My name is Vernon Drewa and I live here in Keller.

Being one of the elder citizens of Keller, I have been fortunate to be involved and seeing electronics evolve into one of today's technologies called **FIOS TV.** 60 years ago I learned that the "proof is in the pudding." Verizon has brought that "**PROOF"** to Keller in the form of **FIOS TV**. Which is the reason I am addressing you today.

I have been involved with many areas of electronics since 1946. My education was paid for, courtesy of the U.S. Navy.

My on-going electronics training began when I was employed by the Civil Aviation Administration in the mid 1950's. A few years later it became the Federal Aviation Administration under the Dept. of Transportation. It was a requirement that we maintain a high level of expertise on all electronic systems.

From the mid 50's until my retirement in 1988, I was an electronics technician, training officer, Specialist in Regional Headquarters, Manager of FAA Airways Facilities Offices in Hattiesburg, Mississippi; Monroe, Louisiana; Little Rock, Arkansas; San Antonio, Texas, and retiring as Manager AFS Area Office, Dallas/Fort Worth, Texas.

I have been an Amateur Radio Operator for over 50 years. And built my own radio transmitter into the trunk space of our car over 50 years ago.

My interest regarding **FIOS Internet Service** began when we learned that installation was to begin in Keller. At this time it was for higher broadband speeds.

We were fortunate to have been one of the first Keller residents to receive **FIOS INTERNET** and **FIOS TV** Service. We hadn't heard the term **FIOS TV** until shortly before it was installed in our home. I was aware it was associated with Verizon's fiber optics because of a video demonstration on my computer by a Verizon installation technician when our **FIOS INTERNET** service was installed. We hadn't previously viewed video as sharp and clear as was demonstrated.

Verizon's remote system is easy for my wife to operate, and she thoroughly enjoys the **Video On Demand** features. Another part of the equation is **Verizons FIOS** technical service. First, one can speak to a "live person." And secondly, the technicians are patient, thorough and professional in aiding the caller. If it's an issue they can't resolve, it's elevated to a higher level of expertise. However, the best feature for us is the **FIOS TV**.

We had a **DISH** video provider when **FIOS INTERNET** was installed, so we were able to **make quality comparisons** between the two. **FIOS TV** was far superior. Plus it doesn't fail during inclement weather.

Our **FIOS INTERNET** service download has consistently remained at 5.0 megabytes and upload at 4.3 megabytes. I exchange historical information with over 70 Universities in the U.S. and Universities in Gdansk, Poland, Berlin and Heidelberg, Germany. The **FIOS INTERNET** service has permitted me to exchange information quickly and error free. I am now able to download a 1500 page book in less than 10 minutes whereas before it took in excess of 45 minutes. And that wasn't always successful.

In early January several of our neighbors and I were discussing the features of **FIOS VIDEO** as well as the **FIOS INTERNET** service. After discussing each families expectations of TV service, **all chose FIOS**. Now most residents in our neighborhood now have **FIOS TV AND FIOS INTERNET** services.

And just this past week several families were visiting in our home and asked me to demonstrate our **FIOS** systems. **<u>Two called for FIOS installation the next day</u>** and the other called his **Cable** provider to advise he was **switching** to **FIOS. However, they** offered him a year of **free service** to remain with them!

From personal expertise, I know that Cable service will degenerate from line attenuation and customer additions. This is one of the reasons a Cable customer has to often call their provider.

I had the same problem with the original **Broadband DSL**. Its service was limited. By the distance a customer was from the Central Office.

Landlines are severely limited on what frequencies they can carry and the number of customers they can serve. For example, prior to digitized video, the FAA's Long Range Radar site in Keller had to microwave its video to the Ft. Worth Air Traffic Control Center, because existing telephone lines didn't have the bandwidth to carry the video (Example: Trying to get water out of a 1" pipe, when the water coming in was from a 5” pipe.). These digitized systems were received in the early 70’s, which made it possible for radar **video** to be transmitted by landline.

Fiber Optics which carries the **VIDEO** is in the visible spectrum of the frequency range and has unlimited usage. One end of the spectrum is in the white light and the other end is toward the infra red light. Between these, there are an infinite number of frequencies that can be used. **THIS IS WHAT MAKES THIS FIOS SYSTEM GREAT**.

With **FIOS VIDEO**, electronic services will be limited only by the imagination as to that future **FIOS** customers will receive.

Consumers relish competition and it raises the “bar” on the quality of service.

Fortunately **FIOS** provides us with another choice.

Again thank you for giving me the opportunity to participate in addressing this Commission.

STATEMENT OF:
LEA ANN CHAMPION
SENIOR EXECUTIVE VICE PRESIDENT – IP OPERATIONS AND SERVICES
AT&T INC.

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
FEBRUARY 10, 2006 OPEN MEETING
KELLER, TEXAS

Good morning. Thank you, Chairman Martin and Commissioners Copps, Adelstein and Tate 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 AT&T. Welcome to Texas.

I know it is not often that the full Federal Communications Commission picks up and leaves the confines of the Beltway. We are especially honored that you chose to come here to Texas. Given the topic of this month's Open Meeting – Video Competition – this is a great place for the FCC to visit.

Last year, the Texas legislature passed a bill that encouraged investment in broadband and allowed video competition to emerge. The Texas legislation is proof that all parties can work together to ultimately accomplish an important goal of policymakers and the subject of today's FCC meeting: **more video choice for consumers**. If there is one takeaway from today's meeting, it is that Texas's accomplishments can be replicated elsewhere.

Texas applied the principles that the FCC has a long-standing tradition in promoting: customer choice and investment in broadband networks. The state bill eliminated the entry barriers – such as build-out mandates and prolonged city-by-city negotiation process – to invite investment and competitors. But, it also protected and advanced the legitimate local interests of cities – items that AT&T supports: continuing to provide cities revenue from video service, offering community access programming (known as PEG), and confirming cities' continued authority over rights-of-way management.

As a result of the legislation, companies like AT&T are able to invest without delay in Texas. In fact, we committed to invest $800 million in broadband here. That includes our Project Lightspeed investment, DSL broadband service to all of the company's 535 central offices and an additional 228 "neighborhood gateways," bringing broadband service to dozens of additional communities throughout the state. These building blocks of investment allow AT&T to expand the reach of our broadband offerings to customers.

Today, Texas consumers are beginning to see the real fruits of that investment – a different kind of video experience than the cable companies provide. We recently started a controlled market entry in San Antonio of our AT&T U-verse services. Verizon and other providers are now offering their video service across the state. And Texas consumers have begun to see that competition in video means better services and more competitive prices for consumers.

This year, the FCC has the opportunity to do for consumers across the country what the legislation here has done. I understand the FCC has an open proceeding to examine the local franchise process and AT&T looks forward to filing its comments in that proceeding. I urge the Commission to remove entry barriers to investment and ensure that the same choice available for Texans is available throughout our country.

But the global economy in which we live requires national policy. And, the United States has consistently lagged behind other countries in broadband infrastructure. Recently, a Cisco executive was quoted as saying that while he believes IPTV is coming soon he "think[s] the leaders will be Japan, Korea, and some parts of Western Europe."

Therefore, all of us in government and business have a responsibility and the opportunity to keep America the technology leader. The Commission has an opportunity to establish national policy that promotes investment in broadband networks - and bring video choice for consumers. And with a clear path forward, we stand ready to invest and bring customers more choice.

Through Project Lightspeed alone, we are planning to make an initial investment of billions of dollars in the next three years in our network, operations, customer care, and IT infrastructure. Working with companies such as Alcatel, Microsoft, and Scientific-Atlanta, we are deploying a two-way, interactive, switched IP video network and extending approximately 40,000 miles of new fiber optics to reach 18 million households in the next three years – reaching more customers faster than any other company with a fiber deployment plan in the United States.

Today, we're offering high-speed Internet access and AT&T U-verse^{sm} TV, which features more than 200 channels, a robust and easy-to-access video-on-demand library, fast channel changes and picture-in-picture browsing. And, over the course of this year and beyond, we are planning to enter more markets and to give customers unprecedented control over the way they watch TV, surf the Web and use other broadband applications. For example:

- We plan to allow customers to access personalized content on their TV screens, such as their favorite sports, weather and stock information.

- We will offer a whole-home DVR – digital video recorder, which allows customers to pause and record live TV on any TV in the home, as well as the ability to watch their recorded programs in any room.

- We plan to allow customers to remotely access and program services. For example, customers may be able to program their DVR from their Cingular phone or a Web page.

I could go on and on about the capabilities that an all-IP network allows us to provide, but my point is this: from day one we have a differentiated video service for our customers and going forward its IP functionality will allow us to provide our customers even greater integration, customization and interactivity.

We are eager to bring new video offers to our customers. That's why we are creating another integrated solution called AT&T Homezone^{sm}, which will be available to all of our DSL capable customers. Through a joint venture with 2Wire, we are integrating 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. AT&T's Homezone will combine satellite TV programming, high-definition, DVR, Caller ID on the TV, movies-on-demand, photo-sharing and music. Customers will also be able to log onto their AT&T Homezone receiver remotely, through a Web browser or wireless phone, to schedule DVR recordings, start movie downloads, and enjoy music and photo collections.

In addition, we plan to continue offering satellite TV to customers via AT&T | DISH. With these three offerings, AT&T provides video choice to its customers throughout our territory.

To summarize, with our Project Lightspeed initiative, we plan to put billions of dollars of private investment at risk to bring customers video choice. We were able to move forward with more confidence in Texas due to the clarity provided in streamlining the franchise process and removing the barriers to investment. We need your help to clear those barriers elsewhere so we can make these investments without delay throughout our territory.

AT&T 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 encourage new entry into the video services market by reducing roadblocks and unnecessary rules. We urge the Commission to establish national policy to promote new broadband investment and deployment. Removing the barriers to investment to enable video competition would be consistent with the broadband polices this Commission has traditionally endorsed. And consumers will benefit from innovation and choice.

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

Statement of Daniel L. Brenner, Senior Vice President, Law & Regulatory Policy, National Cable & Telecommunications Association

FCC Open Commission Meeting
Keller, Texas
Friday, February 10, 2006

Good morning, Mr. Chairman and Commissioners. My name is Daniel L. Brenner and I am the Senior Vice President for Law and Regulatory Policy for the National Cable & Telecommunications Association. NCTA is the principal trade association for the cable industry, representing cable operators serving more than 90 percent of the nation's cable television households and more than 200 cable program networks. The cable industry is also the nation's largest broadband provider of high-speed Internet access after investing $100 billion over ten years to build out a two-way interactive network with fiber optic technology.

This is a discussion of the state of video competition. But, I would like to suggest that the Commission also look more broadly, to the state of competition in the communications market. I say communications market and not video market because cable is no longer limited to subscription television. Nor are its competitors.

When Congress required an annual video competition report in the 1992 Act, DBS did not exist. Telcos were barred from providing video service in all but the most rural areas. No video Broadband, no Tivo, no portable DVDs, and what satellite dishes existed had the diameter of a small Buick. Not to put too fine a point on it, but there were no pictures on cell phones, either.

Today, the cable industry is no longer merely a provider of video programming. NCTA's member multiple system operators (MSOs) now also provide consumers with high-speed access to the Internet (cable modem service), and telephone service (both traditional circuit-switched and Voice over Internet Protocol).[1] And telephone companies are now providing high-speed Internet service and video programming in addition to their core telephone service. It's 2006 and video competition is here, here to stay. Customers have the choice of living in, and buying services from, a converged communications marketplace.

With regard to our core business, the video marketplace is more competitive than ever. As the Commission has noted, there have been sweeping changes in the video marketplace over the past decade. As you concluded in the 10th Annual Report, "the vast majority of Americans enjoy more choice, more programming and more services than anytime in history."[2] In the 11th Annual Report, the Commission reported that "almost all U.S. consumers have the choice between over-the-air television, a cable service, and at least two direct broadcast satellites (DBS) providers."[3] And in some areas, the FCC found, "consumers also can choose to receive service from one or more emerging technologies, including digital broadcast spectrum, fiber, and video over Internet."[4]

---

1 Some cable operators are also beginning to add wireless telephone service to their bundle, as Time Warner did recently in its partnership with Sprint.
2 *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* 19 FCC Rcd 1606, 1608 (2003).
3 *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* 20 FCC Rcd 2755, 2757 (2005).
4 Id.

When Congress ordered an annual video report in the 1992 Cable Act, cable -- a one-way service with about 39 analog channels and no digital channels -- commanded 95 percent of the multichannel television market. Today, it is only one of many interactive broadband platforms that provide a variety of voice, video, and data services. Thanks to fierce competition from two Direct Broadcast Satellite (DBS) providers – EchoStar and DirecTV – cable's market share has fallen to less than 69 percent. The Regional Bell Operating Companies (RBOCs) are entering the fray, bringing with them an annual revenue stream of $150 billion – about three times that of the cable industry – and billions committed to upgrading their plants to provide cable service.

Added to these three significant video players – cable, satellite, and telephone – are others who compete to provide state-of-the-art video services. These include Internet-based services, video cell phone providers, wireless computer manufacturers, and consumer electronics suppliers – not to mention over-the-air broadcasting, wireless cable, and DVD sales and rentals. Consumers are the beneficiaries of this highly competitive landscape. When it comes to video competition, I think it's fair to say that it's time to put a fork in it – it's done.

Evidence of a highly competitive marketplace can be found not only in the choices available to consumers, but also how cable operators and their competitors have reacted. When DBS began to offer consumers an alternative with more channels, more pay-per-view movies, and digital audio and video, cable operators embarked on a $100 billion, nationwide upgrade of their facilities. With additional capacity and digital capability, cable operators began to offer new tiers of digital programming, along with video-on-demand and digital video recording capability. Cable expanded its video services to offer high definition television programming. Cable also increased the quality and diversity of its programming and pioneered commercial high-speed Internet service.

Let me make two points about the consequences of this vibrant video market. First, with ample video competition, consumers and communications companies are moving toward providing <u>bundles</u> of services – video, data, voice, and, increasingly, wireless for a set price. There are several advantages for both providers and customers of bundles. By providing a suite of services, competitive providers become one-stop shops for most residential consumer needs. For customers, there's the benefit of a single bill, a simple point of contact for customer relations issues, and prices reflecting a multi-purchase discount.

Because the customer is buying a suite of services, there are pricing plans that provide substantial savings. I point to that fact because while competition engendered by DBS led to some price competition, it also led cable to offer larger, higher quality programming offerings and digital enhancements. The Commission recognized that quality competition, not solely price competition, also benefits consumers. The bundle is now providing new service <u>and</u> price competition in video.

The bottom line: signs of a competitive marketplace abound. Several different providers of a wide array of services vie with each other for customers, each trying to differentiate itself with unique offerings while trying to match those of its competitors.

As early as 1998, telephone and DBS companies joined forces to offer their own packages of TV and voice service. That year DirecTV teamed up with Bell Atlantic (now Verizon) and SBC (now AT&T) to offer a video-voice bundle. And this year DirecTV and Echostar are launching a nationwide wireless broadband network to compete with the video/data bundle of cable and telcos.

NCTA's cable operators are leading in bundling:

- In the New York market, Cablevision offers an Optimum Triple Play package comprised of digital cable (including 18 channels of High Definition channels), High-Speed Internet access (at a rate three times faster than DSL) and Optimum Voice for an introductory rate of $29.95 per service for the first year. After the promotional rate expires, Cablevision customers are given a $20 Optimum Reward discount over the regular rates.
- Likewise, Time Warner Cable offers Double and Triple Play in numerous markets. For $99 per month, customers can purchase a 150 channel digital TV package, high-speed cable service, and digital phone.
- Cox Communications pioneered the first successful cable bundle using circuit switched telephony and now offers its customers discounts for taking bundled services.

- Comcast will roll out discount "triple-play" bundles nationwide this year. In Boston, Comcast subscribers can get TV, broadband and phone service for $99 a month the first year, far less than what they'd pay for all three separately.
- Smaller MSOs serving more rural areas also are offering bundled services. NewWave, Galaxy Cablevision and SEMO Communications Corp., for example, share an overall game plan: Offer consumers in the heartland a bundle of services – video, high-speed Internet, digital and now voice – at an attractive price.

Not all customers necessarily want to buy a bundle, and for these customers the relative competition of each market segment is worth examining. As I have indicated, the video market is robustly competitive. As to the data market, cable enjoys a healthy lead in residential broadband. It's not surprising, given that the cable industry virtually invented residential broadband service. By offering customers an improvement over the telco dial-up service, cable forced the Bells to take its DSL technology off the bench and onto the playing field. Today there is a vigorous competition for broadband customers with dial-up still a significant market player for some customers.

This leads to my second point. Only one part of the bundle – only one part of residential communications services – remains dominated by the incumbent provider, and that is landline phone service. According to the FCC's July 2005 report on Local Telephone Competition, ILECs accounted for nearly 85% of all residential and Small business access lines as of December 2004. Wireless competes, but for many customers, the landline phone defines phone service.

It is here where cable has been the leader in offering customers a choice of facilities-based residential phone competition. This commitment from large companies started with Cox, with its offering of competitive, facilities-based circuit-switched service in 1997. Today, Cox is one of the largest facilities-based telcos in the United States. And it earned that position not on guaranteed rate-of-return formulas but by competitive entry against incumbents who controlled 100% of the market. With the advent of VoIP, all major cable companies are providing facilities-based competition to the incumbent carriers. By Year End 2005, the cable industry had an estimated five million telephony customers.

So, as the Commission considers issues of competition in <u>video</u>, I would urge it to look more broadly at the growing market for <u>bundled telecommunications services</u>. The future of video competition will be all about the bundle. And in examining competition there I urge a focus on the one part of the bundle that is still dominated by an incumbent provider – wireline phone service.

Thank you.

TESTIMONY OF JOIAVA PHILPOTT

CORPORATE VICE-PRESIDENT

GOVERNMENT AFFAIRS & FRANCHISE RELATIONS

CHARTER COMMUNICATIONS

FEDERAL COMMUNICATIONS COMMISSION

Video Competition Panel

KELLER, TEXAS – FEBRUARY 10, 2006

Charter Communications – HQ
12405 Powerscourt Drive
St. Louis, MO 63131
Phone: (314) 965-0555
Fax: (314) 909-0609

Charter Communications – SE Div.
11720 Amber Park Drive
Suite 160
Alpharetta, GA 30004
Phone: (770) 754-5275
Fax: (678) 893-5980

Charter Communications – TX Office
4800 Blue Mound Road
Fort Worth, Texas 76106
Phone: (817) 509-6272
Fax: (817) 509-5020

Good morning Chairman Martin, Commissioners Adelstein, Copps, and Tate. My name is Joi Philpott and I thank you for the opportunity to participate on this panel on behalf of Charter Communications. I am the Corporate Vice-President of Government Affairs and Franchise Relations, and I am responsible for the oversight of local, state, and federal franchising issues impacting Charter Communications and its customers. I am especially pleased to greet you in Keller, Texas, which is one of Charter's local markets.

When Charter began as a small company in 1993, our only product was analog video and we had just a few hundred franchises. Today we're a Fortune 500 company, the nation's fourth largest cable operator, with 4,063 franchises throughout four operating divisions, covering 37 states. During Charter's peak growth period, we completed over 2,000 franchise transfers with local franchising authorities.

In addition to working diligently within the current Title VI framework for franchise renewals and transfers, Charter has also worked hard to rebuild its network. Since 2000, we've invested approximately $10.5 billion throughout the country with the majority of the capital spent on upgrading our infrastructure. In Texas alone, Charter has invested approximately $430 million and has over 210,000 customers. Over the past decade, we've grown our national customer base from 1 million to more than 6 million customers.

Throughout much of our broadband network of coaxial and fiber optic cable, we offer our customers traditional cable video programming (analog and digital), high-speed cable Internet access, advanced broadband cable services (such as video on demand), high definition television service and interactive television, and in some of our markets, VOIP telephone service.

This is a hearing on video competition and I want to share with you Charter's views on a subject that we know very well and also correct some misunderstandings that seem to have been reported as to our experience in Keller. We can speak to the subject of video competition authoritatively because we operate in a highly competitive marketplace.

In the broadband industry, our principal competitors for video services throughout our footprint are the two large direct broadcast satellite ("DBS") companies that offer multichannel service throughout our service areas and throughout the nation. The DBS industry has grown rapidly over the last several years, far exceeding the growth rate of the cable television industry, and now serves more than 24 million subscribers nationwide. Total DBS penetration in Charter's national footprint is approximately 26%.

In response to competition from DBS, we, like other cable companies, have invested billions of dollars to offer a more attractive and more competitive product and to retain our customers. To compete with DBS's all-digital product we deployed our own digital services, which enable our customers to receive not only digital-quality audio and video but also an array of new functions to better enjoy cable service– such as video on demand and digital video recording. We also deployed high-speed Internet services, which enables us to offer customers who purchase cable and Internet services prices that are lower than the standalone prices for either service.

We also face competition from traditional non-telco wireline competitors. Presently, we compete against such overbuilders impacting approximately 750,000 of our homes passed.

Our Texas market, like many of Charter's markets, has a very significant DBS penetration. In fact, DBS penetration in the Dallas-Fort Worth DMA has been reported at 32%, compared to a nationwide penetration of approximately 21%. Moreover, other companies such as OneSource Communications provide video service to residents of Keller.

Notwithstanding the fact that Charter was already operating in this fully competitive marketplace before Verizon ever arrived with its video product, some claim that Verizon's entry into the marketplace directly resulted in a 50% reduction in Charter's prices. This is simply not the case.

Almost a year before Verizon launched FIOS video in Keller, in response to the high penetration and competitive threat of DBS, Charter initiated a high-speed Internet and video introductory package to attract new customers and existing video-only customers. The introductory package initially offered 240 channels of video programming along with high-speed Internet service for up to 12 months for $49.95. This was a significant discount for this new customer base: At that time, we offered standard analog – only 86 channels – for $46.99. Our standard digital offering started at $52.99 up to $68.99 for 240 channels. Additional tiers, channels and products were also available.

Our high-speed Internet and video introductory package continues with Verizon's arrival, but I note that the price was *increased* not decreased, by $10 as of January 1, 2006, to $59.95 for 5Mbps and $49.95 for 383Kbps.

This introductory package was designed to induce new cable customers and existing video-only customers to try – and hopefully retain – two products: digital video and high-speed Internet. Our two-way digital products like video-on-demand and our high-speed-Internet services also set us apart from our DBS competitors. Offering special introductory packages is something we would have done – and we in fact planned – long before Verizon arrived on the scene with its FIOS video product.

Charter routinely introduces promotions and special offers in direct response to DBS penetration. Last year in South Carolina, Charter offered discount packages for high-speed Internet and video for up to 240 channels for $79.99 compared to the regular price of $109. In St. Louis, MO, Charter initiated a dish win-back program worth $500 whereby customers received a video package priced at $75 per month for only $50 over a twenty month period.

Special introductory pricing and packaging discounts is a standard practice in today's competitive landscape. We will continue to compete by providing a compelling value proposition for our customers, specifically in the areas of product quality, bundling and customer service.

To sum up, competition is not a new concept for the cable television industry since the Cable Television Consumer Protection and Competition Act of 1992, which invited additional franchises and facilitated entry by satellite companies. Consumers benefit from a vigorously competitive market – so long as winners and losers are determined by who best and most efficiently meets their needs and demands, and not by artificial regulatory advantages.

If our new ILEC competitors, who already have ubiquitous networks, well-known brands, deep financial resources, and relationships with every home in their multi-state territories, are subject to the same regulatory obligations as Charter and our other wireline competitors, Charter will be able to compete effectively and attract capital investment for competitive broadband facilities and new services. Competition will continue to flourish, and consumers will be the beneficiaries.

Thank you.