

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:00 A.M. on February 7, 2006 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Helen Pedigo, Revisor of Statutes
Jackie Lunn, Committee Secretary

Audrey Dunkel-Legislative Research

Conferees appearing before the committee:

David Kerr-AT&T
David McClure-US Internet Industry Assoc.
Peter Salmeron-Small Business Owner in Wichita
Darrel Pope-NAACP
Mike Welch-Consumer
Bea Bacon-Representing the Elderly
Rachael Reiber-Everest Communications
Janet Chubb-Assistant Secretary of State
John Federico-KCTA
Rick Cimerman-National Cable Telecommunications Assoc.
Jay Allbaugh-Cox Communications
Jeff Bridges-City of Andover
David Hawksworth-Community Access of Salina
Rick Wolfe-Comcast
Tim Dannenburg-City of Olathe
Eric Wade-City of Lenexa
Damon Porter-Time Warner
Kim Winn-Kansas League of Municipalities
Mike Taylor-Unified Government Wyandotte
Mike Santos-City of Overland Park

Others attending:

See attached list.

Chairperson Brownlee opened the hearing on **SB 449-Video competition act** by introducing Helen Pedigo from the Revisors Office to review the bill. Upon the completion of Ms. Pedigo's review Chairperson Brownlee introduced David Kerr representing AT&T to give his testimony as a proponent of **SB 449.** Mr. Kerr gave a brief review of his written testimony. (Attachment 1) He stated that **SB 449** will streamline the franchising process, protect local franchise revenues, continue local management of the right-of-way, preserve local community programing and will ease barriers to entry. In closing he urged the Committee to support **SB 449.**

Chairperson Brownlee introduced David McClure representing the US Internet Industry Association to testify as a proponent of the bill. Mr. McClure gave a brief review of his written testimony. (Attachment 2) Mr. McClure stated **SB 449** would ensure that the future of Kansas is built on a strong network of fiber optic strands that has the potential to stretch from Kansas City to Elkhart and from Galena to St. Francis. He stated the barriers need to be swept away and concerns need to be given control of open competitive markets for broadband. In closing he urged the Committee to support **SB 449.**

Chairperson Brownlee introduced Peter Salmeron a business owner in Wichita to give his testimony as a proponent for **SB 449.** Mr. Salmeron gave a brief review of his written testimony. (Attachment 3). He expressed his support for more competition and less regulations in today's marketplace and urged the Committee to support **SB449.**

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Chairperson Brownlee introduced Darrel Pope, Hutchinson Chapter of the National Association for the Advancement of Colored People (NAACP) to give his testimony as a proponent for **SB 449**. Mr. Pope gave a brief review of his written testimony. (**Attachment 4**) Mr. Pope stated when there is one video provider in a marketplace, consumers have limited options and leverage to drive programming and packaging options. But if there are two or more, providers have an incentive to pursue niche programming. In the end, without options people are powerless. With competition, there are possibilities. In closing, he urged the Committee to support **SB 449**.

Chairperson Brownlee introduced Mike Welch, a consumer in Topeka, to testify as a proponent of **SB 449**. Mr. Welch gave a brief review of his written testimony. (**Attachment 5**) Mr. Welch stated regulations have limited access to video and his cable television has steadily increased in price. He is strongly in favor of competition and urged the Committee to support **SB 449**.

Chairperson Brownlee introduced Bea Bacon representing the elderly to give her testimony as a proponent of **SB 449**. Ms. Bacon gave a brief review of her written testimony (**Attachment 6**) Ms. Bacon stated Cable television is one of the last monopolies consumers are forced to deal with. Her cable provider has raised the prices each year. Everyone will benefit from competition and **SB 449** would provide citizens of Kansas a choice. In closing, she urged the Committee to support **SB 449**.

Chairperson Brownlee introduced Rachael Reiber representing Everest Communications, to give her testimony as a neutral on **SB 449**. Ms. Reiber gave a brief review of her written testimony. (**Attachment 7**) Ms. Reiber stated Everest has concern that the bill, as it is currently drafted, may only provide relief for AT&T since it is the only entity that qualifies as a competitive video service provider. It appears that Everest may be in a "no-Mans land" since the term "competitive video service provider", as it is currently defined, does not include Everest, and it is unclear whether Everest would qualify as a competitive video provider in cities where it does not currently have a franchise. For Everest, the worst of all worlds would be if Everest was bound by the current cable franchising requirements as it sought to enter new communities, and AT&T was not. In closing, she asked the Committee to come up with a bill that was fair to all parties and not favor just one.

Chairperson Brownlee introduced Janet Chubb, Assistant Secretary of State, to give her testimony as a neutral party on **SB 449**. Ms. Chubb gave a brief review of her written testimony. (**Attachment 8**) Ms. Chubb stated the bill provides that the Secretary of State promulgate regulations to govern an application process for competitive video service providers. She stated that the Secretary of State is primarily an administrative office. Historically it has been responsible for maintaining public records so that citizens may have access to the governmental and business information of importance to them. The office has not promulgated regulations or enforced them concerning regulatory or quasi-regulatory activities. For that reason the Secretary submitted a fiscal note, which is an estimate only, because they would have to increase the staff.

Chairperson Brownlee called the Committee's attention to written on testimony from AARP as a neutral party.
(**Attachment 9**)

Chairperson Brownlee announced that she would be calling on the opponents to give their testimony.

Chairperson Brownlee recognized John Federico representing KCTA to give his testimony as an opponent to **SB 449**. Mr. Federico presented written testimony. (**Attachment 10**) Mr. Federico stated **SB 449** is patently unfair, unnecessary, discriminatory and in violation of equal protection provisions (competitive neutrality requirements). **SB 449**, as introduced would remove the local units of government of their franchising authority, and eliminate critical pro-consumer elements of traditional franchises, but only for new video service providers. In closing, Mr. Federico urged the Committee to reject **SB 449** and urged the interested parties to negotiate an agreement that will bring fair competition to consumers and proper regulatory oversight that all providers, municipalities and consumers benefit from.

Chairperson Brownlee introduced Rick Cimerman representing the National Cable Telecommunications Association to give his testimony as an opponent of **SB 449**. Mr. Cimerman offered written testimony. (Attachment 11) Mr. Cimerman gave a brief review of his testimony discussing video franchising reform. Mr. Cimerman offered information on some of the federal activity surrounding video franchising and the activity in some of the other states. In closing, he suggested the Committee take the time to study these complex issues. The Internet Industry Association's view is that AT&T should step up to the plate and acknowledge there are important social responsibilities, including non-discrimination that have long been the hallmark of video regulation. Any effort to change the system must accord with the principles articulated by Senators Burns and Inouye, emphasizing the importance of localism, while striking an appropriate balance between the desire to speed entry for new providers and ensure a level playing field for all competitors.

Chairperson Brownlee introduced Jay Allbaugh representing Cox Communications to testify as an opponent on **SB 449**. Mr. Allbaugh gave a brief review of his written testimony. (Attachment 12) Mr. Allbaugh stated Cox Communications agrees that technology sometimes outpaces the regulatory frameworks that historically have been in place. It is their position that changing those frameworks needs to be carefully considered in order to both ensure a level playing field and to create certainty for companies seeking to invest in Kansas. In closing, Mr. Allbaugh stated there are many issues impacted by a revision in policy and Cox Communications requests the Committee take an in-depth look at the impact **SB 449** will have on the various parties involved in delivering quality video service products to our customers.

Chairperson Brownlee introduced Jeff Bridges representing the City of Andover to give his testimony as an opponent on **SB 449**. Mr. Bridges gave a brief review of his written testimony. (Attachment 13) Mr. Bridges stated **SB 449** would eliminate the requirement that a phone company desiring to provide cable programming have a franchise from a local unit of government. He also stated this bill would create a competitive disadvantage between phone companies providing cable services and cable companies having to comply with 47 U.S.C.

Chairperson Brownlee introduced David Hawksworth representing Community Access Television of Salina, Inc. to testify as an opponent on **SB 449**. Mr. Hawksworth gave a brief review of his written testimony. (Attachment 14) Mr. Hawksworth stated access channels would suffer under the provisions in **SB 449**. The bill would release video providers from requirements under 47 USC 531, which enables cities to negotiate with video providers as to the number of channels to be set aside for public, educational, and governmental use. In closing, Mr. Hawksworth stated enacting **SB 449** in its current form, and doing away with local video franchises, will hurt cities, access channels, and citizens. He stated that the franchising process has never been a barrier to entry into the marketplace. All video franchises are, by federal law, non exclusive. The current franchising process has not stopped competition from happening in cities like Overland Park, Lenexa and Shawnee.

Chairperson Brownlee introduced Rick Wolfe with Comcast to give his testimony as an opponent of **SB 449**. Mr. Wolfe gave a brief review of his written testimony. (Attachment 15) Mr. Wolfe stated Comcast's review of the bill reveals that fairness is absent from **SB 449**. In fact, provisions that directly address prospective competitors in the video service market all but proudly proclaim their bias. These provisions establish only the most basic obligations on new providers (such as fee payment) while binding incumbent cable operators to their myriad of community service obligations. Comcast respects and faithfully observes all of its service obligations and believes these obligations properly extend beyond just mailing in a check. Comcast has many concerns with the bill and urged the Committee not to pass it out.

Chairperson Brownlee introduced Tim Dannenburg representing the City of Olathe, to give his testimony as an opponent of **SB 449**. Mr. Dannenburg gave a brief review of his written testimony. (Attachment 16) Mr. Dannenburg stated the City of Olathe and the Olathe City Council fully support cable television competition in their community. They are most pleased to enter into a franchise agreement with a second provider for cable services, and they will sit down immediately to enter into other such agreements with other providers if asked. In fact, they provide the exact language in their current franchise agreements for signature as soon as it is requested. In principal, the City of Olathe opposes undermining local ability to determine how the public right of way is managed. They are very concerned about any type of statewide franchise agreement that does not include a reasonable build-out requirement. Without a reasonable build-out requirement, there is absolutely no assurance a cable provider will offer their services to more than a

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handful of residents. A potential cable provider may provide verbal assurance that they will provide services to an entire community. However, those assurances should be required in writing. There is nothing to prevent a company from entering a community intent on offering the service to all residents, only to make a business decision to only offer the service to a select demographic. The City of Olathe and the Olathe City council also have concerns regarding government and education access channels and are opposed to **SB 449**.

Chairperson Brownlee introduced Eric Wade representing the City of Lenexa to give his testimony as an opponent to **SB 449**. Mr. Wade gave a brief review of his written testimony. (Attachment 17) Mr. Wade stated the City of Lenexa wholeheartedly supports video competition. In fact, becoming a communication and technology city of choice for businesses and residents has been a longstanding goal of the City of Lenexa. However, it is the City of Lenexa's responsibility to effectively manage its rights-of-way so as to ensure that video service providers are allowed access to the rights-of-way in a fair and evenhanded manner and that other users of the right-of-way are not unduly inconvenienced by their presence. Local video franchising ensures that the needs of the local community are met and that local customers are protected. The City of Lenexa believes that greater video competition can be achieved under the current system of regulation and that **SB 449** is unnecessary and simply creates another level of regulation that benefits new entrants to the video industry at the expense of the cities, consumers and cable companies.

Chairperson Brownlee introduced Mike Santos, Senior Assistant City Attorney for the City of Overland Park to give his testimony as an opponent of **SB 449**. Mr. Santos gave a brief review of his written testimony. (Attachment 18) Mr. Santos stated **SB 449** establishes a statewide franchise for video service providers. The concept of a statewide franchise effectively denies local governments the essential ability to interact directly with service providers who occupy the public right-of-way and provide service to local citizens. This legislation creates an inequity between current users of the public right-of-way and the video service providers. The proposed legislation not only removes local governments from the interactive process necessary to insure proper, effective and economical provisions of video services, it specifically prohibits local governments from requiring such fundamental services as "build out" requirements. Without the ability to require fair and uniform "build out" requirements, providers will "cherry pick" those areas of local communities that the provider believes will generate the greatest revenue and leave the remaining areas of the community without service. In closing, he stated **SB 449** represents an attack on the ability of local governments to establish meaningful legal relationships with the service providers in the public right-of-way.

Chairperson Brownlee introduced Damon Porter representing Time Warner to give his testimony as an opponent for **SB 449**. Mr. Porter gave a brief review of his written testimony. (Attachment 19) Mr. Porter stated Time Warner Cable does not oppose a review of how franchises are awarded or how cable systems are regulated. Any reform of the current process should have limited regulation in mind. **SB 449**, establishes an unfair, unlevel playing field for incumbent video providers while granting special treatment to traditional telephone companies, such as SBC/AT&T, and other video service authorization grantees. He stated as **SB 449** is currently written, many community benefits that consumers enjoy will be threatened. There is no requirement that telephone companies or other VSA grantees entering the video marketplace provide public, educational, and government channels. (PEG) Video service authorizations do not require local programming or schools and libraries to receive free cable and high speed internet the same way Time Warner Cable does. In closing, Mr. Porter stated the current franchising structure has been in place for many years and is being reviewed at the Federal level. Any bill considered by this Committee should ensure that similar services be regulated in a similar manner.

Chairperson Brownlee introduced Kim Winn representing the Kansas League of Municipalities to give her testimony as an opponent of the **SB 449**. Ms. Winn gave a brief review of her written testimony. (Attachment 20) Ms. Winn stated because the bill alters the current law with regard to the franchising of cable and video service providers, it is of tremendous interest to cities in Kansas and they feel that there has not been a demonstrated need to change the current law in this area. The League of Kansas Municipalities believes there will be a loss of the local agreements regarding right-of-way. The Franchise represents a type of contract between cities and providers. **SB 449**, as written would prohibit such agreements. Ms. Winn offered amendments to **SB 449** regarding the franchises, community

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programming, red-lining, the revenue stream and the audit. In closing, Ms. Winn stated the League of Kansas Municipalities be happy to help the Committee with amendments and language when they are ready to work the bill.

Chairperson Brownlee introduced Mike Taylor representing the Unified Government of Wyandotte County/Kansas City, Kansas to give his testimony as an opponent of **SB 449**. Mr. Taylor gave a brief review of his written testimony. (Attachment 21) Mr. Taylor stated the bill as proposed erodes the ability of local governments to regulate and control use of the public right-of-way through the traditional franchise agreement. This erosion of local control is a negative for citizens who expect their local government to look out for their best interests. The bill also raises troubling issues regarding service to all citizens. **SB449** prohibits any requirement that AT&T "build out" its systems to serve all neighborhoods in a community. The Unified Government of Wyandotte County is concerned that AT&T will "cherry-pick" customers, providing service to the most affluent neighborhoods while avoiding lower income neighborhoods. In closing, Mr. Taylor stated that **SB 449** as it is drafted preempts local regulation and erodes local control.

Written only testimony as opponents is presented by David Norlin representing Salina Access TV in Salina, Kansas, (Attachment 22), Mary Leonida representing Women Impacting Public Policy, (Attachment 23), and Nancy Zurbuchen representing the Kansas City Council of Women Business Owners. (Attachment 24)

Upon completion of Mr. Taylor's testimony, Chairperson Brownlee called for questions; being none, Chairperson Brownlee closed the hearing on **SB449** stating the Committee could possibly work the bill on Friday.

The meeting was adjourned at 9:30 a.m. with the next schedule meeting being on February 8, 2006 at 8:30 a.m. in room 123 S.



David D. Kerr
President-Kansas

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Testimony of David D. Kerr, President – AT&T Kansas
220 S.E. 6th Street, Room 500, Topeka, Kansas 66603
In support of SB 449 – The Kansas Video Competition Act
Before the Senate Commerce Committee
February 7, 2006

Chairwoman Brownlee, Chairman Jordan, members of the Committee, good morning. My name is David Kerr and I am the President of AT&T Kansas. I thank you for the opportunity to be here today and speak in support of Senate Bill 449, the Kansas Video Competition Act.

Senate bill 449 presents you the opportunity to update Kansas' video franchising laws, which have not been reviewed since 1972. This bill would simplify the franchising process, and make the State of Kansas, rather than hundreds of local municipalities, the single "franchising authority" for all providers seeking to provide video service in the state. This will enable prospective video providers, such as AT&T, to quickly enter the Kansas video market and bring consumers the benefits of the newest technologies and much needed competition to the video market. Additionally, these consumer benefits will not result in the loss of "local control," and the cities will continue to receive franchise fees (up to 5% of gross revenues) and maintain the exact same control over the right of way that they have today. It is a true win-win-win situation: consumers win with better choices and pricing; providers win with streamlined regulations; and, cities win as they maintain the status quo in fee collection and right of way management and benefit from investment in their community.

This subject is very important to my company. In October 2004, the then SBC and now the new AT&T announced the introduction of Project Lightspeed, a \$4 billion initiative to push fiber optic facilities much closer to the home and use the power of the Internet to bring video programming to consumers. Our video product is called "IPTV" short for Internet protocol television. Very simply, IPTV is a very efficient technology that will allow AT&T to seamlessly combine video, broadband, and communications to bring consumers services that were unimaginable just a few years ago. Our plans include greater access to video on demand services, interactive programming, and even the ability to pick the angle to view a sporting event; in the near future, you could watch the Super Bowl from a bird's eye view, from the end zone, or from the 50 yard line, and switch back and forth; or the World Series from the catcher's or first baseman's perspective. We believe IPTV service will revolutionize the video experience.

Even more amazing is the speed at which AT&T plans on deploying Project Lightspeed. Our current plans call for deployment in 1500 cities nationwide, to reach about 18 million households, or 50% of our residential customers, in three years. This seems fast to us, but it's really fast when compared to the rollout of cable services, which took 35 years to offer service to half the country. It's also fast when compared to the rate of deployment other services: the wireless industry took 16 years and the broadband industry took 9 years to reach the same target. Again, AT&T intends to do all of this in three years.

Unfortunately, the greatest barrier to this deployment may prove to be outdated regulations, which could require city-by-city negotiation of "cable franchise" agreements. But this is a slow process, and if we were able to reach one agreement per week, it would take 30 years to cover our initial 1,500 city deployment. We believe the most efficient, fastest way to bring competing video services like IPTV to Kansans is to adopt a streamlined video service authorization process. Senate Bill 449 would do exactly that, and unleash a host of new video alternatives.

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Other states are also reevaluating the traditional video franchising processes. Last year, the Texas Legislature passed SB 5 by a near unanimous vote. Like SB 449, the Texas bill also established a statewide franchising authority and eliminated the inefficient city-by-city negotiation process. Texans are already seeing the benefits from the bill. AT&T has announced an \$800 million investment plan in Texas to deploy Project Lightspeed as a direct result of that landmark legislation. In addition to growing the economy through new investment and jobs, consumers have already realized significant price decreases. For example, in Keller, Texas, cable customers saw their bills drop 25 percent when Verizon introduced its new video product as the incumbent lowered prices to compete with Verizon. Other companies including Cox, Time Warner, and several smaller providers also applied for statewide authorizations in Texas.

Support for this type of legislation goes well beyond Texas. An ALEC subcommittee unanimously approved model statewide franchising legislation. The Council of State Governments has adopted SB 5 as "suggested state legislation." Other state legislatures are now reviewing similar bills in a virtuous race to be at the forefront of new investment and the benefits of competition. It's easy to understand why there is wide-spread support of bills like SB 449. Cable rates have increased 86 percent since 1995 and 40 percent in the last five years. On the other hand, the Federal Communications Committee has reported that those few consumers with wireline video competitors have seen their rates decrease by more than 27 percent.

Here is exactly what SB 449 will do:

- It will streamline the franchising process. SB 449 will create a state-wide, uniform set of terms and conditions under which all video providers, including cable companies, will operate. Video providers will have only one stop along the way to receive authorization to provide service in Kansas, which will reduce the time to market, speed the benefits of competition to customers, and quickly bring new jobs and investment to the state.
- It will protect local franchise revenues. All municipalities will continue to have the option to collect franchise fees of up to 5% of gross revenues, the maximum level allowed under federal law, from all wireline video service providers.
- It will continue local management of the right of way. All municipalities will maintain the exact same control over the right of way that they have today under SB 397 approved by this very Committee and enacted in 2002.
- It will preserve local community programming. All video providers must retransmit community programming, such as governmental meetings and educational programming.
- It will ease barriers to entry. It is simply not practical to require new entrants to negotiate an agreement with every one of the hundreds of cities in Kansas. Instead, SB 449 will apply the same "light touch" regulation that has been extended to new entrants to the telecommunications industry since 1996, which has created the highly competitive market for local, long distance and wireless calling as well as Internet access.

But despite all of the benefits that consumers will derive from this bill, opponents will try to have you believe it is flawed.

- *Opponents will argue the bill will allow new providers to redline or cherry pick.*

Nothing could be further from the truth. First, federal law already prohibits discrimination based on income, so this simply can't happen no matter what SB 449 says. And this is bad business anyway. For example, we provide telephone service to all customers, not just a select few like our cable competitors. And high speed Internet access via DSL is available to more than 80 percent of AT&T's customers in Kansas, covering a wide demography. In fact, AT&T's DSL deployment was in downtown and inner city areas early on, before deployment to most suburban areas, which may be described by some of our opponents as "higher income" areas. Our DSL deployment has never been described as discriminatory and our commitment to narrowing the digital divide will continue as we enter the video market place. In fact, we will offer a very comparable video service to virtually all of our customers even where Project Lightspeed is not available.

- *Opponents will argue that new entrants should be subject to legacy cable regulation.*

This claim directly conflicts with the position the cable industry has taken in the past and even during the current session under this dome in regards to telecommunications reform. After 10 years of light touch regulation and the development of a highly competitive telecommunications market, cable still contends that traditional incumbent carriers should be saddled with more restrictive requirements while new entrants enjoy virtually no regulation. AT&T is not advocating that legacy regulation should be applied to incumbent cable companies. But new entrants should not be saddled with the old rules.

- *Opponents will argue new providers should be forced to build-out everywhere.*

AT&T will go as far as we can as fast as we can, and we hope to bring Project Lightspeed to almost all of our customers in the future. But the truth is that complete build-out requirements are a huge barrier to entry, which is why only a handful of cities in Kansas, or anywhere in America, have wireline video alternatives. The elimination of barriers to entry and the development of a competitive marketplace will ensure that new technology will make its way to customers.

I urge your support of SB 449. Kansas has already benefited from Project Lightspeed, even before AT&T deployed one strand of fiber. This is because Mission, Kansas was selected as the site for one of the two AT&T national hubs that will deliver programming to our customers nationally. AT&T invested tens of millions of dollars and created new high quality jobs in northeast Kansas. We hope this is just the beginning. Consumers want competition for video services and the provisions in Senate Bill 449 are the best and fastest way to make this a reality.

Thank you for taking the time to consider the important issues associated with this bill and I am happy to answer any questions you may have.



Testimony of David P. McClure
Kansas State Senate
Committee On Commerce
February 7, 2006

Chairwoman Brownlee, Chairman Jordan, members of the Commerce Committee, good morning.

As president of the US Internet Industry Association, the nation's leading trade association of companies engaged in Internet commerce, content and connectivity, I thank you for the opportunity to state our position on your efforts to reform and advance the telecommunications laws of the state of Kansas . . . and specifically your efforts to establish new and streamlined procedures for franchise agreements within the state. I am here to urge your support for those efforts through endorsement of Senate Bill 449.

In the past decade, virtually everything we knew about telecommunications has been rendered obsolete by advances in technology and by the advancing information needs of the people of Kansas. Where once we could safeguard the interests of Kansans by regulating separately for local versus global telephony; for cable television services, for wireless and broadcast and for satellite. . . we are now faced with an environment in which these companies are striving to deliver to their customers the same sets of services – voice, video and data.

This is not a bill about cable television service. Bluntly put, there no longer is a separate and distinct cable television service, because the companies offering that service are now also Internet companies, telephone companies and more. This is a bill about broadband, and fiber, and about the wealth of opportunities that the people of Kansas will have through video, Internet, telephony, education, health and security services that fiber will make possible.

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USIIA advocates for continued investment in a single telecommunications platform called “broadband” that will deliver all of these services and more. . .from distance learning and e-government to expanded health care and entertainment. . .over a single connection. The regulatory regime of the past. . .one created before customers had choice. . .is standing in the way of greater broadband deployment across Kansas.

Just as we believe it is finally prudent to shed the three-percent federal excise tax on telephony that was used to fund the Spanish-American War, it is prudent and necessary to shed the regulatory barriers that might keep us from building a broadband network for the 21st Century. We believe that this can be done without harm to consumers, the communities within Kansas or the companies presently serving those consumers and communities.

This legislation addresses three goals:

- First. . .it sweeps away the monopoly franchises for broadband services and replace them with open, consumer-driven competition. Such competition is healthy for the companies that compete and for consumers, as it will result in innovation and a faster buildout of fiber networks across the state.
- Second. . .it continues to recognize the needs of communities to manage their own resources, and to derive fair revenue for those resources, in ways that do not interfere with this competition.
- Finally. . .it allows consumers and their needs to drive the market for broadband services, not artificial limits and goals. Specifically, it should encourage the buildout of broadband infrastructure as rapidly as possible statewide without emphasis on buildout requirements that might hamper the ability of companies to continue a strong investment in the state.

Here is the simple truth: the creation of a 21st-Century broadband network in Kansas will require a significant investment. Those dollars will be derived in part through incentives at the federal, state and local levels. But to a much larger degree, they must be obtained from the capital markets. . . Wall Street. And while companies across the state are prepared to make that investment, they must do so in a way that reassures investors that they will receive a timely return on their investment. At present, investors – recognizing the markets are competitive - are cautious about making these funds available because of the regulatory barriers that would inhibit a return on investment.

You have before you a bill that would tear down those barriers. Senate Bill 449 would ensure that the future of Kansas is built on a strong network of fiber optic strands that has the potential to stretch from Kansas City to Elkhart and from Galena to St. Francis.

But the bill needs to become law. . . the barriers need to be swept away. . . and consumers need to be given control of open, competitive markets for broadband. For these reasons, I am asking you to give your support to Senate Bill 449, and to use this bill as a critical first step in securing the future of Kansas.

I would be happy to answer any questions you might have.

Thank you.

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**Testimony of Peter Salmeron
In support of SB 449
Senate Commerce Committee
February 7, 2006**

Chairperson Brownlee; members of the committee, thank you for the opportunity to be here today speaking in support of Senate Bill 449.

My name is Peter Salmeron. I own a landscaping business in Wichita and I am the Chairman of the Board of Directors for the Wichita Hispanic Chamber of Commerce.

I want to express my support for allowing more competition and less regulation in today's marketplace. I don't know a lot of details about cable TV or video services, but I know that I—as a consumer--have to write a check if I want to subscribe to cable TV service. I like to know that I'm getting the best value for my dollar.

I've learned as a businessman that competition for the consumers' business is the quickest way to establish a fair and marketable price. As I understand Senate Bill 449, it allows for new video and cable providers to quickly enter existing markets, where currently we often have only one choice.

I can assure you that in my business, I look for efficiencies and cost savings every day so that I can establish affordable prices and attract more business. I think the big cable companies would have to do the same thing if they were competing with other providers for my TV dollars.

I mentioned my position as Chairman of the Board with the Wichita Hispanic Chamber. Our organization has passed a resolution in support of SB 449. The Hispanic Chamber supports economic expansion and consumer choices. Our economy works best when the consumers can make their purchasing decisions in a competitive marketplace. That's how my customers choose to hire me for my landscaping services, and that's how I would like to shop for cable TV.

Thank you for your time and attention today and please consider the benefits this law would bring to Kansans like me who enjoy the opportunity to comparison shop.

Peter Salmeron
Complete Landscaping Systems
2141 South Mead
Wichita, KS 67213
316-832-0061

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Testimony in Support of Senate Bill 449

**The Video Competition Act
Prepared by Darrel Pope, Hutchinson, KS NAACP
Before the Senate Commerce Committee
February 7, 2006**

Good Morning:

To Chairwoman Brownlee and ladies and gentlemen of the Committee, I am Darrel Pope. I live in Hutchinson, Kansas, where I have been president of the Hutchinson Chapter of the National Association for the Advancement of Colored People (NAACP) for the past 30 years. I am here this morning to voice my support for the Kansas Video Competition Act.

I am sure you will hear plenty in these debates about consumer benefits of competition, and those benefits typically associated with lower bills paid by Kansans. Everyone supports lower bills, and without question, African-Americans, like nearly all segments of today's America, spend money on cable television and other entertainment options. Efforts to lower those bills should be embraced by all.

I'd like you to also think of cultural advantages of having more than one video provider in a market.

When there is one video provider in a marketplace, consumers have limited options and leverage to drive programming and packaging options. But if there are two or more, now providers have an incentive to pursue niche programming. Perhaps that comes in

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the form of content directed toward African-Americans, or Hispanics, or seniors. The potential is real, if yet undefined.

In the end, without options, people are powerless. With competition, there are possibilities.

I would urge you to look beyond AT&T when you contemplate new video providers in Kansas. Indeed, AT&T has received much publicity for its plans to deploy a video product. But any new provider or incumbent cable provider will have new opportunities through this bill to deploy new video, voice and data networks in Kansas.

While I am before you I would like to address the concept of "redlining." Soon, if Kansas is like other states that have addressed this issue, cable companies will paint you an unsettling picture of where companies may or may not offer service. They'll claim new providers will target only the wealthy. I find these scare tactics reprehensible. I hope you'll recognize my support for this bill as a vote against misleading attacks and a vote for new technology, broadband deployment and cable choice.

Thank you very much for your time today. I urge you to support the Video Competition Act.

Darrel Pope
610 East Second Street
Hutchinson, Kansas 67501
(620) 665-8184

Michael C. Welch
335 Yorkshire Road
Topeka, KS 66606

To: Senator Karin Brownlee and Committee Persons

Re: Senate Bill 449

Dear Senator Brownlee and Committee Members:

I am Mike Welch, and I live at 335 Yorkshire Road, Topeka, Kansas.

I am here to support the above video bill. As a consumer I am satisfied with my Cox cablevision and the service, my AT&T internet DSL service, Cingular cellular long distance phone service, and AT&T local phone service. I have been able to decrease my costs for telephone services and internet services because there is good competition, excellent service, and I have several choices. The only thing that has gone up is the tax on those services in the last several years. And those services are also much more convenient. For instance, I can access my internet service anywhere in the country. My wife and daughters have Cingular cell phone service and can talk to each other long distance free of charge between states; that alone has saved me a fortune. My local phone service is reliable because if it isn't, I can get rid of it.

Video is different. Regulations have limited access, and my cablevision has steadily risen in price since I originally subscribed to it. I have the basic service plus ESPN sports, but don't subscribe to other premium services. I don't know how the young, poor and disadvantaged people can afford cablevision, although many of them have cell phones.

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The bill before you will do the following for me:

- Allow other video services access to the markets
- Stir up competition and reduce prices
- Allow my family to access more video channels and movies giving us more choices for less dollars
- Get service more quickly from outside services by disallowing each City separate options on requirements and time durations for franchises
- Treat all service providers the same without any sweetheart deals assuring my family of competitive pricing
- Still provide the cities with a 5% franchise fee, which will help maintain my city's infrastructure
- Not change cities' easement requirements, protecting my streets and sidewalks
- Allow cities to audit the video supplier's financial records, making sure that my city's income stream is safe
- Ultimately allow the rich and poor alike to access the technology that helps us learn, improving my neighborhoods

I appreciate the opportunity to share my views, and respectfully ask for your support of this bill.

Thank you.

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Testimony in Support of Video Competition Act
Bea Bacon before the Senate Commerce Committee
February 7, 2006

Senator Karin Brownlee and Members of the Senate Commerce Committee,
I am Bea Bacon.

Cable television is one of the last monopolies consumers are forced to deal with. In my hometown of Olathe, KS, Comcast is the only provider of cable television. And from the way they raise prices each year, they certainly act like it, too. From what I have read, Comcast has some of the highest cable rates in the industry.

The citizens of Olathe have waited long enough, and are ready for cable competition. I believe Senate Bill 449, the *Video Competition Act*, is a good way to provide it.

Everyone benefits from competition. A recent study by The American Consumer Institute found that the elderly, who are extremely reliant on television services, are also needlessly overpaying for cable TV services and the most harmed by noncompetitive pricing. Shockingly, it estimates that seniors could save nearly \$1,200 over the next five years if cable competition were increased.

As an active senior in my community, I found this study to be very informative and shared it with many of my friends. We are all in agreement

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there should be more competition, and correspondingly, enjoy the benefits of lower cable bills.

Senate Bill 449 would provide the citizens of Kansas a choice in cable TV services. Several years ago, Everest Connections said they would come to Olathe to compete with Comcast and Southwestern Bell. They never did. I believe local franchising laws might have had something to do with it.

Some cities seem to be taking the position that if everyone in their community can't immediately get new services, no one should. That's nonsense and a lack of leadership.

I applaud you, Senator Brownlee, for fighting for consumers and helping bring cable competition to Olathe. I urge committee members to join her in supporting SB 449.

Bea Bacon
11901 W. 148th Street
Olathe, KS 66062
(913) 897-3352

**An Analysis of Cable TV Services:
Are Older Consumers Losing Out?**

The American Consumer Institute
Advocating Smart Consumer Policies
P.O. Box 2161
Reston, VA, 20195
www.theamericanconsumer.org

October 17, 2005

An Analysis of Cable TV Services: Are Older Consumers Losing Out?¹

Executive Summary

Cable TV services are an important aspect of consumer's daily lives, providing vital information, news and entertainment. Americans aged 50 and above are most reliant on television services, viewing on average 5.5 hours per day.² However, this study finds that consumer are needlessly overpaying for cable TV services. The major findings of this study are:

- Televisions and cable TV services represent a substantial portion of consumer spending, exceeding the annual costs of many critically important products and services, such as drugs (prescription, nonprescription and vitamins), tuition, and personal care products.³
- Each year, compared to other consumers, older consumers pay on average a greater proportion of their income on cable TV services.
- The increasing prices for cable TV services pose an accelerating risk for consumers. Cable television prices have risen much faster than the prices for other network services, such as telephone and Internet services. Over the last five years, according to FCC survey data, cable prices have increased 7.5% per year. Compared to the Bureau of Labor Statistic's Consumer Price Index, telephone and Internet prices have actually declined by 4% and 2% per year, respectively. To put this increase in perspective, cable service prices have increased faster than prescription drugs, nonprescription drugs, and medical care commodities, which represent another critical area of spending for older consumers.
- The lack of competition appears to be a key reason for the high (and increasing higher) cable TV service prices. FCC data show that consumers would realize a 27% price decrease when alternative wireline cable TV and video service providers compete against incumbent cable TV providers.
- The benefits of competition appear to be significant. This study estimates that competition would lead to more competitive pricing and result in savings of \$107 billion over the next five years. In addition, competition would hold future price increases in check and stimulate more demand for cable TV and video services, further increasing consumer benefits.
- Due to their reliance on television services for their information and news, older consumers are most harmed by noncompetitive pricing. This study estimates that American seniors would save \$1,156 over the next 5 years, if competition were increased.

¹ This research was not funded (directly or indirectly) by any group, organization or corporation, but represents the volunteer efforts of our public policy experts. For information about the American Consumer Institute, see www.theamericanconsumer.org. Comments on this study should be directed to editor@theamericanconsumer.org.

² Lavada DeSalles, "Preparing Consumers for the End of the Digital Television Transition," AARP's Testimony Before the House Subcommittee on Telecommunications and the Internet of the House Committee on Energy and Commerce, AARP, Washington, DC, March 10, 2005.

³ *Consumer Expenditure Survey*, U.S. Department of Labor, Bureau of Labor Statistics, 2003, Table 1300.

The lack of wireline competition is an area that public policymakers must address, if consumers are to see these consumer benefits. While wireline competitors are attempting to enter the cable TV and video services market, regulators need to understand the high stakes involved and develop policies that speed market entry. For older American consumers, failure to encourage competition into the cable TV and video services market will put billions of dollars of savings on hold.

Testimony of
Rachel Lipman Reiber
Everest Connections
9647 Lackman Road
Lenexa, KS 66219
(913) 322-9624

Everest appears today as a neutral party. As the first competitor to the incumbent cable provider in the Kansas City area, Time Warner, in four municipalities (Lenexa, Overland Park and Shawnee in Kansas and parts of Kansas City, MO), Everest has the experience of negotiating cable franchises as a competitor to the incumbent cable companies and will share that experience with you.

Background

Everest currently has approximately 33,000 residential customers who subscribe to its broadband – phone, video and high –speed Internet service, which Everest provides over its own hybrid-fiber coaxial cable facilities. Everest has 170 employees and has invested several hundred million dollars in its state-of-art-network. Aquila, Inc. owns approximately 98% of Everest, and currently is in the process of selling the company as part of its strategy to return to its core business -- gas and electric utilities.

When Everest first came into existence in April 2000, it was at the height of the tech bubble. Everest was competing with a Louisville-based company, Digital Access, to become the first broadband competitor to enter Johnson County, Kansas. The city of Lenexa was inviting, and granted both Everest and Digital Access cable franchises in the summer of 2000. However, by the end of January 2001, Digital Access had declared bankruptcy and suspended construction in Lenexa without ever turning up a single customer.

Everest's franchise negotiations with Overland Park were much more difficult and took nearly 20 months. The city of Overland Park utilized the services of Sean Stokes, a very capable Washington D.C. attorney, who specializes in representing cities in cable negotiations. The city spent many thousands of dollars, and drove a hard bargain. Everest finally received a cable franchise from the City of Overland Park on December 3, 2001. The City of Shawnee, mindful of the resources being deployed by Overland Park, waited for Overland Park to complete its process. The Shawnee City council granted Everest its cable franchise a week later, identical in wording to that of Overland Park.

As a precursor to each cable franchise, both Overland Park and Shawnee insisted on adopting a Cable Code, applicable to all cable companies, both incumbents and competitors. This ordinance sets out basic design, services and capabilities, density requirements for build out, technical standards and customer service requirements, rights of way provisions and the events and consequences of default. In addition to being bound by the various provisions of the Cable Code, Everest is also bound by its cable franchise ordinance, which sets forth its particular obligations to each of the cities.

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Under Section 621 of the federal cable law, cities, as a condition to granting access to the right of way, can demand that the cable operator provide an "institutional network (INET)." The federal statutes do not define the term institutional network. Overland Park defined it as a private network that connected 40 city-owned facilities, including the police and fire stations, golf courses, pools, the Deanna Rose Farmstead and the Arboretum. In addition to constructing this network as it constructed its own network, Everest was required to provide \$157,349 worth of in-kind construction and services free of charge to the city, because the incumbent cable company, Time Warner, had allegedly provided a similar amount of "free" service to the city. The Shawnee franchise, which contains identical wording to the Overland Park franchise, requires \$31,000 of "free" service to the city, and has a less ambitious INET connecting nine city facilities.

Both the Overland Park and Shawnee franchises require Everest to complete build out of the entire city in five years. Everest's build out requirements in Overland Park come due in December 2006 and in Shawnee in February 2007. Everest's construction is approximately 90 percent complete in Overland Park and 75 percent complete in Shawnee. Everest has notified both cities that it is unlikely that it will be able to complete its build out in either city in the time frame required by the franchise. Failure to complete a franchise build out requirement could be considered an event of default, precipitating hefty fines and revocation of large performance bonds or the franchise itself, Everest is hopeful that it will be able to work with the cities to achieve a mutually acceptable outcome.

The following are some of the provisions contained in the Overland Park and Shawnee cable codes and Everest's franchises with those cities:

Every cable franchisee shall, to the extent required in its Franchise and subject to applicable law, provide or fund an Institutional Network or PEG Access Facilities or other public interest services or some combination of the same for use by Institutional users. Such obligations shall be comparable to support, when taken as a whole, provided by other exiting Cable providers within the City. Such public interest requirements shall, at a minimum satisfy the community need for such facilities an/or services as determined by the Governing Body for the period of the applicable Franchise.

Cable franchisees shall serve all areas of the city with populations of at least 10 dwelling units per one quarter (1/4) aerial cable mile, including areas annexed subsequent to the grant of the franchise.

Cable franchisees may not discriminate in the build-out of its cable system to a particular area of the city or provision of cable service to individual or groups of residents on the basis of race, creed, religion or economic condition.

Everest was required to post a performance bond of \$200,000 in Overland Park (\$100,000 in Shawnee) to ensure that construction is completed in accordance with the density and line extension requirements of the Cable Services Code

Everest was required to post a \$50,000 bond (\$30,000 in Shawnee) as a "Security Fund" to ensure "faithful performance of all provisions of the Franchise and compliance with all orders, permits and directions of the City and for the payment of any adjudicated or liquidated claim, liens and taxes due the city which arise by reason of the construction or maintenance of Cable System."

The Cable Codes permit the City to impose penalties and/or liquidated damages from the security funds

as follows: For system construction schedule violations, including but not limited to provisions relating to initial construction schedules...\$500 per day of non-compliance; for all other violations \$250 per day.

Every cable franchisee is required to provide one cable drop and one outlet to all accredited K-12 schools and public libraries where drop does not exceed 200 ft.

Every cable franchisee must provide, upon request, one courtesy cable modem w/ cable Internet service to every state accredited K-12 public school.

In sum, there is no doubt that Everest has found some of these requirements imposed by the Cable Codes and its individual franchises cumbersome and expensive. But in 2001, Everest had little bargaining power with the cities. In 2001, many thought the prospects for the survival of a so-called "over builder," such as Everest, were slim. Everest certainly did not have the political clout to come to the legislature to seek relief from these provisions.

Everest appears here today as a neutral party. On the one hand, Everest believes that despite its small size, it has complied with the numerous city-imposed mandates. We have worked through them and appear here today as a viable, profitable company. On the other hand, if as the result of our impending change of ownership, Everest has access to additional capital and can expand its existing footprint, it could benefit from SB 449, if it attempts to enter new communities.

Everest has concern that the bill, as it is currently drafted, may only provide relief for AT&T since it is the only entity that qualifies as a competitive video service provider. It appears that Everest may be in a "no-mans land" since the term competitive video service provider, as it is currently defined, does not include Everest, and it is unclear whether Everest would qualify as a competitive video provider in cities where it does not currently have a franchise. For Everest, the worst of all worlds would be if Everest was bound by the current cable franchising requirements as it sought to enter new communities, and AT&T was not.

I appreciate having the opportunity to appear before you today and would be pleased to respond to any questions you may have on this important issue.

RON THORNBURGH
Secretary of State



Memorial Hall, 1st Floor
120 S.W. 10th Avenue
Topeka, KS 66612-1594
(785) 296-4564

STATE OF KANSAS

TESTIMONY OF THE SECRETARY OF STATE TO THE SENATE COMMERCE COMMITTEE SB 449

February 7, 2006

Chairs and Members of the Committee:

The Secretary of State appreciates the opportunity to offer written testimony regarding SB 449, the video competition act.

This bill provides that the Secretary of State shall promulgate regulations to govern an application process for competitive video service providers. The authorization secured under the act or the Secretary of State would constitute a "franchise" under federal law. The State of Kansas would constitute the exclusive "franchising authority" for competitive video service providers in Kansas.

Mindful that it is within the legislature's province to set public policy, the Secretary of State takes a neutral position on SB 449, and these comments are informational only.

The office of the Secretary of State is primarily an administrative office. Historically it has been responsible for maintaining public records so that citizens may have access to the governmental and business information of importance to them. The office has not promulgated regulations or enforced them concerning regulatory or quasi-regulatory activities.

For that reason the fiscal note we submitted for SB 449 is an estimate only. The Secretary of State would have to increase his staff and current expertise in the office if SB 449 is enacted.

Thank you for your consideration.

Janet A. Chubb
Assistant Secretary of State

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February 6, 2006
Senator Brownlee, Chair
Senate Commerce Committee

Good Morning Madam Chair and members of the Senate Commerce Committee. My name is Ernest Kutzley and I am the Advocacy Director for AARP Kansas. AARP Kansas represents the views of our more than 350,000 members in the state of Kansas. Thank you for this opportunity to express our comments on SB 449 and the video competition act.

SB 449 would permit phone companies such as AT&T and other entities to receive authorization to offer video services in the state of Kansas. Cable television ranks high on the list of consumer complaints, and many consumers would welcome a competitive alternative. However, AARP does not believe this issue is as black and white as some would describe it. Our organization is carefully studying the issue and is in the process of developing our policy on statewide video franchising.

Currently, federal law requires cable television providers to negotiate franchise agreements with local communities. Franchise agreements typically include consumer protections and other provisions, such as government access channels, that are important to the local community. Further, cable TV providers are required to "build-out" their network to the entire community, rather than picking and choosing neighborhoods to offer service.

However, under this bill the new video competitors would not be required to negotiate with local communities for a franchise. New entrants to the video services market would be permitted to obtain a statewide franchise, which does not obligate them to serve all communities and all consumers, nor to follow consumer protection rules or offer a minimum number of public access, educational and government channels.¹

AARP will follow this legislation closely as it moves through the process. As with all telecommunications services, we will be most concerned about the following principles:

- a) Redlining—If a new video provider offers a service in an area, all consumers in that area should have an equal opportunity for the same service.

¹ SB 449 requires a video service provider to make "reasonable" effort to offer community channels. The term "community channel" is not defined and no minimum number of such channels is established.

- b) **PEG**—Cable companies have basic requirements to provide channels for the public good (Public access channels for anyone or any group that wants to air their own show; Educational channels; and local Governmental channels). Ideally, all video providers would be required to air these channels.
- c) **Customer Service Standards**—Cable companies are required by most local franchises to meet very minimal customer service standards covering issues such as handling complaints and the length of time required to receive new service connections. Ideally, all providers should be subject to consumer protection standards that include enforcement mechanisms.

Thank you for this opportunity to provide our comments on SB 449.



Kansas Cable Telecommunications Association

Testimony In Opposition To SB 449

Submitted By: John J. Federico

On Behalf of
The Kansas Cable Telecommunications Association

February 7, 2006
Senate Commerce Committee

Chairperson Brownlee and Chairman Jordan, my name is John Federico and I appear before you today on behalf of the Kansas Cable Telecommunications Association in strong opposition to SB 449.

SB 449 is patently unfair, unnecessary, discriminatory and in violation of equal protection provisions (competitive neutrality requirements). In the strongest way possible, I urge you to reject this "special interest" legislation and respectfully request that you consider amending the bill or holding it over for further study.

As an industry, we are opposed to unnecessary and overly burdensome regulations as all telecommunication competitors benefit from a *light* regulatory touch,... except however, where there is a genuine threat of anticompetitive conduct or a need to ensure compliance with a set of social responsibilities universally recognized as important.

SB 449, as introduced would remove the local units of government of their franchising authority, and eliminate critical pro-consumer elements of traditional franchises, BUT ONLY FOR NEW video service providers. While the bill allows for incumbent video providers to avail themselves of the benefits of SB 449, they could not do so until their existing franchise expires. In some cases that may result in a state-authorized competitive advantage for as long as 12-15 years.

The absence of other requirements such as public access channels, minimum customer service standards, emergency broadcast notices, and most importantly, build-out, sidestep important elements of franchises that ensure that video is provided in a beneficial and non-discriminatory manner.

SB 449, in its current form, will not benefit the consumer, as much as it will a telecommunications behemoth that has no "real" barriers to entry. Cable franchises are

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non-exclusive and allow for any number of video service providers to enter a community and compete. When offered a franchise in Lenexa that closely mirrored that by which two other incumbent cable providers were operating under, AT&T rejected it.

In closing, we respectfully request that you reject SB 449 and urge the interested parties to negotiate an agreement that will bring fair competition to consumers and proper regulatory oversight that ALL providers, municipalities and consumers benefit from.

WHO IS SAYING THE BELLS (AT&T) WILL DISCRIMINATE?

THE BELLS ARE SAYING THEY WILL DISCRIMINATE

- **SBC Admitted Choosing Richest Neighborhoods for More Profit.** “During a slide show for analysts, SBC said it planned to focus almost exclusively on affluent neighborhoods. SBC broke out its deployment plans by customer spending levels: It boasted that Lightspeed would be available to 90% of its ‘high-value’ customers -- those who spend \$160 to \$200 a month on telecom and entertainment services -- and 70% of its ‘medium-value’ customers, who spend \$110 to \$160 a month. SBC noted that less than 5% of Lightspeed’s deployment would be in ‘low-value’ neighborhoods -- places where people spend less than \$110 a month. SBC’s message: It would focus on high-income neighborhoods, at least initially, to turn a profit faster.” [USA TODAY, 5/23/05]

CIVIL RIGHTS LEADERS HAVE SAID THE BELLS WILL DISCRIMINATE

- ““The telephone companies’ proposal is made precisely for the purpose of allowing them to invest less, and in fewer communities -- rather than more, as the current rules require. And as for their perennial promises of more investment in exchange for legislative favors: Legislators around the country have derided SBC and Verizon for never fulfilling such pledges....potential benefits should not transform our elected officials into marionettes for two monopolies that want to trample our civil rights traditions.” [C. Delores Tucker, Co-founder of the National Congress of Black Women, Washington Post Op-Ed, 10/19/05]

CONSUMER GROUPS HAVE SAID BELLS WILL DISCRIMINATE

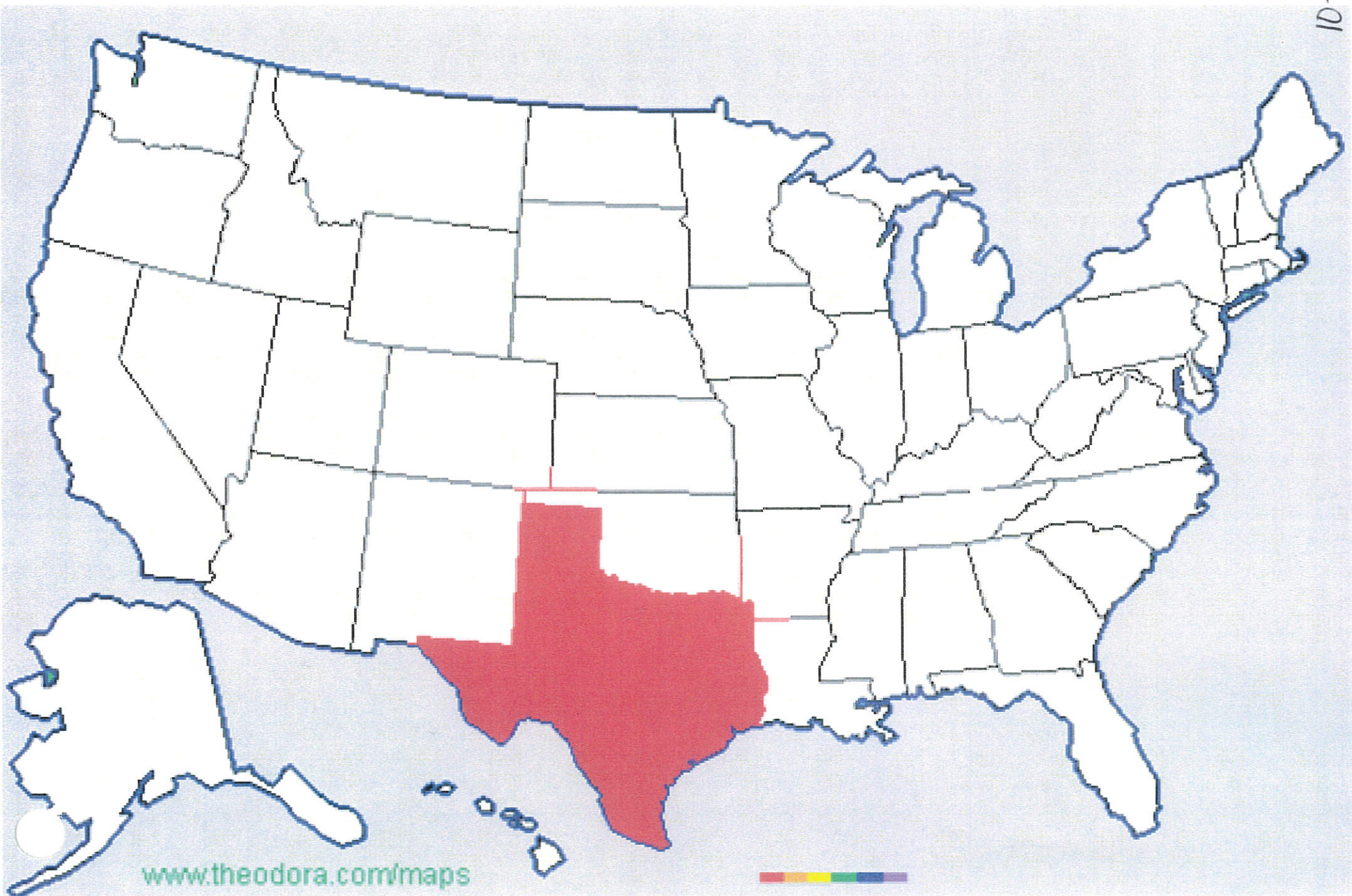
- “Dispense with local franchises for the phone companies and ‘if you live in a poor neighborhood, they won’t serve you,’ said Mark Cooper, director of research at the Consumer Federation of America in Washington, D.C.” [Raleigh News & Observer, David Ranji, 8/22/05]

PUBLIC OFFICIALS HAVE SAID BELLS WILL DISCRIMINATE

- “...[W]hat was sold as a plan for competition could end up as a road map for the Bells to systematically redline minority and low-income communities by bypassing them in the deployment of their high-speed fiber networks.” [James Bertram, Mayor of Lockhart, TX, Oakland Press, 1/3/06]
- “Most recently in Texas, telcos were given what they wanted, fast track franchises. But Verizon and SBC, months after the law was put on the books, have offered to provide competitive choice to less than one percent of Texas households. Is the nation giving up the consumer protections and community benefits in the current franchising system just to provide choice to one percent of the population?” [Testimony of the Honorable Marilyn Praisner on behalf of the National League of Cities, United States Conference of Mayors, National Association of Counties, National Association of Telecommunications Officers and Advisors, and Telecommunity. U.S. House Telecommunications and Internet Subcommittee, 11/9/05]

FINANCIAL EXPERTS HAVE SAID BELLS WILL DISCRIMINATE

- “While avoiding the franchise obligation would save time and money, there’s something even more vital to SBC’s business plan when it comes to the regulatory assumptions executives are making. As Banc of America Securities LLC senior research analyst Douglas Shapiro notes in a recent report, ‘[SBC] has indicated that its 18 million-home deployment will reach 90 percent of its “high-value” subs. With roughly 30 million residential passings (overall), that means that 40 percent of all its residential customers will be left out. Since these high-value subs aren’t all necessarily living contiguously, it suggests that SBC will be faced with the challenge of marketing a service that won’t be available uniformly across large service areas.’ ... ‘Franchises might limit their ability to pick and choose which areas they want to serve, which would impact their revenue assumptions.’[senior analyst Gregg Moffett of Sanford C. Bernstein & Co. LLC]. High-end customers are important, he adds, because they are viewed as more likely to be swayed by SBC’s marketing message that it offers a more compelling service than cable with a la carte options that would drive revenue well beyond the basic service fee.” [www.xchangemag.com, 5/1/05]



Posted on Sun, Feb. 05, 2006

Lose the red marker

By MARK McCLEARY

Special to the Star-Telegram

When it comes to telecom, 2006 might well be known as the "on-demand" year. Each day, the newspapers are filled with the latest in the wonderments of the digital revolution: video iPods, flat-panel TVs, satellite radio and digital cameras, to name a few that can bring consumers what they want, when they want.

That's what makes so puzzling a new business model being promoted by the telephone monopolies that, if widely adopted, probably would result in very few of us ever seeing the true competitive promise of the 21st century's digital age.

The giant telephone monopolies -- AT&T, Verizon, BellSouth and Qwest -- are gearing up this year to launch an unprecedented legislative push to effectively eliminate the only nondiscrimination provision in federal law that prohibits red-lining by any telecom company providing "video services."

In Indiana, they are asking legislators to bless a dubious business plan to bring their new TV services only to wealthy neighborhoods.

Current law -- if left untouched -- now ensures that new fiber networks that can deliver cable television and advanced digital services are deployed in a nondiscriminatory fashion in every neighborhood and hamlet of a telecom company's service area. For the cable industry, that law has resulted in a \$100 billion-plus investment in new networks and today represents the closest thing we have to a universal broadband policy. Rural communities and inner cities are considered as important as the wealthy suburbs.

But the Bell telephone companies appear to have much meeker goals. With strange fervor, the Bells are insisting that Congress and state legislatures exempt only the Bell telephone companies from the nondiscrimination provisions. As C. Delores Tucker, the now-deceased founder of the National Congress of Black Women, argued, it is the "[phone] monopolies that want to trample our civil rights traditions."

AT&T's (formerly SBC) proposal is known as "Project Lightspeed." Months ago, its executives said that its bold new broadband service would be rolled out to 90 percent of its "high-value" customers but only 5 percent of "low-value" customers. Chafing at what seemed to be an open admission of red-lining, U.S. Rep. Ed Markey, whose subcommittee oversees telecom policy, accused the company of offering "Lightspeed for the well-off and 'snail-speed' for everyone else."

In Markey's home state of Massachusetts, Verizon has committed to bring its new FiOS broadband network to only 39 communities, bypassing nearly every major center of African-American and Hispanic life. All but one of these 39 communities reside above the state's median income, and not a single neighborhood to be served has a majority African-American or Hispanic population.

And if you pull out a map of the other states that Verizon serves -- such as New Jersey, New York, Virginia, Texas and Pennsylvania -- its rollout plans are equally exclusionary. Middle-income and minority communities are mostly left in the cold by the telephone monopolies.

For their part, the Bells argue that they don't have the resources to comply with the nondiscrimination provisions that would require a far more ambitious build-out of fiber networks than they seem prepared to undertake. And they claim that local governments are too pesky, that negotiating local franchise agreements with them is unreasonably bureaucratic.

The Bell telephone monopolies earned five times the revenues of the cable companies. The telephone networks were built with decades of government subsidies. Their claim that they should be held to a lower standard than the cable industry -- which never had government handouts -- doesn't meet the laugh test.

Congress changed the laws in 1996 to invite Bell entry into the cable industry. And since then, the Bells have obtained local franchise agreements (often in days) in California, Virginia, Florida, Utah and Texas -- a fact that debunks their complaint about local bureaucracy.

Indeed, when it comes to entry into the cable industry, the only one standing in the way of the telephone companies is the telephone companies themselves.

America ranks 16th among industrialized nations in broadband deployment, and our digital divide threatens to become a digital gulf. Rather than moving us to the "future ... faster" as its advertising campaign promises, the Bell cartel seems intent on moving us to a 19th-century reality where communications services are available only to the aristocracy.

The Rev. Mark McCleary is the chairman of the National Black Church Initiative's Minister Alliance, a Washington-based coalition of faith communities.



NATIONAL CONGRESS OF BLACK WOMEN, INC.

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February 6, 2006

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Dr. Michelle Battle

Chief Operating Officer

***Deceased**

Statement by E. Faye Williams

Chair

National Congress of Black Women

On behalf of the NCBW, I'd like to thank members of this committee for holding this hearing on what we feel is a critical issue. We could not represent ourselves in person today as we are attending funeral services for Coretta Scott King, and so we thank the committee for accepting these written comments.

NCBW believes that Kansas – indeed, all states – should continue to honor the long-standing antidiscrimination rules that ensure equal access to advanced broadband technologies. This bipartisan commitment to rules which require video providers deploy networks in a non-discriminatory fashion is now under threat by the Bell telephone companies who want to sweep these away under the flag of statewide franchise regulation.

Make no mistake about it. There are no barriers to entry in the cable television industry. There are no exclusive franchises. Small operators enter the market quite ably under existing rules. Congress invited the telephone companies into the cable business in the 1996 Telecommunications Act. Where they apply for local franchises, the telephone companies often get such franchises within a few months or less.

Furthermore, Senators Burns and Inouye have announced principles for legislation that will make entry into the cable industry by the Bells even easier. Their principles call for a "shot clock" that will ensure that local governments grant them local franchises within 30 days, and a level regulatory playing field for all providers.

The truth is that the special interests are asking to eliminate the rules not because of barriers to entry but because existing rules give local mayors and local governments the tools they need to ensure the timely deployment of advanced broadband services to all of their communities.

If we are concerned about bridging the digital divide, then maintaining such an enforceable authority at the local level is the acid test. For without it, any new entrant will be allowed – actually invited by the Bell sponsored legislation – to only serve the elite and affluent set. That is not a policy behind which state legislators should unite.

Indeed, the associations of Black and Hispanic state legislators have urged the maintenance of the enforceable antidiscrimination laws that will ensure that African American and Hispanic communities get new services as fast as other communities do. In my hometown of Washington, the local cable provider chose the inner neighborhood of Anacostia as the first destination for the network upgrades that brought cable modems to our homes, before more affluent areas like Georgetown.

The NCBW joins a large number of civil rights and grassroots organizations across the country - including the National Black Church Initiative, the Hispanic Federation, National Conference of Black Mayors, and the Hispanic National Bar Association - that have denounced the effort to repeal the antidiscrimination laws.

This is not just wild speculation. AT&T (formerly SBC) has said it wants to target 90% of its "high value" customers (those who will spend over \$160 a month on telecommunications services) and only 5% of its "low value" customers. And Verizon's targeted towns are almost exclusively targeted to the most affluent neighborhoods – nearly 90% of the 500+ towns have above average median household incomes. Only 14

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have a population that is majority African American.

We harbor a bias will towards the telephone companies, and believe that they have done many positive things in our community. And we want the telephone companies to be able to compete vigorously in the cable industry, as cable and other companies compete in the telephone industry. But in this day and age, competition should be for everyone and in every neighborhood.

There is no reason why we should fall victim to false choices that suggest otherwise. Let's get competition in Kansas and elsewhere. But let's make sure that all neighborhoods and communities get that same competition. That will be good for the economy, and true to our core principles behind which we can all unite.

**Before the Kansas Senate Commerce Committee
Testimony of Richard L. Cimerman,
Vice-President State Government Affairs
National Cable & Telecommunications Association (NCTA)
Opposing Senate Bill 449**

Madam Chairwoman, honorable members of the Committee, I am Rick Cimerman, Vice-President State Government Affairs of the National Cable & Telecommunications Association ("NCTA"). NCTA is the principal trade association of the cable television industry at the national level. Its members provide video programming, broadband Internet and other services throughout the United States, including here in Kansas. NCTA also represents programmers and suppliers of equipment to the to the cable television industry.

I'm here today to discuss video franchising reform and Senate Bill 449 (SB 449). I will provide information on some of the federal activity surrounding video franchising, activity in other states, and I will make a few observations about video franchising and AT&T that I trust will be useful in your deliberations.

First and foremost, I want to make you aware of a set of Principles for Video Franchising Reform released last week by U.S. Senators Conrad Burns and Daniel Inouye that we heartily endorse. In addition to the release of these principles, at least four bills have been introduced, or are under discussion, that would change today's video franchising system and several proceedings are underway at the FCC that would do the same. It brings into question the need for state action at this time.

As most of you probably know, the State of Texas enacted a video franchising statute last year. It is currently the subject of both federal and state lawsuits because it violates the Constitution and federal law. SB 449 suffers from many of the same infirmities.

I'll address both of these points briefly, as well as making the following five observations:

- 1) The law does not need to be changed to allow AT&T to enter the already competitive video marketplace.
- 2) AT&T is not a new entrant that needs a regulatory leg-up.
- 3) Local franchising is not a barrier to entry.
- 4) There are important social responsibilities attendant to offering video services, that AT&T apparently seeks to avoid.
- 5) AT&T is forum shopping, making different arguments in each venue.

Senate Commerce Committee

February 7, 2006

Attachment

11-1

The newly released Principles for Video Franchising Reform emphasize the importance of localism, while striking an appropriate balance between the desire to speed entry for new providers and ensure a level playing field for all competitors –

Last week U.S. Senators Conrad Burns and Daniel Inouye, Senior Majority Member and Co-Chairman, respectively, of the Senate Commerce, Science and Transportation Committee released a set of Principles for Video franchising reform. The Senators stated in their press release that they “seek to foster competition and a fair process that recognizes local needs” and believe the principles “are essential for any legislation the [Senate Commerce] Committee might consider on video franchising reform.” The principles, which are more fully fleshed out in the attached document, are intended to:

- Recognize and Reaffirm the Role of States and Localities in the Video Franchising Process.
- Promote Competition by Facilitating Speedy Entry on Fair Terms.
- Promote Competitive Neutrality and a Level Playing Field.

We strongly support these principles and likewise believe they are essential. In addition, a number of others have endorsed these principles. I’ve attached, in particular, press releases and letters from some of the major city organizations that have done so.

Kansas should undertake further study of video franchising issues while various federal activities play out

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In the U.S. Senate, the Ensign and DeMint bills (S. 1504 and S. 2113 respectively) and in the U.S. House, the Blackburn-Wynn bill (H.R. 3146) and House Staff Draft “BITS” bill would all change today’s video franchising system. I won’t take your time today to discuss all the changes these bills would bring about except to note two aspects of the bills. First, the House bills would, unfairly in our view, treat new entrants and existing providers differently, allowing large regional telephone companies to completely avoid the existing franchising system while tying existing cable companies to operating under the old rules. Second, and perhaps more importantly from your perspective, all the bills would preempt state and local governments and leave them with virtually no responsibility as to video services except managing rights-of-way. None of these bills would be consistent with the Burns-Inouye principles.

the FCC, for their part, has several proceedings underway in which video franchising issues have been raised. In a Notice or Proposed Rulemaking (NPRM) entitled *Rulemaking on Ensuring Reasonable Franchising Process for New Video Market Entrants* the FCC is examining its role with regard to Section 621(a)(1) of the Communications Act. That section states in part that “a franchising authority ... may not unreasonably refuse to award an additional competitive franchise.” In a proceeding known as the IP-Enabled Services proceeding, AT&T has asked the FCC to rule that its proposed video technology is not a cable service under the Communications Act and therefore does not require a franchise. We disagree with AT&T’s position, but the issue is squarely before the Commission. Given all of this activity it seems premature to enact new legislation at the state level.

Texas SB 5, now law, violates the U.S. Constitution and federal law. SB 449 would do the same -

For the record I have brought a copy of a brief filed last month by the Texas Cable & Telecommunications Association (“TCTA” the Texas version of the KCTA) in an ongoing action in the United States District Court, Western District of Texas, Austin Division. TCTA filed suit against the Texas state-issued franchising statute for several reasons. I won’t go into all the detail of the brief but let me quote from the introduction and give you the highlights.

[U]nder the statute new entrants can obtain a lightly regulated franchise from the PUC, thereby making it unnecessary for them to negotiate franchise agreements with multiple municipalities. The Act likewise benefits so-called overbuilders (companies like Grande, which build cable systems in areas that are already served by another cable operator), which are allowed to renounce their existing municipal franchise agreements and obtain PUC-issued franchises. All other cable operators (the cable companies that first started providing cable service and that are sometimes called “incumbents”), are ineligible for this largesse: they are locked into more onerous long-term municipal franchise agreements. And, even after these cable operators become eligible for PUC issued franchises when their municipal franchise agreements expire, they are subjected to more onerous conditions than are new entrants and overbuilders... This disparate treatment violates non-discrimination principles applicable under the First Amendment, the Equal Protection Clause, and the Federal Communications Act.

The Texas statute is also unlawful in other ways. In particular, by rendering cable operators ineligible for state-level franchises, the statute violates a provision of the Federal Communications Act that prohibits franchising authorities from “grant[ing] an exclusive franchise” and from “unreasonably refus[ing] to award an additional competitive franchise.” In addition, the Texas statute prohibits the PUC from imposing assurances against so-called “red-lining,” thereby violating a section of the Federal Communications Act providing that, “[i]n awarding a franchise,” any “franchising authority” must “assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income if the residents of the local area in which such group resides.”

SB 449, which appears to be largely based on the Texas statute would, in our view, be similarly unconstitutional and violative of federal law.

The law does not need to be changed to allow AT&T to enter the already competitive video marketplace -

Congress established four ways for telephone companies to enter the video marketplace. Telcos may: 1) provide transmission of video programming on a common carrier basis; 2) may undertake radio-based video operations, such as Multichannel Multipoint Distribution Service ("MMDS"); 3) may operate a system known as an Open Video System ("OVS"); or 4) may operate as a traditional cable operator. Most, but not all phone companies have chosen this last route – operating as a traditional cable operator. Importantly, federal law prohibits exclusive franchises and the unreasonable denial of a competitive franchise. AT&T can, as have other telephone companies, obtain franchises should they only choose to do so.

AT&T is not a new entrant that needs a regulatory leg-up -

AT&T has a number of advantages over traditional new entrants, and even over existing cable operators. Unlike traditional new entrants, AT&T already has connections to virtually every home (and business) within their service territory. They have facilities in the rights-of-way and in some cases the power of eminent domain and access to private easements. And their financial strength dwarfs that of any typical new entrant, or even cable companies. AT&T alone (just one of the four Regional Bell Operating Companies) has a market capitalization of \$81 billion compared to a market cap of \$112 billion for the top ten cable operators combined. Their annual revenues of \$41 billion equal two-thirds of the annual revenues of the entire cable industry. The idea that they need government assistance to compete is disingenuous at best.

Local franchising is not a barrier to entry -

Telcos can and do obtain franchises. During the late 1990s, when Ameritech, now part of AT&T, decided to avail itself of the 1996 Act's opportunities to provide in-region cable service, franchises were obtained for 111 communities. Ameritech did not express frustration with the franchising process then. And it operated under Title VI for several years before deciding to exit the video business. BellSouth received at least 20 franchises in the 1990s, representing 1.4 million potential cable households. And in the last several months, Verizon has been awarded franchises in at least 16 communities in California, Florida, Maryland, Massachusetts, Texas and Virginia representing over 1 million potential subscribers. It is negotiating with at least 250 additional cities and municipalities. It's hard to believe, as AT&T likes to claim, that a company with their regulatory prowess and manpower cannot reach satisfactory agreements with local franchising authorities (LFAs) in a reasonable time period.

As you've heard today, LFAs seek to encourage additional video entrants. As we noted in comments to the FCC, hospitality, not hostility, awaits new entrants on the steps of city hall. In any case, complaints about

the t takes to negotiate a franchise ring somewhat hollow in light of the ability of companies like TCI, AT&T (in a former life), Comcast, Adelphia, and Time Warner to complete thousands of transfer approvals with LFAs in the matter of a few months in major merger cases.

AT&T should acknowledge there are important social responsibilities attendant to offering video services, including non-discrimination –

Wireline video service providers have long had several important social responsibilities. These include making service available to *all* residents, regardless of income; meeting the local information needs of the communities they serve; and, complying with consumer protection obligations. SB 449 falls short in all these areas, particularly with respect to non-discrimination, where the issue appears to be completely sidestepped. Texas at least attempts to address the issue, though the language is wholly insufficient to actually prevent discrimination.

AT&T is forum shopping, making different arguments in each venue -

At the state level AT&T is arguing for state franchising. At the federal level AT&T is arguing for national franchising. In both cases, AT&T wants to limit the role of local government. AT&T is asking state legislatures to give the states control and preempt local governments, even as they go to Washington and ask Congress to preempt both the states and local governments. On top of it all they're telling the FCC that their existing telecom rights-of-way authority coupled with their claim that their technology is so new and utterly amazing that they don't need franchises at all.

So what's our view? Our view is that you should take the time to study these complex issues. Our view is that AT&T should step up to the plate and acknowledge there are important social responsibilities, including non-discrimination that have long been the hallmark of video regulation. And finally, our view is that any effort to change the system must accord with the principles articulated by Senators Burns and Inouye - emphasizing the importance of localism, while striking an appropriate balance between the desire to speed entry for new providers and ensure a level playing field for all competitors.

Thank You, Madam Chairwoman and honorable members of the Committee for the opportunity to speak with you today.

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931 SW Henderson Rd.
Topeka, KS 66615
(785) 368-1080



Senate Bill 449 Opposition Testimony
Senate Commerce Committee
Jay Allbaugh, Cox Communications
February 7, 2006

Chair Brownlee, Chair Jordan and members of the committee, I am Jay Allbaugh, Vice President of Government and Public Affairs for Cox Communications.

Thank you for the opportunity to present our concerns regarding Senate Bill 449. We oppose this bill as currently written.

We agree that technology sometimes outpaces the regulatory frameworks that historically have been in place. This is prompting consideration at both the federal and state level. It is our position that changing those frameworks needs to be carefully considered in order to both ensure a level playing field and to create certainty for companies seeking to invest in Kansas. Senate Bill 449 falls short in both areas.

Cox Communications was created with private capital in an entrepreneurial spirit that is familiar to many Kansas companies. Competing for market share is a core business practice we embrace. Our experience with competition has taught us that regulation only for regulations' sake eventually impacts market conditions and can create less demand for a meaningful product.

If regulation must exist it should be the right type of regulation. Regulatory outcomes should resemble laws that foster competition, protect the consumers and ensure one company is treated in a similar manner as another regardless of their size or influence. By creating a two tiered franchise structure that distinctly favors a new entrant into the video services market, Senate Bill 449 falls short of appropriate public policy.

There are many issues impacted by a revision in policy and we request that this committee take an in-depth look at the impact Senate Bill 449 will have on the various parties involved in delivering quality video service products to our customers.

Thank you for your consideration and I will stand for any questions the Committee might have.

Senate Commerce Committee
February 7, 2006
Attachment 12-1

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Testimony in Opposition to SB 449
Senate Commerce Committee
Tuesday, February 6, 2006

Jeff Bridges, City Administrator, City of Andover, Kansas

Co-Chairs Senators Brownlee and Jordan and Members of the Senate Commerce Committee; thank you for your consideration of these remarks. I am testifying in opposition to SB 449 for the following reasons:

SB 449 would eliminate the requirement that a phone company desiring to provide cable programming have a franchise from a local unit of government.

47 U.S.C. known as the Communciations Act of 1934 and its amendments provides rules for cable companies to provide "public benefits" such as connections to municipal and school buildings, local government channels, public education channels, and emergency notification systems, to justify their place in the public rights-of-way.

The public rights-of-way within a city are for public purposes only. If SBC (AT&T) provides no public benefit via their video programming as this bill would allow, then their presence in the right-of-way should not be permitted.

This bill would create a competitive disadvantage between phone companies providing cable services and cable companies having to comply with 47 U.S.C.

Public benefits such as public education channels, local government information channels, and emergency notification systems would not be provided for in this bill. Once existing franchise agreements with cable service providers have expired, these public benefit services would cease or be available to schools and local governments at considerable costs.

This bill is a 180 degree reversal of SBC stated policy in it relationships with local governments. The attached franchise agreement (Section 6) between the City of Andover and SBC states that SBC will not operate a video system without complying with 47 U.S.C. (Federal Communications Act). This franchise ordinance was written by SBC. This bill seeks to void that requirement.

We believe that the existing legal relationships between phone companies, cable companies, and cities are proper and provide public benefits justifying their use of public property (right-of-way) for their profit making enterprises. There is nothing to prevent a phone company from acquiring a franchise to provide video programming. What is fair is fair, in order to preserve "competitive neutrality" which seems to be SBC's major concern, the City of Andover has required all phone companies utilizing physical plant in the city's rights-of-way to negotiate a telephone franchise. This requirement includes cable companies selling phone service in Andover.

ORDINANCE NO. 1186

A CONTRACT FRANCHISE ORDINANCE GRANTED TO SOUTHWESTERN BELL

Senate Commerce Committee
February 7, 2006
Attachment 13-1

TELEPHONE COMPANY, A TELECOMMUNICATIONS LOCAL EXCHANGE SERVICE PROVIDER PROVIDING LOCAL EXCHANGE SERVICE WITHIN THE CITY OF ANDOVER.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ANDOVER, KANSAS:

SECTION 1. Pursuant to K.S.A. 2002 Supp. 12-2001, a contract franchise ordinance is hereby granted to Southwestern Bell Telephone Company (SWBT), a telecommunications local exchange service provider providing local exchange service within the City of Andover ("City"), subject to the provisions contained hereafter. The initial term of this ordinance shall be for a period beginning January 1, 2002, and ending December 31, 2007. Compensation for said contract franchise ordinance shall be established pursuant to Section 3 of this ordinance.

SECTION 2. For the purpose of this contract franchise ordinance, the following words and phrases and their derivations shall have the following meaning:

"Access line" shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations serviced by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer's premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, lines providing only data services without voice services process by a telecommunications local exchange service provider or private line service arrangements.

"Access line count" means the number of access lines serving consumers within the corporate boundaries of the city on the last day of each month.

"Access line fee" means a fee determined by a city, up to a maximum as set out in K.S.A. 2002 Supp. 12-2001 and amendments thereto, to be used by a telecommunications local exchange service provider in calculating the amount of access line remittance.

"Access line remittance" means the amount to be paid by a telecommunications local exchange service provider to a city, the total of which is calculated by multiplying the access line fee, as determined in the city, by the number of access lines served by that telecommunications local exchange service provider within that city for each month in that calendar quarter.

"Gross Receipts" means only those receipts collected from within the corporate boundaries of the city enacting the franchise and which are derived from the following: (A) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (B) recurring local exchange access line services for pay phone lines provided by a telecommunications local exchange service provider to all pay phone

service providers; (C) local directory assistance revenue; (D) line status verification/busy interrupt revenue; (E) local operator assistance revenue; and (F) nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills. All other revenues, including, but not limited to, revenues from extended area service, the sale of lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services; lines providing only data service without voice services processed by a telecommunications local exchange service provider; private line service arrangements, Internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross Receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts... If a telecommunications local exchange service provider offers additional services of a wholly local nature which if in existence on or before July 1, 2002, would have been included with the definition of gross receipts, such services shall be included from the date of the offering of such services in the city.

"Local exchange service" means local switched telecommunications service within any local exchange service area approved by the state corporation commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.

"Provider" shall mean a local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187 and amendments thereto, or a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187, and amendments thereto.

"Public right-of-way" means only the area of real property in which the city has a dedicated or acquired right -of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other nonwire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.

"Telecommunications local exchange service provider" means a local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187, and amendments thereto, and a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1, 187, and amendments thereto, which does, or in good faith intends to, provide local exchange service. The term telecommunications local exchange service provider does not include an interexchange carrier that does not provide local exchange service, competitive access provider that does not provide local exchange service or any wireless telecommunications local exchange service provider.

"Telecommunications services" means providing the means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

SECTION 3. Compensation made pursuant to this contract franchise ordinance shall be paid on a monthly basis without invoice or reminder from the city and paid within forty-five (45) days after the last day of the applicable month. For the first year of this contract franchise ordinance, said

compensation shall be a sum equal to \$1.26 per access line. Thereafter, compensation for each calendar year of the remaining term of the contract franchise ordinance shall continue to be based on a sum equal to \$1.26 per access line; unless the city notifies SWBT prior to ninety days (90) before the end of the calendar year that it intends to increase or decrease the amount for access lines for the following calendar year or that it intends to switch to a gross receipt fee for the following calendar year. In the event City elects compensation based on a gross receipt fee, nothing herein precludes City from switching back to an access line fee provided City notifies SWBT prior to ninety days (90) before the end of the calendar year that it intends to elect an access line fee for the following calendar year. Beginning January 1, 2004, any increased access line fee or gross receipt fee shall be in compliance with the public notification procedures set forth in subsections (l) and (m) K.S.A. 2002 Supp. 12-2001.

SECTION 4. The city shall have the right to examine, upon written notice to the telecommunications local exchange service provider, no more than once per calendar year, those records necessary to verify the correctness of the compensation paid pursuant to this contract franchise ordinance.

SECTION 5. As a condition of this contract franchise ordinance, SWBT is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission (FCC) or the Kansas Corporation Commission (KCC), subject to SWBT's right to challenge in good faith such requirements as established by the FCC, KCC or other City Ordinance. SWBT shall also comply with all applicable laws, statutes and /or ordinances, subject to SWBT's right to challenge in good faith such laws, statutes and/or ordinances.

SECTION 6. This contract franchise ordinance does not provide SWBT the right to provide cable service as a cable operator (as defined by 47 U.S. C. § 522 (5)) within the City. Upon SWBT's request for a franchise to provide cable serve as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City, the City agrees to timely negotiate such franchise in good faith with SWBT. SWBT agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.

SECTION 7. If requested by City, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public, SWBT shall remove its facilities from the public right of way or shall relocate or adjust its facilities within the public right of way at no cost to the City. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by the City for such relocation or adjustment. Any damages suffered by the City or its contractors as a result of SWBT's failure to timely relocate or adjust its facilities shall be borne by SWBT.

SECTION 8. Permission is hereby granted to SWBT to trim trees upon and overhanging streets, alleys, sidewalks and public places of said city so as to prevent the branches of such trees from coming in contact with SWBT's facilities, all the said trimming shall comply with all applicable laws, statutes and /or ordinances.

SECTION 9. Nothing herein contained shall be construed as giving SWBT any exclusive privileges, nor shall it affect any prior or existing rights of SWBT to maintain a telecommunications system within the City.

SECTION 10. SWBT shall collect and remit compensation as described in Section 3 on those access lines that have been resold to another telecommunications local exchange service provider.

SECTION 11. Any required or permitted notice under this contract franchise ordinance shall be in writing, Notice upon the city shall be delivered to the city clerk by first class United States mail or by personal delivery. Notice upon SWBT shall be delivered by first class United States mail or by personal delivery to”

Southwestern Bell Telephone Company
Director-Municipal Affairs
220 E. 6th Street, Room 505
Topeka, Kansas 66603

SECTION 12. Failure to Enforce. The failure of either party to enforce and remedy any noncompliance of the terms and conditions of this contract franchise ordinance shall not constitute a waiver of rights nor a waiver of the other party's obligations as provided herein.

SECTION 13. Force Majeure. Each and every provision hereof shall be subject to the acts of God, fires, strikes, riots, floods, war and other disasters beyond SWBT's or the City's control.

SECTION 14. This contract franchise ordinance is made under and in conformity with the laws of the State of Kansas. No such contract franchise shall be effective until the ordinance granting the same has been adopted as provided by law.

14
David Hawksworth
Executive Director
Community Access Television of Salina, Inc.
410 W. Ash St.
Salina, KS 67401
(785) 823-2500

Testimony Against Senate Bill 449
Before the Senate Commerce Committee
February 7, 2006

Committee members: good morning, and thank you for the opportunity to testify. I am David Hawksworth, the Executive Director of Community Access Television of Salina. I am opposed to Senate Bill 449 in its present form.

Community Access Television manages the public, education, and government access channels on the cable system in Salina, and is enabled by the cable television franchise agreement between the City of Salina and Cox Communications. Some of you may be familiar with education and/or government channels in your hometowns. But as there are very few public access channels in Kansas, I thought I would quickly define what they are. A public access channel is open and available to all community members to produce and show programming on virtually any topic, without censorship or prescreening - ensuring that a diversity of ideas, opinions, and viewpoints can be heard. Community Access Television also operates a television production facility, and we provide training on the equipment to community members for a nominal fee. Use of the equipment to produce programming, as well as time on the channel, are free. In 2005, community members and staff produced 784 hours of programming on topics of interest to Salinans. We also run an after-school class for middle school students on media literacy, teaching them to interpret media messages and become better communicators.

Access channels would suffer under the provisions in SB 449. This bill would release video providers from requirements under 47 USC 531, which enables cities to negotiate with video providers as to the number of channels to be set aside for public, educational, and governmental use. SB 449 does include a provision for video providers to "provide distribution capacity" for access channels, but in the absence of clear requirements, a video provider might allocate only one channel for such use. This would devastate cities like Wichita, which currently has five access channels; Overland Park, Topeka, and Salina, which have three channels each; and numerous other small cities, like Great Bend, Yates Center, and WaKeeney, which have at least two access channels. All these channels carry valuable local programming.

Most worrisome is the fact that under SB 449, video providers would not be subject to 47 USC 531(e). This section prohibits a video provider from exercising editorial control over programming on public, education, and government access channels. Public access is built on the premise that every user has a valid message to get out, no matter his/her opinions, and as such, it is vitally important that no editorial control be exercised by anyone over content submitted by community members. By exempting video providers from 47 USC 531(e), SB 449 might allow video providers to interfere with the content of programming on these channels, and would have a chilling effect on the free expression of ideas, opinions, and viewpoints currently flourishing on access channels.

Also at stake is funding, both for access channels and cities. About 40% of Community Access Television's funding comes from a provision in the franchise agreement that requires the cable company to pay 70 cents per month per subscriber (which is passed through to the subscriber). In the absence of a local franchise, that source of funding will disappear, crippling Community Access Television's operations considerably. Moreover, it appears that SB 449 changes the way franchise fees are calculated, excluding revenue from advertising and home shopping. As a result, the amount that cities receive (as well as access channels, most of whom are funded with franchise fee money) could be reduced by as much as 20%.

Senate Commerce Committee
February 7, 2006

Attachment 14-1

In order to protect access channels across Kansas and the valuable service they provide, I would suggest amending SB 449, New Section 3(e) to read, "All video providers shall comply with all community programming obligations contained in the incumbent cable operator's current franchise, and shall remain subject to all requirements under 47 USC section 531."

The removal of video franchises from the municipal level under SB 449 leaves several unanswered questions, including: how will current institutional networks be maintained? Who will handle the complaint of a citizen whose yard is improperly repaired after a video provider digs it up to repair or replace wiring? Will police and emergency management be able to override channels on the system to get out information about severe weather or missing children? Provisions for these and other situations, currently in local franchises, are missing from SB 449.

It seems to me that the franchising process has never been a barrier to entry into the marketplace. All video franchises are, by federal law, non-exclusive. The current franchising process has not stopped competition from happening in cities like Overland Park, Lenexa, and Shawnee, where citizens can choose between Time Warner and Everest as their video provider.

Enacting SB 449 in its current form, and doing away with local video franchises, will hurt cities, access channels, and citizens. Instead, I suggest that perhaps there are ways to streamline the current franchising process to remove obstacles, like setting procedural timetables to ensure decisions by local governments in a timely manner. This may achieve the goals of enabling speedy entry and promotion of competition while at the same time protecting the ability of cities to provide for the cable-related needs and interests of its citizens.

Once again, thank you for the opportunity to speak today, and I would be happy to answer any questions you might have.

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**Testimony In Opposition
To SB 449**

Submitted By: Rick Wolfe; Comcast

Senate Commerce Committee

February 7, 2006

Senator Brownlee and members of the Senate Commerce Committee, Comcast states for the record its support for a reasoned consideration of revisions to Kansas law that could affect local cable franchising. This position is fully consistent with NCTA's (and Comcast's) national perspective and is appropriate in light of changing technology, market conditions, and even consumer behavior. Regrettably, Senate Bill 449 speaks to none of these dynamics and, at its core, simply does not present appropriate revisions. Moreover, and perhaps unintentionally, SB449 altogether avoids a reasoned consideration and instead accomplishes little beyond achieving a market advantage 'slam dunk' for proponents such as AT&T.

Comcast's review of SB449 reveals that even a general fairness is absent from its provisions. In fact, provisions that directly address prospective *competitors* in the video service market all but proudly *proclaim* their bias. These provisions establish only the most basic obligations on new providers (such as fee payment) while binding incumbent cable operators to their myriad of community service obligations. Comcast respects and faithfully observes all of its service obligations and believes these obligations properly extend beyond just mailing in a check.

But AT&T has a different view.

Theirs is a history of rules gamed and promises made, and then broken, in the telephone market. Those of us on hand, back in the day, for the much heralded rollout of SBC's Project Pronto will recall that project's "interruption" when subsequent market and regulatory developments failed to slant in SBC's favor. But they're back again and now they're seeking favors and making promises for video. Promises couched in half-truths, and we'll get to that, but still more promises.

So why is there a need for promises? Because AT&T cannot make a persuasive case without them. Their assertions regarding the "barrier" of local franchises have been dashed. In a previous life they held local franchises. In their Ameritech footprint (in MI and WI) they entered the video market years ago, found the going too tough when competing on a 'rules equal' basis, and sold out to Wide Open West (WOW). In their current form they've never once, *not once*, even attempted to obtain a local franchise. So what would they know about 'barriers' now? They could ask Verizon, because Verizon has obtained local franchises, most notably in Keller, Texas, but that would permit facts to intrude upon their promises.

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Speaking of Keller, if you are not already aware, Keller is the city, and Texas is the state, which AT&T will laud as being the incubators for video competition. That claim is debatable but both have certainly emerged as the incubators for half-truths. Among the most egregious - which is heard repeatedly in Indiana where similar legislation is being run - is the claim that since passage of Texas Senate Bill 5 "cable rates in Texas have dropped 25%". The *simple* truth is that "in Keller, *and in Keller alone*" Charter reduced its rates for its premium offering from \$119 to \$59 for twelve months after VZ introduced FiOS. BTW, that quote belongs to Gale Givens, President of Verizon's Great Lakes Region. Now FiOS occurred before SB5 but, if you do the math, you'll note that this is in fact more than a 25% reduction. But it is a *promotional offer, for a premium tier service only, and in one community*. That's a far cry from the implied statewide cable rate decrease.

Texas SB5 and SB449 share other slanted attributes. Beyond a dearth of obligations they both bestow a statutory grant of 'flexibility' upon AT&T that no cable operator may enjoy. In both bills AT&T can choose where it wants to serve, how it wants to serve, and when it wishes to no longer serve. AT&T, in its own investor call, declared its intention to serve what it described as "high value" customers. This means it would define its "service area footprint" based upon demographics, the spending habits of consumers in a given area, and not any notion of aggregate income. This can be as small as a single neighborhood block. And lest we forget the Ameritech cable experience, should AT&T find that all or even part of a given "service area footprint" isn't working out for them financially nothing in statute prevents them from ceasing operations there.

These are just a very few of the concerns Comcast has with SB449. I thank you once again Senators for your invitation to speak today, your kind indulgence, and your consideration of my remarks. I am happy to respond to any questions you may have, either now or at an appropriate future time.



February 7, 2006

TO: Senate Committee on Commerce
FROM: Mayor Michael Copeland, Mayor of Olathe
SUBJECT: Opposition to SB 449

The City of Olathe and the Olathe City Council fully support cable television competition in our community. We were most pleased to enter into a franchise agreement with a second provider for cable services, and we will sit down immediately to enter into other such agreements with other providers if asked. In fact, we will provide the exact language in our current franchise agreements for signature as soon as it is requested.

In principal, the city opposes undermining local ability to determine how the public right of way is managed. However, we are very concerned about any type of statewide franchise agreement that does not include a reasonable build-out requirement.

This provision is essential to ensure true competition for cable television, rather than government subsidized competition in select areas of the city. Without a reasonable build-out requirement, there is absolutely no assurance a cable provider will offer their services to more then a handful of residents.

In fact, it would stand to reason that cable rates in areas with competition would be reduced. It would further stand to reason that the remaining residents would neither have cable choice nor reduced rates. However, there is not a way to prevent current providers from raising rates in areas without competition to subsidize the lowered costs in areas with competition.

The city believes the public right of way is owned by every resident of the city. As such, each resident, within reason, should expect to have the opportunity to enjoy services provided by companies profiting from using that land.

A potential cable provider may provide verbal assurance that they will provide services to an entire community. However, those assurances should be required in writing. There is nothing to prevent a company from entering a community intent on offering the service to all resident, only to make a business decision to only offer the service to a select demographic. In addition, there would be nothing to require providers to maintain infrastructure in areas where the percentage of customers is lower then their business model mandates.

SB 449 also raises questions about government and education access channels positioning on the services as well as costs for upgraded equipment.

Senate Commerce Committee

February 7, 2006

Attachment 116-1



TESTIMONY IN OPPOSITION TO SENATE BILL NO. 449

To: Members of the Senate Commerce Committee

From: Michael A. Boehm, Mayor
Eric Wade, City Administrator

Date: February 7, 2006

RE: Senate Bill 449 – Video Franchising

Thank you for the opportunity to appear before you today in opposition to Senate Bill 449. The City of Lenexa wholeheartedly supports video competition. In fact, becoming a communication and technology city of choice for businesses and residents has been a longstanding goal of the City initially set forth over 8 years ago in *Vision 2020*, the City's strategic planning document adopted in August, 1997. Of equal importance, however, is the City's responsibility to effectively manage its rights-of-way so as to ensure that video service providers are allowed access to the rights-of-way in a fair and evenhanded manner and that other users of the right-of-way are not unduly inconvenienced by their presence. Moreover, local video franchising ensures that the needs of the local community are met and that local customers are protected. The measure before you today would, at best, undermine and, at worst, completely eliminate the ability of the City to uphold these important responsibilities to its citizens. We believe that greater video competition can be achieved under the current system of regulation and that SB 449 is unnecessary and simply creates another level of regulation that benefits new entrants to the video industry at the expense of cities, consumers and cable companies.

You will hear from proponents that, without this bill, effective deployment of video service will be impossible due to the need to obtain franchises from over 600 cities in Kansas and that issuance of a statewide franchise is the only way to ensure that deployment can occur. This assertion is interesting for three reasons:

- (1) AT&T has no intention of deploying IP Video to every city in Kansas. In fact, USA Today reported that, in a presentation to investors in November of 2004, AT&T (then SBC) indicated a plan to serve only 90% of "high-value customers" (those who spend \$160 - \$200 per month on telecom and entertainment services) and 70% of medium-value customers (those who spend \$110 - \$160 per month on such services), which accounts for only 65% of AT&T's current telephone customers. (See Leslie Cauley, *Cable, phone companies duke it out for customers*, USA Today, May 22, 2005, available at http://www.usatoday.com/money/media/2005-05-22-telco-tv-cover-usat_x.htm (visited February 5, 2006)). Why should Kansas provide AT&T with a statewide video franchise, when it has no intention of providing statewide video service?
- (2) Because of competitive neutrality requirements that cities are subject to and because cities do want competition and more choices for their citizens, the process of obtaining a video franchise from cities would be quick and painless IF AT&T were willing to accept the same terms and conditions in a franchise that the incumbent cable companies operate under, rather than seeking special treatment.

- (3) And last, SBC/AT&T already has franchises to provide telephone services throughout Kansas. So the process really isn't that burdensome.

Lenexa has first hand experience in this matter. In fact, Lenexa was approached by SBC in the summer of 2005 about its desire to deploy Project Lightspeed, which includes IP Video, in the City. SBC presented a Public Benefit Agreement to provide for the deployment, which included an offer to pay a fee to the City, but no other "franchise-like" commitments. The City repeatedly offered its standard video franchise to SBC, but SBC refused, although company representatives did negotiate with the City for several months on the terms of the alternate Agreement. The City was not able to agree to the terms of such an Agreement because SBC was unwilling to agree to commitments on important matters such as build out, customer service, emergency broadcast and service to public buildings. However, the City did not wish to delay the deployment of Project Lightspeed to its citizens and so, on December 20, 2005, Lenexa passed an ordinance granting SBC the City's standard video franchise. The franchise was subject to SBC's acceptance to the terms thereof within 30 days after publication, by January 27, 2006. SBC did not file an acceptance to the terms of the video franchise, and as such, it became null and void at midnight on January 27, 2006.

Like the Agreement that SBC presented to the City of Lenexa last summer, SB 449 contains no real commitments:

- It purports to preserve the franchise fee by allowing cities to charge up to 5% of "gross receipts" for use of the rights-of-way, but defines gross receipts very narrowly and permits the disproportionate application of package discounts to the video segment of any bundle of services.
- It contains no customer service requirements and in fact, specifically preempts cities from requiring any level of customer service for its citizens.
- It has no requirement that video providers carry local, state or federal emergency alerts.
- It does not prevent discrimination against customers, or potential customers, on the basis of age, sex, race or economic status.

These are just a few of the things that a local franchise will provide its citizens. Without the local franchising mechanism, cities will be powerless to ensure its citizens receive quality video service even though providers will be utilizing the public right-of-way to provide that service.

The City of Lenexa urges your opposition to SB 449 or any legislative proposal that would preempt local elected officials from addressing these issues of local concern. Please do not hesitate to contact Mayor Boehm (913/477-7550 or mboehm@ci.lenexa.ks.us) or me (913/477-7552 or ewade@ci.lenexa.ks.us) if we can answer any questions or provide you with any additional information. In addition, you may contact Senior Assistant City Attorney Beccy Yocham (913/477-7628 or byocham@ci.lenexa.ks.us), who is the City staff member responsible for franchising and right-of-way management issues. Thank you for your consideration.



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Testimony Before The
Senate Commerce Committee
Regarding
Senate Bill 449
Presented by Michael R. Santos, Senior Assistant City Attorney
February 7, 2006

On behalf of the City of Overland Park, thank you for the opportunity to appear today in opposition to Senate Bill No. 449.

Senate Bill No. 449 establishes a statewide franchise for "video service providers." The concept of a statewide franchise effectively denies local governments the essential ability to interact directly with service providers who occupy the public right-of-way and provide services to local citizens. While Senate Bill No. 449 addresses certain issues related to private companies utilizing the public right-of-way it either fails to address other important issues or specifically prohibits local governments from addressing those issues. In addition, this legislation creates an inequity between current users of the public right-of-way and the "video service providers."

While Senate Bill No. 449 does provide a mechanism for local governments to recover a gross revenue fee from "video service providers" the bill prohibits local governments from the use of any other revenue calculation method. By combining this revenue limitation with a statewide franchise, local governments are unable to react to technology developments and trends that will in time inevitably result in revenue stream changes.

The proposed legislation not only removes local governments from the interactive process necessary to insure proper, effective and economical provision of video services, it specifically prohibits local governments from requiring such fundamental services as "build out" requirements. Without the ability to require fair and uniform "build out" requirements, providers will "cherry pick" those areas of local communities that the provider believes will generate the greatest revenue and leave the remaining areas of the community without service. It also seems improper and some might argue illegal to permit a "video service provider" to pick and choose service areas while providers subject to the Cable Act are required to comply with uniform "build out" requirements.

Senate Bill No. 449 represents an attack on the ability of local governments to establish meaningful legal relationships with service providers in the public right-of-

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way. The franchises that local governments enter into pursuant to K.S.A. 12-2001 et.seq. represent an agreement between the provider and the community. By transferring this legal franchise relationship to the State, local governments are unable to effectively regulate and manage issues that arise with service providers in their local communities. The language of Senate Bill No. 449 does not create a mechanism for the State as the franchisor to remedy issues that arise in local communities across the state. Even if the proposed legislation included such language, it is unlikely the State would be willing to fund and staff the resources necessary to address such issues. Without the legal framework of a franchise to work within, local governments will be forced to rely upon criminal prosecution and injunctive relief to resolve issues currently managed through the franchise relationship.

For the above reasons, the City of Overland Park respectfully urges the Committee to vote against passage of Senate Bill No. 449.

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TESTIMONY IN OPPOSITION TO SB 449
Damon Porter: Time Warner Cable
Senate Commerce Committee
February 7, 2006

Madam Chair, Members of the Committee, thank you for the opportunity to submit for the record our **opposition** to Senate Bill 449 as introduced.

INTRODUCTION

Time Warner Cable provides video, high speed data, and digital and wireless phone service to over 570,000 homes in 56 communities in the Kansas City metropolitan area. Our company employs nearly 1,000 professional and technical people locally, pays cities more than \$8 million annually in franchise fees, contributes over \$4 million annually in free services to schools, libraries, and community organizations, and supports "family friendly" programming and a dedicated family tier. Time Warner Cable has invested over \$100 million in Kansas City in the last ten years, enhancing technology and availability **without receiving one dollar of government money, tax incentives, or special regulation.**

Time Warner Cable does not oppose a review of how franchises are awarded or how cable systems are regulated. Any reform of the current process should have limited regulation in mind. Senate Bill 449, however, establishes an unfair, unlevel playing field for incumbent video providers while granting special treatment to traditional telephone companies, such as SBC/AT&T, and other (VSA) video service authorization grantees.

VIDEO COMPETITION EXISTS AND CUSTOMERS HAVE CHOICES

In every municipality, there are already at least three and in some instances, four video providers offering the public a choice of options and services. Federal law requires that every franchise granted by a municipality must be non-exclusive, prohibiting a monopoly of one cable provider. This provision guarantees the right of municipalities to provide a competitive choice to consumers.

Traditional telephone companies, such as SBC/AT&T, have the ability and opportunity to enter an already competitive market today—they simply need to apply. In the city of Lenexa, Kansas (a suburban community in the Kansas City metropolitan area) where Time Warner Cable and three other providers currently offer video service, **SBC/AT&T rejected an expedited franchise passed by the city council.** The franchise offered maintained a level playing field; requiring SBC/AT&T, Time Warner Cable, and Everest all to operate under the same set of rules.

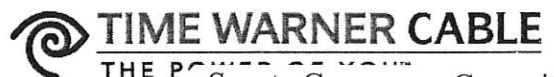
SENATE BILL 449 JEOPARDIZES COMMUNITY BENEFITS AND CONSUMER PROTECTION

As SB 449 is currently written, many community benefits that consumers enjoy will be threatened. There is no requirement that telephone companies or other VSA grantees entering the video marketplace provide (PEG) public, educational, and government channels. Video service authorizations do not require local programming or schools and libraries receive free cable and high speed Internet the same way Time Warner Cable does.

Senate Bill 449 does not protect consumers with standards on customer service or construction build-out and completion timelines. Senate Bill 449 would allow SBC/AT&T and other VSA grantees to decide what neighborhoods it will serve without any public comment or oversight. Senate Bill 816 promotes redlining based on a consumer's income status or geographic area.

CONCLUSION

The current franchising structure has been in place for many years and is being reviewed at the Federal level. Any bill considered by this Committee should ensure that similar services be regulated in a similar manner. Time Warner Cable respectfully recommends that this Committee consider the unintended consequences that will occur if Senate Bill 449 becomes law.



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Attachment 19-1



League of Kansas Municipalities

To: Senate Commerce Committee
From: Kimberly Winn, Director of Policy Development & Communications
Date: February 7, 2006
Re: Opposition to SB 449

Thank you for the opportunity to appear before you today on behalf of the 576 member cities of the League of Kansas Municipalities (LKM). Because SB 449 alters the current law with regard to the franchising of cable and video service providers, this bill is of tremendous interest to cities in Kansas. While we believe that there has not been a demonstrated need to change the current law in this area, we offer the following issues of concern for your consideration should you go forward with this or similar legislation.

1. **Loss of a Local Agreement Regarding Right of Way.** The franchise represents a type of "contract" between cities and providers. As written, SB 449 would prohibit such agreements. At a minimum, we believe that cable and video service providers should execute an agreement with each city within which they intend to provide services. We recommend an amendment to New Section 3(c)(5) as follows:

"Impose any other franchise requirement, except that each city may require a video service provider to execute the following agreement:

[Video service provider name] understands that the City of [Name of City] has a local right of way management ordinance. [Video service provider] hereby agrees to comply with all requirements of the local right of way management ordinance. In addition, [Video service provider] agrees to provide [City] direct contact information and to information [City] within 15 days in the event that such contact information changes."

2. **Community Programming.** While SB 449 says that a video service provider will provide "feasible" community programming, we believe that the bill needs to specify that such community programming is not to be considered when satisfying the 5% gross receipts requirement. We recommend an amendment to New Section 4, (e) to add the following:

"(6) any valuation on community programming."

3. **Red-Lining.** Many franchise agreements include provisions regarding "build-out" and red-lining of communities. In its current form, SB 449 preempts such provisions.

LKM opposes this preemption and requests that New Section 3(c)(4) be removed from the bill.

4. **Revenue Stream.** SB 449 currently allows for cities to establish the percentage of gross receipts and that amount is distributed directly to cities. This provision of the bill is absolutely necessary in order to maintain a local revenue stream and meet the requirements of the State Constitution regarding payment for use of the public right of way. We are, however, concerned with two of the exclusions from the definition of "gross receipts" in the bill. The bill excludes discounts, refunds and other price adjustments...and certain bundled charges (See New Section 4(e)(1)&(5)). We understand that companies are looking to bundle various services for marketing purposes. However, it is important to address these sections so that a company is not authorized to bundle services such that the video service is valued at nothing. For example, a company could bundle together video services and Internet access for \$49.95 a month. Because there is no franchise fee for Internet access, the company could offer the video service for "free" with the purchase of Internet access, and thereby avoid paying franchise fees altogether. One city has addressed this issue in the following manner and we would recommend amendments to New Section 4(e)(1) and 4(e)(5) as follows:

"(1) Discounts, refunds and other price adjustments that reduce the amount of compensation received by a video service provider, provided that any such reduction shall not be applied disproportionately to the video segment of any package of products that is offered to subscribers."....

(5)Charges, other than those described in subsection (d) of this section, that are aggregated or bundled with amounts billed to video service subscribers, provided that any such bundling shall not be applied disproportionately to the video segment of any package of products that is offered to subscribers."

5. **Audit.** SB 449 requires the city to pay for any audit that would need to be performed. Currently, audits are handled in a variety of manners across the state. Some cities pay for the audits, some require the company to pay for the audit, and some split the cost of the audit. LKM is requesting that the cost of the audit be shared between the company and the city. We recommend an amendment to New Section 4(f) as follows:

"At the request of a city, no more than once per year, the city, ~~at its sole expense,~~ may perform a reasonable audit of the video service provider's calculation of the video service provider fee. The cost of such audit shall be apportioned equally between the city and the service provider."

Testimony

Unified Government

Public Relations

701 N. 7th Street, Room 620

Kansas City, Kansas 66101

Mke Taylor, Public Relations Director
913.573.5565

Don Denney, Media Relations Specialist
913.573.5544

**Senate Bill 449
Video Competition Act**

**Delivered February 7, 2006
Senate Commerce Committee**

The Unified Government of Wyandotte County/Kansas City, Kansas opposes Senate Bill 449.

The bill as proposed erodes the ability of local governments to regulate and control use of the public right-of-way through the traditional franchise agreement. If AT&T is successful in avoiding a "signed contract" with the local communities in which it does business, competitive providers will also want to avoid signing franchise agreements. In fact, the bill calls for the end of franchises in the future. This erosion of local control is a negative for citizens who expect their local government to look out for their best interests.

SB 449 also raises troubling issues regarding service to all citizens. SB 449 prohibits any requirement that AT&T "build-out" its systems to serve all neighborhoods in a community. The concern that AT&T will "cherry-pick" customers, providing service to the most affluent neighborhoods while avoiding lower-income neighborhoods, is of particular concern in Wyandotte County. AT&T representatives have said they do not plan on "cherry-picking." That being the case, why does SB 449 pre-empt build-out requirements?

SB 449 as it is now drafted pre-empts local regulation and erodes local control. For those reasons, the Unified Government must oppose the legislation.

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February 7, 2006

Attachment 21-1



From: "David Norlin" <davidnor@sbcglobal.net>
To: "Senator Jim Barone" <barone@senate.state.ks.us>, <brownlee@senate.state.ks.us>, <emler@senate.state.ks.us>, <jordan@senate.state.ks.us>, <reitz@senate.state.ks.us>, <schodorf@senate.state.ks.us>, <wagle@senate.state.ks.us>, <wysong@senate.state.ks.us>, <kelly@senate.state.ks.us>
Date: 2/6/2006 3:13 PM
Subject: Message re SB 449 from Vice President of Salina Access TV Board

Dear Senators of the Commerce Committee,

I will not be able to be in town to testify tomorrow regarding SB449, but David Hawksworth, our director of Access TV Salina, will. He will ably lay out to you some reasons the bill should be soundly rejected. Here, however, is my brief statement explaining its dangers from local citizens' perspectives.

A "video provider" is not merely a "video provider." Video can be entertainment, news, or other content, but it deeply influences how we perceive the world. A "video provider" is not a "video channel," which provides a means for the citizenry to openly discuss and present ideas, the heart of a free society. It is merely a "provider," which asks only that you watch--and participate only as a consumer of others' goods and ideas, not as an active citizen.

At the least, providers should also provide channels. If they use public domain including the airspace around us, a part of the public commons, they must at least negotiate with local governments for that right--and provide a means of citizen expression in the process. A vote for this bill is a vote against the citizenry.

Consider this from the organization Free Press, which examines such bills from both a state and national perspective, especially #3 on Kansas. (More at <http://www.freepress.net/defendlocalaccess/=threat2>)

1. Eliminating the local franchising process.

Telecom Companies, as they deploy new fiber, want to provide television services over this cable in addition to phone and Internet access. But present law often demands that because of their intent to provide video programming, this means they need to obtain local franchises to do this. Their solution? Propose laws that eliminate local franchises in favor of state-level, blanket franchises that last for decades. Local communities are taken completely out of the picture that way. Should they succeed, in addition to freeing themselves of old constraints, Big Telecom puts pressure on the U.S. Congress to pass similar legislation.

Cable companies have not supported these laws - yet - only because they fear the competition of Big Telecom. It's understandable: cable companies have spent a great deal of time and money negotiating their franchises, and they have no intentions of allowing a new player to easily slip onto the playing field. But it's only a matter of time before a consensus is reached between Big Cable and Big Telecom, at which point they together will be a very difficult force to reckon with.

2. Chipping away at the negotiating power of local communities.

Other bills mandate that cities can only request a small number of local access stations or limit the franchise fees cable providers pay to localities. Addressing the entry of satellite services into a community, cable companies complain of the need to "level the playing field" - but the way they do so is exclusively to eliminate local protections.

Bills that seek to limit or cut franchise fees incumbent providers pay to communities are often posed as potential savings that will be passed on to local residents, but the reality is that if local cities don't raise this money via these franchise fees, everyone's taxes - including those not wired for service by the incumbent - will rise to make up the difference. These are really "tax hikes" in disguise!

3. About Kansas and SB449, specifically.

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The legislators' three main principles:

.Recognize and Reaffirm the Role of States and Localities in the Video Franchising Process.

"The regulation of video services under Title VI relies upon a type of 'deliberately structured dualism' where state and local authorities have primary responsibility for administration of the franchising process within certain federal limits. Because each community may be unique, this framework recognizes that the local franchising authority is uniquely positioned to ensure that video providers meet each community's needs and interests in a fair and equitable manner, and are most effective in seeing that provider obligations are enforced. The Federal government has neither the resources nor the expertise to address such issues.

"Consistent with existing law, state or local franchise authorities should retain the authority to supervise rights-of-way use and recover the associated costs, to require the payment of a reasonable franchise fee, and to require sufficient outlets for local expression and appropriate institutional network obligations."

.Promote Competition by Facilitating Speedy Entry on Fair Terms.

"Video Franchise Reform should promote competition in video services. Obstacles to reform that result in unnecessary procedural delay should be eliminated. If the current process results in unnecessary delay, procedural timetables could be established to ensure a decision by the relevant franchising authority by a date certain.

"Nevertheless, the desire for a process facilitating swift entry should not result in a blank check for would-be competitors. Instead, franchising authorities must ensure that similar (though not necessarily identical) responsibilities attend to any would-be franchisee, so that consumers throughout the franchise area can enjoy the benefits of such services on a non-discriminatory basis."

.Promote Competitive Neutrality and a Level Playing Field.

"The regulatory regime should be the same for providers of video services where the operator, and not the consumer, controls the video content offering. Definitional arbitrage on the basis of a particular technology should not be permitted.

"The franchising process should be designed to promote fairness for consumers in local communities and to promote a level playing field for providers. If a competitive entrant negotiates better terms and conditions for a franchise, other providers in that community should be entitled to adopt those same terms and conditions."

CC: <brungardt@senate.state.ks.us>

This bill, like so many others, seeks to make the state the franchising authority for new video providers. PEG programming is clearly put at risk, with the barest requirement for video providers to "provide distribution capacity and make reasonable, technically feasible efforts to retransmit community programming, but shall not be subject to any requirements" under the section of the Communications Act that outlines how local franchises can enforce PEG requirements. New service providers need only provide localities 10 days notice to provide service.

Franchise fees are effectively cut by this bill. Institutional networks are no longer applicable. No build-out requirements are to be applied. While localities can retain control over construction activities of new providers, customer service standards are no longer something localities can negotiate, nor are "lifeline" level price agreements. Localities also have no say in approving local transfers of ownership, one of the opportunities where communities can have negligent service corrected.

Thank you, Senators, for considering this issue, and for your service to Kansas citizens!

Sincerely,

David Norlin

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Salina, KS 67401

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P.S. If time allows, here are 2 US Senators' statement on National Principles of Video Franchise that must be preserved in Kansas.

Burns, Inouye Team on Video Franchise Principles

By John Eggerton -- Broadcasting & Cable, 2/2/2006 4:44:00 PM

Ranking Senate Commerce Committee member Conrad Burns (R-Mont.) and Co-Chairman Daniel Inouye (D-Hawaii) have released a "series of principles" they say are "essential" to any video-franchising reform legislation.

Essentially, they are backing streamlining the process, with the caveat that state and localities must not be stripped of their authority; that terms for new entrants, like cable video, should be essentially the same as for incumbents; and that the playing field should be technologically neutral, or as they put it: "Definitional arbitrage on the basis of a particular technology should not be permitted."

Telephone companies like Verizon and SBC are pushing hard for changes to state and federal law that will free them from the time-consuming local-franchise negotiating process, arguing that the government has a compelling interest in doing so in order to speed the rollout of broadband and price and service competition to cable.

Barbara Kasoff
 Cofounder, Vice President and COO

Coalition Partners

- American Women in Radio and Television
- Association for Women in Communications
- Association of Women's Business Centers
- Black Women Enterprises
- Boardroom Bound
- Business Women's Network
- Enterprising Women
- Euro-American Women's Council
Europe - Greece
- Financial Women International
- Hispanics Impacting Public Policy
- Kansas City Council of Women Business Owners
- National Associations for Female Executives
- National Association of Small Disadvantaged Businesses
- National Association of Women Business Owners
- National Business Association
- National Indian Business Association
- National Defense Industrial Association
- National Women Business Owners Corporation
- Native American Women's Business Council
- New Jersey Association of Women Business Owners
- San Francisco Small Business Network
- Small Business & Entrepreneurship Council
- Small Business Television Network
- UNIFEM / USA
- Women Construction Owners & Executives
- Women Entrepreneurs, Inc.
- Women Impacting Public Policy Florida
- Women Impacting Public Policy Pennsylvania
- Women in Technology International
- Women Presidents' Organization
- Women's Business Enterprise National Council
- Women's Leadership Exchange
- WorldWIT



January 30, 2006

Dear Senator Brownlee and members of the Senate Commerce Committee,

This letter is in support of SB449 in Kansas. Women Impacting Public Policy (WIPP) is supportive of legislation that encourages competition in the video technology market. Kansas now faces a choice of whether to take a positive step forward that will increase competition in the television and broadband delivery market, or to retain outmoded laws that limit competitive progress.

WIPP is the nation's largest bi-partisan public policy organization comprised of women business owners. According to our surveys, cost and access to technology are increasingly important to business owners. Further, we found that 63% of our members support lessening telecommunications regulation if it will increase the availability of new technology and widen consumer choice.

As a National Partner with WIPP and a Kansas small business owner for over 15 years, I not only represent WIPP's support, but also my own personal support for SB449. Through this legislation, government can strengthen small businesses, especially those owned by women and minorities. In short, all consumers of broadband and television will ultimately benefit from increased competition.

Sincerely,

Mary Leonida
 Mary Leonida
 Polaris Companies
 6901 Shawnee Mission Parkway, #222
 Overland Park, KS 66202
 913-262-1565

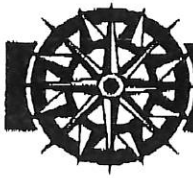
2709 W I-44 Service Rd, Oklahoma City, OK 73112 ~ 405.943.4474 ~ Fax: 405.606.4656
 48 San Antonio Place, San Francisco, CA 94133 ~ 415.434.4314 ~ Fax: 415.434.4331
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bkasoff@wipp.org
 Website: www.wipp.org

Senate Commerce Committee

February 7, 2006

Attachment 231

**KC-CWBO****Kansas City Council of Women Business Owners**

**A Letter of Support
Regarding Policy to Facilitate Fair and Increased Video Competition**

February 3, 2006

Senator Brownlee and Members of the Senate Commerce Committee:

The Kansas City Council of Women Business Owners (KC-CWBO) is very interested in policy that affects our members, and by extension, all small business owners in the state of Kansas. Specifically, we are supportive of Senate Bill 449 which will spur video competition for Kansans. There are two primary reasons for our support:

First, we believe that it is imperative for laws to promote competitive alternatives for customers in the field of technology. The fact that technology is changing very rapidly cannot be an excuse for the public living with a policy that does not encourage multiple providers in the marketplace. Our legislators should act in a timely manner on policy issues involving technology, specifically video, wireless and broadband communications.

Second, we also believe that public policy either facilitates competition or hinders it. The current situation in Kansas leaves its residents with less choice because current laws ensure less competition in the marketplace. This is bad for consumers and unhealthy for Kansas small businesses.

Therefore, we strongly encourage the Kansas State Legislature to allow greater competition for communications services (voice, video, data) by eliminating barriers created by outdated laws. We support policy that updates and renovates communications laws.

Sincerely,

Nancy Zurbuchen

Co-founder and Executive Director, Kansas City Council of Women Business Owners
(*KC-CWBO has members living and working on both sides of the state line in the KC metro area.*)

President, Motional Multimedia
209 N.W. 44th Street, Kansas City, MO 64116
816-452-4700

Senate Commerce Committee
February 7, 2006

Attachment 24-1