



May 19, 2003

Senate Committee on Commerce, Science and Transportation  
Washington, DC 20510-6125

Dear Chairman McCain, Senator Hollings, and Members of the Committee:

We thank the Committee for holding what we hope will be the first of several Congressional hearings to address cable competition, pricing, customer service and related issues. Local governments welcome the opportunity to share with the Committee our experience as cable regulators, public right-of-way managers, and community interest advocates. At the close of the May 6, 2003 hearing on Competition in the Market for Video Services, Senator Burns indicated that the record would be left open and that parties were welcome to offer comments. On behalf of the undersigned representative associations of local governments, we therefore submit this testimony for the record to provide the Committee with a ground-level assessment of how current rate regulation and competition policies are working, and to clarify the nature and importance of local governments' role in promoting competition and protecting cable and broadband consumers.

Local governments were disappointed that the Committee's hearing did not include a witness representing local governments, particularly since local governments are the government entities responsible for reviewing cable operator rate filings and approving or modifying cable operator selected rates as part of the federal rate regulation regime. Moreover, as the regulatory agency closest and most accessible to consumers, local governments receive daily input from subscribers regarding rates, billing and the general performance of cable operators and broadband service providers, and we work daily with these industries to resolve a wide range of consumer issues. Nevertheless, local governments renew our pledge to assist the Committee in any way we can to address the Committee's concerns as well as the cable issues outlined in our testimony.

We draw the Committee's attention to what we think is the primary explanation for the continued escalation in cable rates, namely, the lack of wireline competition for cable providers. Local governments have used their authority to promote competition and deployment, strengthen consumer protections, and facilitate viewpoint diversity and localism in video programming. In contrast, cable operators are using their market power to drive out video programming competitors, are refusing to run advertisements from DSL competitors on their cable systems, have attempted to infringe on the privacy rights of consumers, and are using exclusive contracts to deny competitors access to local origination programming. Contrary to the testimony of the

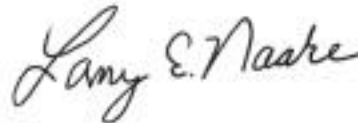
May 6th cable industry witnesses, there is no evidence that cable operators will limit rate increases if they obtain more control over cable programming through á la carte pricing or other forms of deregulation. We remind the Committee that cable operators used á la carte tiers in 1994 as a means of evading rate regulation. Without meaningful competition or effective rate regulation, the cable industry will not voluntarily lower rates.

Local governments also urge the Committee to consider additional oversight of the FCC. As implemented today, FCC rate regulation rules do not ensure reasonable rates, despite the continued congressional mandate to do so. Furthermore, we believe that misguided FCC interpretations and inaction have thwarted local government efforts to make effective use of the rate regulation process, such as it is. Finally, local governments are deeply concerned that if the FCC does not act to curb current market power abuses by incumbent cable operators, wireline competition for video programming and broadband service will be irreparably harmed. We urge the Committee to work with local governments to protect subscribers from unreasonable rates and to promote continued growth of wireline competition in a manner that respects the sovereignty, property rights and important regulatory role of local governments.


Sincerely,



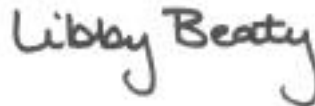
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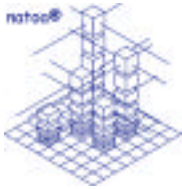
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**Congressional Testimony  
of the**

**NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS,  
NATIONAL LEAGUE OF CITIES,  
UNITED STATES CONFERENCE OF MAYORS,  
NATIONAL ASSOCIATION OF COUNTIES,  
AND TELECOMMUNITY**

**Media Ownership in Video Markets:  
The Case for Competition and Effective Rate Regulation**

**Before the Committee on Commerce, Science and Transportation  
United States Senate**

**May 6, 2003**

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**I. LOCAL GOVERNMENT CABLE FRANCHISING RESULTS IN MORE COMPETITION, GREATER BROADBAND DEPLOYMENT, AND BETTER CONSUMER PROTECTION FOR SUBSCRIBERS.**

**A. Local Franchising Benefits Cable Operators and Protects Local Communities and Subscribers.**

Local governments<sup>1</sup> grant cable franchises as a means of:

- Promoting deployment and competition;
- Protecting the public rights-of-way and the vital facilities located therein;
- Promoting localism and viewpoint diversity in video programming and ensuring that the future cable-related needs of the community will be met;
- Protecting subscriber privacy rights, enforcing consumer protection statutes, and ensuring compliance with customer service standards; and
- Maximizing the benefits and power of rate regulation to keep cable rates reasonable.

Through the franchising process, cable operators have obtained the special privilege to semi-permanently use and occupy the public rights-of-way with over one million miles of cable plant as a means to annually deliver almost \$50 billion worth of cable and other services to almost 69 million subscribers. In return, cable operators agree to comply with local government right-of-way regulations, construction standards, and customer service regulations; to provide rental compensation, both monetary and in-kind services and facilities; and agree to provide access channels and support for local public, educational and governmental (“PEG”) programming, as well as municipal institutional network facilities and support services.

**B. Local Franchising Promotes Broadband Competition and Deployment.**

Local governments grant incumbent cable operators and competitive broadband providers non-exclusive franchises to use public property to provide cable service and non-cable services.<sup>2</sup> Build-out schedules, system upgrade requirements, and anti-redlining provisions have long been among the core franchise conditions negotiated by local governments.<sup>3</sup>

A local government cable franchise regime – *i.e.*, operators and local governments negotiate franchise requirements, operators pay five percent franchise fees and provide PEG channel capacity and support, local governments enforce customer service standards and regulate

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<sup>1</sup> In a small number of states, franchising is performed by a state agency.

<sup>2</sup> Grants of exclusive franchises, rare in any case, were prohibited by the 1992 Cable Act. 47 U.S.C. § 541(a)(1). New entrants and incumbent cable operators are using new and upgraded systems to offer bundled combinations of video programming, Internet access, and telephone service to increase per subscriber revenues.

<sup>3</sup> See also 47 U.S.C. § 541(a)(3); 47 U.S.C. § 541(a)(4)(A).

rates – has been in place for more than seventeen years and it has been highly successful industry model. For example, as of June 2002:

- Cable plant reaches 97% of all households.<sup>4</sup>
- 80% of all cable plant has been rebuilt since 1996 to be capable of providing digital services.<sup>5</sup>
- There are approximately 16 million cable modem lines deployed,<sup>6</sup> reaching 50 million homes, and serving between 6.9 and 7.4 million subscribers.

In contrast, as of June 2002, ADSL<sup>7</sup> and other forms of broadband which have not generally been subject to local franchise fees, franchise build-out or anti-red-lining requirements have deployed only 6.3 million high-speed and advanced service lines to residences and small businesses, and serve between 3 and 3.3 million residential subscribers.<sup>8</sup>

### **C. Local Franchising and Regulation Protects All Right-of-Way Users.**

Cable operators are not the only users of the public rights-of-way. The public rights-of-way also contain millions of miles of telecommunications fiber, copper telephone wiring, electrical lines, and millions more miles of gas, water and sewer pipes and mains. Automobiles and mass transit, as well as pedestrians and bicyclists, rely on use of the public rights-of-way as well, often necessitating installation and maintenance of thousands of traffic control signals, cameras, and real time traffic camera links to web sites, cable systems, and public safety facilities. All told, the combined value of the public rights-of-way owned (or held-in-trust for public use) by local governments is over \$7.1 trillion.<sup>9</sup> And in most cases, it falls to local governments to exercise both proprietary and police powers to coordinate and manage these diverse and competing uses, protect all users from damages by other users, and to prevent waste or premature exhaustion of this valuable public asset.

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<sup>4</sup> *In re Annual Assessment of the Status of Competition in the Market For the Delivery of Video Programming*, MB Docket No. 02-145, Ninth Annual Report, 17 FCC Rcd 26,901, Table 1 (2002)(“*Ninth Annual Report*”), available at [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6513404824](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6513404824).

<sup>5</sup> *Ninth Annual Report* at ¶ 33.

<sup>6</sup> FCC Wireline Competition Bureau Industry Analysis and Technology Division, *High Speed Services for Internet Access: Status as of June 30, 2002* at Tables 1, 2 (Dec. 17, 2002) (“*June 2002 High Speed Report*”), available at <http://www.fcc.gov/wcb/stats.html> (9.2 million high-speed [200 kbps in one direction] and 6.8 million advanced service [200 kbps in both directions] lines).

<sup>7</sup> Asymmetrical Digital Subscriber Line service is faster in one direction, usually subscriber downloading, and is primary used to serve residential areas. Symmetrical DSL provides equal speeds in both directions is typically deployed to serve large businesses.

<sup>8</sup> *June 2002 High Speed Report* at Tables 3 and 4.

<sup>9</sup> TeleCommUnity, “Valuation of the Public Right-of-Way Asset,” March 2002, available at <http://www.telecommunityalliance.org/images/valuation2002.doc>.

**D. Local Franchising Promotes Local Programming, Viewpoint Diversity, and the Community’s Cable-Related Needs and Interests.**

Local governments negotiate with cable operators to obtain channel capacity on cable systems for the purpose of presenting primarily local, public, educational, and government access programming. Cable is the primary means of communicating with over 76% of all television households<sup>10</sup> and access channels are the primary means of ensuring that programming content is not exclusively controlled by the owners of these powerful communications systems. Access channels are used by a wide range of community groups to carry local community programming, educational K-12 programming and distance learning courses for students of all ages, federal and local government programming, emergency information alerts.<sup>11</sup> Local governments have also used the franchising process to bring Internet access to schools and to create municipal institutional networks (“I-Nets”) to support e-government initiatives. These institutional networks provide vital redundant telecommunications infrastructure. For example, some of the New York City communications infrastructure was destroyed in the September 11, 2001 World Trade Center attack, but the New York I-Net system rerouted signals as it was designed to do and continued to provide vital communications during the emergency crisis.

**E. Local Governments Enforce Customer Service Standards and Privacy Protections.**

Local governments have broad authority under federal and state law to protect subscriber privacy and to enforce customer service standards against cable operators.<sup>12</sup> Local governments use this authority to ensure that subscribers receive what they paid for at the level and quality of service advertised; as incentive to persuade cable operators to resolve service and billing complaints in a timely manner; and to make certain that subscriber privacy is protected to the fullest extent permitted under law.<sup>13</sup> The need to protect subscriber privacy becomes even more important as more broadband services are offered over cable systems.<sup>14</sup>

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<sup>10</sup> *Ninth Annual Report* at App. B, Table B-1. This table has been attached as an Appendix to this testimony.

<sup>11</sup> “Public, Educational and Governmental (PEG) access television channels on cable television systems serve a wide range of community groups including: the Lions, Kiwanis and Rotary Clubs, the League of Women Voters, NAACP, AARP, the Urban League, public schools, local Chambers of Commerce, religious institutions, colleges and universities, community theaters, labor unions, veterans groups, second language communities, the disabled, politicians, and political organizations. Additionally, PEG channels carry programming from NASA, the US Department of Education, the Organization of American States, Members of Congress, the National Guard, the US Army, the US Air Force, the Federal Emergency Management Administration (FEMA), the US Department of Housing and Urban Development (HUD), and various arts organizations such as Annenberg/CPB and Classic Arts Showcase.” Alliance for Community Media, “About Community Media,” available at <http://www.alliancecm.org/> (last visited 5/6/03).

<sup>12</sup> 47 U.S.C. § 551, 552.

<sup>13</sup> See e.g., Seattle, WA Ordinance No. 12775, available at [http://www.cityofseattle.net/cable/customer\\_service.htm](http://www.cityofseattle.net/cable/customer_service.htm) (customer service standards, customer credits and privacy policy) (last visited 5/6/03).

<sup>14</sup> See e.g., Christopher Stern, “Comcast Halts Tracking of Its Subscribers; Privacy Activists Had Criticized Practice of Collecting Data on Visits to Web Sites,” *Washington Post*, Feb. 14, 2002, at E4; Brigitte Greenberg, “Privacy Complaints Prompt Change in Comcast Web Policy,” *Communications Daily*, Feb. 14, 2002.

- **Cable Modem.** Congress empowered local governments to enforce “customer service requirements of the *cable operator*,” not merely requirements related to “cable service.”<sup>15</sup> Thus, regardless of whether cable modem service is classified as a cable, information or telecommunications service, local governments have authority to continue to require cable operators to comply with local customer service standards and consumer and privacy protections, regardless of the type of service offered.

#### **F. Local Government Rate Regulation Authority Is Limited.**

Real competition creates downward pressure on rates.<sup>16</sup> Local rate regulation has been used as a substitute rate restraint where there is no real competition to protect consumers from unreasonable rates. Unfortunately, as explained below, local government actions to ensure reasonable rates for subscribers have been stymied by illogical FCC rules, interpretations, and unreasonable rate-setting formulas.<sup>17</sup>

In addition, the effectiveness of basic rate regulation is hampered by the lack of regulation of other service tiers. For example, if a local government determines that an operator’s basic rate is more than what would be charged if a competitive market existed, the operator can simply charge more for the unregulated tiers, thereby ensuring that subscribers will continue to pay the unreasonable rate selected by the operator. As one operator bluntly stated:

If, during the appeal process and prior to a final decision by the FCC, Time Warner Cable is required to implement the Rate Order, it is our intention to provide the ordered customer refund during 1 billing period. It is also our intention to adjust our CPST Service tier price by a like amount during that 1 billing period. . . If the Rate Order is implemented, the only customers who will realize a net refund and/or reduction in total service price are those 2,930 customer subscribing only to basic service.<sup>18</sup>

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<sup>15</sup> 47 U.S.C. § 552(a). See Comments of Alliance of Local Organizations Against Preemption at 67-68, *In re Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, CS Docket No. 02-52, Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002), available at [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6513198533](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6513198533)

<sup>16</sup> Brigitte Greenberg, “Cable Prices Rise More Than Other Goods and Services,” *Communications Daily*, Jan. 15, 2002, at 6.

<sup>17</sup> For a fuller discussion of local government recommendations for rate regulation reform, see Comments and Reply Comments of National Association of Telecommunications Officers and Advisors, National League of Cities, Miami Valley Cable Council, Montgomery County, Maryland, and City of St. Louis Missouri, *In re Revisions to Cable Television Rate Regulations*, MB Docket No. 02-144, Notice of Proposed Rulemaking and Order, 17 FCC Rcd 16,803 (2002), available at [www.fcc.gov/searchtools.html](http://www.fcc.gov/searchtools.html), “Search For Filed Comments – ECFS,” Proceeding “02-144,” Filed on Behalf of “NATOA” ([Comments](#)) and “National Association of Telecommunications Officers and Advisors” ([Reply Comments](#)).

<sup>18</sup> “Time Warner Settlement Letter,” Letter from Gerald DeGrazia, Time Warner Cable, to Kent Bristol, Executive Director, Miami Valley Cable Council (Nov. 5, 2002), attached as Exhibit B, Attachment 14 to *Errata to Opposition to Appeal of Local Rate Order, Time Warner v. Miami Valley Cable Council* (filed Dec. 6, 2002), available upon request.

## **II. CABLE INDUSTRY DEREGULATION HAS LED TO LESS COMPETITION, NOT LOWER RATES.**

Cable rates continue to rise unreasonably because cable incumbents lack viable wireline competitors, not, contrary to the claims of the cable industry, because programming costs continue to rise. In the past, cable operators used their control over à la carte tier pricing as a means to charge more, not less, per channel. Today, consolidated cable behemoths are using ownership control of sports and news programming, predatory pricing tactics, and geographic rate discrimination as means to drive out wireline competition. Cable operators should be held accountable for their attempts to evade current rate regulations, not rewarded with further deregulation.

### **A. Expanding Cable Operator Control of Programming Is Unlikely to Reduce Cable Rates.**

#### **1. Cable Operators Historically Used À La Carte Pricing to Evade Rate Regulation.**

In 1994, the initial cable rate regulation rules exempted single-channel “à la carte” offerings. Operators began offering à la carte channels on a single and à la carte tier package basis. The single channel price, however, was so high that it only made sense to purchase à la carte channels as a tier package. However, because each channel in the à la carte tier was technically available as a single à la carte channel, cable operators claimed that the à la carte tier package was not subject to rate regulation (as other programming tiers were). On an ad hoc basis, the FCC permitted this à la carte tier arrangement so long as six or fewer channels were packaged together.<sup>19</sup> Ultimately, the FCC found no sufficient justification for the tier restructuring “other than to avoid rate regulation.”<sup>20</sup> Despite this finding, however, the FCC neither prohibited this evasion, nor sanctioned the operators for trying to avoid compliance with rate regulation rules.

The unfortunate consequence of the FCC response is that it creates an implicit incentive for cable operators to aggressively interpret the rate rules to their benefit. For example, an operator with 10 million subscribers manipulates a rule interpretation to add an additional ten cents per month to every subscriber bill. In one year, the rate manipulation has generated \$12 million. Even if the ten-cent addition is denied by a local government in a large jurisdiction with 200,000 subscribers, and the FCC rules on appeal that the ten-cent charge was unlawful, at worst, the operator would have to refund \$240,000 to the 200,000 subscribers. But it will likely keep the other \$11 million it unlawfully collected from other subscribers because the FCC is not

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<sup>19</sup> See, e.g., *In the Matter of Adelpia Cable Partners, L.P., South Dade County, Florida, Letter of Inquiry*, Memorandum Opinion and Order, 9 FCC Rcd. 7781 (1994) (rejected justification where 32 channels were placed on an “à la carte” tier, although operator was not sanctioned for the attempted evasion).

<sup>20</sup> *In re Comcast Cablevision of Tallahassee, Florida, Letter of Inquiry*, Memorandum Opinion and Order, 9 FCC Rcd 7773, ¶ 15 (1994); *aff’d by full Commission, In re Comcast Cablevision of Tallahassee, Florida, Application for Review*, Memorandum Opinion and Order, 11 FCC Rcd 1246 (1995).

going to assess a separate fine or make the FCC Order apply beyond the jurisdiction that issued the challenged Rate Order.

## 2. **À La Carte Pricing Could Result in Channel Substitution, Not Lower Rates.**

Cable operators cannot offer every channel on an à la carte basis. Operator-owned programming interests may affect decisions as to which channels will be offered as part of a package or as an à la carte channel. Congress should be concerned about channel substitution. For example, assume in New York City that Cablevision agrees to carry YES Network, drop ESPN from its expanded-tier programming, and make ESPN available as a separate à la carte channel. If there are no substantial savings in programming costs between YES and ESPN, or if programming cost savings are not passed onto subscribers, then the subscriber who did not want sports programming would see no price reduction, and the subscriber who wanted ESPN will have to pay the same price to receive ESPN-less programming or a larger price to receive the same programming with ESPN.

### **B. Cable Operators Have Not Presented Verifiable Programming Cost Data.**

Verifiable programming cost and revenue data is needed to evaluate the impact of programming costs on cable rates. Notwithstanding the fact that a Justice Department investigation and an informal SEC inquiry related to the accuracy of operator-reported data are currently pending,<sup>21</sup> Congress should require the cable industry to provide specific information about all channel programming costs, programming launch fee revenue, and corporate allocation of volume discounts.

- **Actual Programming Costs.** Cable operators submit only their basic tier channel programming costs to local governments as part of the rate regulation process and do not routinely submit any programming costs to the FCC. Thus, cable operators do not disclose to any regulatory body what they are paying for most of their programming.
- **Accounting Treatment of Launch Fee Revenue.** Cable operators receive substantial “launch fees” from programmers – *i.e.*, fees for adding new channels to cable systems, for advertising new channels on existing channels, in program guides, on or with subscriber bills, and for other channel launch-related services – but do not uniformly treat them as programming revenues which offset total programming costs.
- **Allocation of Volume Discounts.** Cable operators often delay or refuse to comply with local government requests to disclose terms of their programming contracts, thus making it difficult to determine how volume discounts are allocated. In at least one instance, franchise-level *reported programming costs were greater than the*

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<sup>21</sup> Riva D. Atlas and Geraldine Fabrikant, “Large Cable Operator to Restate its Results for 2000 and 2001,” *New York Times*, Nov. 20, 2002, at C1.

***operator’s actual costs*** because the operator negotiated volume discounts for programming, but charged its local franchises as if no discount had been obtained, booking the difference as profit for the corporate parent. According to the 2001 Annual Report Comcast filed with the SEC:

“[O]n behalf of the company, Comcast secured long-term programming contracts . . . Comcast charged each of the Company’s subsidiaries for programming on a basis which generally approximated the amount each subsidiary would be charged if it purchased such programming from the supplier . . . and did not benefit from the purchasing power of Comcast’s consolidated operations.”<sup>22</sup>

### **C. The Effect of Programming Cross-Ownership Remains Unknown.**

Without actual programming cost data, it is also difficult to evaluate what effect cable operator cross-ownership of programming networks has had on increases in programming costs and cable rates. Cable operators could be recovering programming fees from subscribers, while also benefiting from fee increases through their programming network ownership agreements. The FCC reported:<sup>23</sup>

- Combined, four of the top six cable operators hold ownership interests in 72 of 92 satellite-delivered programming networks.
- AOL Time Warner has an ownership interest in 39 networks, *i.e.*, 13% of all national programming networks.
- Cox has an ownership interest in 25 networks, *i.e.*, 8% of all national programming networks.
- Comcast has an ownership interest in 9 networks, *i.e.*, 3% of all national programming networks.
- Cablevision has an ownership interest in 5 networks, *i.e.*, 2% of all national programming networks.
- Liberty Media has an ownership interest in 41 networks, or 13% of all national programming networks.
- Comcast has an ownership interest in several regional sports programming channels, and sports programming has been cited as major source of programming fee increases.

Local governments urge the Committee to take steps to protect subscribers from potential abuses of à la carte pricing, to ensure transparent and equitable accounting treatment of programming costs and revenues, and to investigate how cable operator cross-ownership of programming affects subscriber rates.

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<sup>22</sup> See Comcast Cable Communications, Inc., *Form 10-K Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 For the Fiscal Year Ended December 31, 2001*, at 42 (filed March 29, 2002) available at <http://www.sec.gov/Achives/edgar/data/1040573/000095015902000190/cable10k.txt>.

<sup>23</sup> *Ninth Annual Report* at ¶ 135.

### **III. WITHOUT WIRELINE COMPETITION, CABLE RATES WILL CONTINUE TO RISE.**

In separate studies, both the GAO and the FCC found that cable rates are lower in areas where competing cable service is available from a second wireline provider than in areas where there is no wireline competition. The GAO study found cable rates to be 17% lower, and the FCC found rates were 8% lower, where a second wireline competitor exists.<sup>24</sup> However, according to the FCC, only 2% of the 33,246 cable community units have competition from more than one wireline provider.<sup>25</sup> The seven largest cable operators, which account for 83.8% of all cable subscribers,<sup>26</sup> are incumbents that do not compete against each other. The largest of these is Comcast with over 21 million subscribers, and the seventh largest is Mediacom with 1.5 million subscribers.<sup>27</sup> In contrast, the three largest competitive cable providers,<sup>28</sup> which compete in the same markets against the largest cable operators, are RCN with 426,700 subscribers, WideOpenWest with 310,000, and Knology with 124,700.<sup>29</sup>

#### **A. DBS Service Does Not Constrain Cable Rates.**

Both the GAO and FCC have determined that the provision of DBS service does not have any effect on cable rates.<sup>30</sup> The National Cable Television Association (“NCTA”) submitted statements to the FCC stating that market power is restrained to the extent that there are competitive alternatives available to which customers could turn if a cable operator attempted to raise its prices.<sup>31</sup> Local governments offer the following factors as possible explanations as to

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<sup>24</sup> United States General Accounting Office, *Telecommunications Issues in Providing Cable and Satellite Television Service*, Report to the Subcommittee on Antitrust, Competition, and Business and Consumer Rights, Committee on the Judiciary, U.S. Senate, at 9, GAO-03-130 (2002) (“*GAO 2002 Study*”), available at <http://www.gao.gov/cgi-bin/getrpt?GAO-03-130>, *In re Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment*, MM Docket No. 92-266, Report On Cable Industry Prices, 17 FCC Rcd 6301, Table 6 (2002) (“*2002 Cost Report*”). This table has been attached as an Appendix to this testimony.

<sup>25</sup> *Ninth Annual Report* at ¶ 115.

<sup>26</sup> *Ninth Annual Report* at App. B, Tables B-1, B-3. Comcast and AT&T are counted as a single operator. The combined percentage of AT&T, Time Warner, Comcast, Charter, Cox, Adelphia, Cablevision, and Mediacom’s share (64.16%) of all MVPD subscribers (89,890,641) equals 57,673,835, which is 83.8% of 68.8 million cable subscribers.

<sup>27</sup> *Ninth Annual Report* at App. B, Table B-3. Comcast’s share of 89,890,641 MVPD subscribers is the sum of AT&T’s 14.75% plus Comcast’s 9.46% as reported in June 2002. Mediacom reported 1.76%.

<sup>28</sup> These cable providers or overbuilders prefer to be called “broadband providers” as they provide competitive video programming, Internet access, data and telephone services.

<sup>29</sup> *Ninth Annual Report* at ¶ 117. RCN reported 506,700 basic subscribers as of June 2002, but the FCC noted the current number of subscribers is 80,000 less due to a sale for cash in August 2002 of certain RCN systems in New Jersey. RCN Corp., “*RCN to Receive \$245 Million for Non-Strategic New Jersey Cable Systems*,” Press Release (Aug. 27, 2002). *Ninth Annual Report* at n.354 .

<sup>30</sup> *GAO 2002 Study* at 9; *2002 Cost Report* at Table 6. GAO also found that cable operators respond to DBS competition by adding more channels. *GAO 2002 Study* at 10.

<sup>31</sup> *Ninth Annual Report* at n.432.

why DBS does not present a true “competitive alternative” for the customer and thus does not restrain cable prices:

- **Non-Interchangeable Equipment.** Wireline competition may be more price competitive than DBS against incumbent cable service because it is easier for customers to switch between wireline competitors using cable modem and set-top boxes than it is for customers to switch between dish systems and cable boxes.
- **Provision of local channels.** In the GAO study, 47% of respondents cited the ability to receive local broadcast and cable channels from the same provider as a major reason for selecting cable, and DBS providers confirm that provision of local broadcast channels increases subscription rates.<sup>32</sup> Yet local broadcast channels are offered by DirecTV or Echostar in only 62 of 210 television markets and local channels are offered by both providers in only 41 markets. In addition, DBS does not carry local PEG programming.

**B. Consolidated Cable Incumbents Are Using Aggressive Marketing to Eliminate Wireline Competitors.**

Competitive broadband providers, including nascent cable system overbuilders, have complained of incumbent cable operators using aggressive marketing tactics – including deeply discounted introductory rates, *e.g.*, \$24.95 per month for 200 channels compared to \$77.90 per month in the neighboring community without wireline competition; cash bonuses, *e.g.*, \$200 to switch to the incumbent’s cable service and another \$200 to switch to the incumbent’s Internet service; and forgiveness of old debt owed by subscribers to the incumbent – to drive these small competitors out of the market entirely.<sup>33</sup> It is also unclear whether the neighboring community’s rates are being increased to offset the discounted price offered in the competitive neighborhood.

Although the reasons may not be clear, the results are: cable prices go down when there is wireline competition; cable prices do not go down when there is no wireline competition or when there is competition only from non-wireline providers. Any legislative attempt to reduce cable rates should focus on encouraging wireline competition. Any legislative reform of programming requirements should examine how cable operators may be using control of

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<sup>32</sup> *Ninth Annual Report* at ¶ 62. Echostar claims provision of local channels makes DBS service competitive with cable service. Sixty percent of DirecTV subscribers purchase the local channel package.

<sup>33</sup> See Comments of Scottsboro (Alabama) Electric Power Board (“SEPB”) in the *Notice of Inquiry* in CS Docket No. 01-129, at 5, Appendix B (Aug. 3, 2001) (“*SEPB Comments*”). In a surrounding community with no competition, the incumbent offered 150 channels for \$77.90. See also, *In re Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, CS Docket No. 01-129, Comments of Knology, Inc. to the Notice of Inquiry, 4-5 (filed late, Nov. 20, 2001); *In re Applications for Consent to the Transfer of Control of Licenses Comcast Corporation and AT&T Corporation, Transferors to AT&T Comcast Corporation, Transferee*, MB Docket No. 02-70, RCN Telecom Services, Inc., Written *Ex Parte* Comments in Response to Comcast (filed Aug. 27, 2002); *In re Applications for Consent to the Transfer of Control of Licenses Comcast Corporation and AT&T Corporation, Transferors to AT&T Comcast Corporation, Transferee*, MB Docket No. 02-70, RCN Telecom Services, Inc., Written *Ex Parte* and Accompanying Declaration (filed Aug. 14, 2002).

programming to discourage competition before considering how to give cable operators more control over programming.

#### **IV. FCC POLICY IMPLEMENTATION HAS LED TO UNREASONABLE RATES AND IS IMPEDING COMPETITION.**

The FCC has not adopted regulations that ensure reasonable rates. The FCC has ignored absurd consequences and been generally unresponsive on consumer issues. And the FCC is permitting cable operators to abuse their monopoly power in a manner that harms competition for cable and broadband services. Additional Congressional oversight of the FCC is necessary to promote the wireline competition necessary to produce lower cable rates.

##### **A. FCC Rate Regulation Rules Do Not Ensure Reasonable Rates.**

An entire hearing could be, and should be, devoted to the numerous ways in which the FCC has failed to establish or interpret rate regulation rules in a manner that ensures reasonable rates for subscribers. Here are but a few examples:

- **Advertising Revenues Do Not Offset Costs.** Regulated rates are calculated to permit the operator to earn a reasonable profit from operation of the cable system. The FCC rate formula permits the operator to recover system operation costs from subscribers, but prohibits offsetting costs with any revenues earned from selling advertising on the system. For example, in 2002, subscribers paid over \$10 billion in regulated rates for basic service. Cable operators collected an additional \$2.8 billion in ad sales – *i.e.*, 25% to 26% of what they recovered in basic rates – but none of the \$2.8 billion was used to reduce the regulated basic rate.<sup>34</sup>

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<sup>34</sup> *Ninth Annual Report* at Table 4. Table 4 has been attached as an Appendix to this testimony; *2002 Cost Report* at Table 1. Table 1 has been attached as an Appendix to this testimony. Basic Service is 38.0% of combined \$28.492 million in 2002 Basic Service Tier and Cable Programming Service Charges, based on 2001 Average Monthly Rates of \$12.84 for Basic Service Tier and \$20.91 for Cable Programming Service. “Advertising sales” as used herein refers to all non-cable revenues, which includes \$2.503 billion in advertising revenues and \$284 million in home shopping network commissions for 2002. See *Texas Coalition of Cities For Utility Issues v. FCC*, 324 F.3d 802 (5th Cir. 2003).

- **Operators Are Permitted to Collect 11.25% Interest.** An operator estimates its costs for the year and calculates a projected rate. At the end of the year, if the operator charged less its actual costs, the operator can recover the difference plus an FCC-mandated *11.25% interest* rate from subscribers. However, if subscribers are owed refunds, under the FCC rules, the operator pays the I.R.S.-mandated rate, which is currently 6%.<sup>35</sup>
- **Operators Are Permitted to Inflate Aggregated Equipment Rates.** Congress permitted operators flexibility to calculate equipment rates at any level,<sup>36</sup> *e.g.*, by franchise, region, state, company-wide, etc., but the FCC implementing rules do not require any consistency within these calculations. Thus, for example, an operator determined that equipment costs were higher to serve a specific cluster of Ohio communities than the aggregate equipment costs for the entire state. The operator then calculated the equipment rates for those Ohio communities using only the higher costs and excluded the remaining lower cost areas. But when the operator calculated the rates for the rest of the state, it included the higher cost clustered communities in its calculations, thus increasing the aggregate rates for the rest of the state as well.<sup>37</sup>

#### **B. FCC Inaction Impedes Local Government Efforts to Ensure Reasonable Rates.**

FCC inaction and delays make rate regulation less effective, encourage operators to use the FCC appeals process as a means for running out the clock, and ultimately deny subscribers the protection from unreasonable rates that Congress intended. For example:

- The FCC does not require the cable operator to refund overcharges if the FCC considers the overcharge to be *de minimis*.<sup>38</sup>
- After 1996, the FCC arbitrarily decided to dismiss any pre-1996 complaints regarding non-basic tier rates on grounds that the 1996 Act would deregulate non-basic tier

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<sup>35</sup> FCC Form 1240, available at <http://www.fcc.gov/mb/mbform.html>; 47 C.F.R. § 76.942(e). See also Comments of New Jersey Office of Cable Television of the Board of Public Utilities, *In re Revisions to Cable Television Rate Regulations*, MB Docket No. 02-144, Notice of Proposed Rulemaking and Order, 17 FCC Rcd 16,803 (2002), available at [www.fcc.gov/searchtools.html](http://www.fcc.gov/searchtools.html), “Search For Filed Comments – ECFS,” Proceeding “02-144,” Filed on Behalf of “New Jersey Office of Cable Television” (filed Nov. 4, 2002); and Comments of Massachusetts Department of Telecommunications and Energy Cable Television Division, *In re Revisions to Cable Television Rate Regulations*, MB Docket No. 02-144, Notice of Proposed Rulemaking and Order, 17 FCC Rcd 16,803 (2002), available at [www.fcc.gov/searchtools.html](http://www.fcc.gov/searchtools.html), “Search For Filed Comments – ECFS,” Proceeding “02-144,” Filed on Behalf of “Massachusetts” (filed Nov. 4, 2002);

<sup>36</sup> 47 U.S.C. § 543(a)(7)(A).

<sup>37</sup> Declaration of Garth Ashpaugh at ¶¶ 17-22, attached as Exhibit C to *Errata to Opposition to Appeal of Local Rate Order, Time Warner v. Miami Valley Cable Council* (filed Dec. 6, 2002), available upon request.

<sup>38</sup> See, *e.g.*, *In re King Video Cable Company Valley Springs, California, Benchmark Filing to Support Cable Programming Service Price*, Memorandum Opinion and Order, 10 FCC Rcd. 1707, ¶ 8 (1995); *In re King Video Cable Company Jackson, California*, Memorandum Opinion and Order, 10 FCC Rcd. 1706, ¶ 8 (1995).

rates *beginning in 1999*.<sup>39</sup> The final irony is, the reason there were any pre-1996 complaints still unresolved after deregulation of the non-basic tier, was because the FCC had not ruled on these appeals in a timely fashion. For example:

- In a survey of FCC rate orders issues in 2000, the average time between the filing of rate order appeal and the release of an FCC order was 63.7 months – *more than five years!*<sup>40</sup>
- On April 16, 2003, the FCC finally remanded for further evidence two rate orders originally appealed on September 21, 1995.<sup>41</sup>
- In 2002, the Enforcement Bureau *sua sponte* overturned a 1999 Cable Bureau Order rejecting an operator’s refund plan. Instead, the Enforcement Bureau accepted the refund the operator thought it owed and dismissed the case on grounds that it was not worthwhile to issue a new refund order (since, post-deregulation of non-basic tiers, the cable operator would be able to raise non-basic service rates to recover the amount of any basic service refund ordered).<sup>42</sup> In effect, the FCC let the cable operator run out the clock and subscribers ended up footing the bill.

### C. The FCC Creates Unreasonable Rates By Refusing to Revise Rate Regulation Rules to Prevent Absurd Results.

In some instances, an original FCC interpretation of federal law may create absurd results because of changed market circumstances, or unscrupulous application by operators. In almost no instance has the FCC reviewed its policy to determine whether the FCC policy continues to further the goal of Congress to ensure reasonable rates. For example:

- **Boston Effective Competition & the LEC Test.** In 1996, Congress permitted effective competition to be declared when a local exchange carrier (“LEC”), *i.e.*, local telephone service provider, began providing video programming service. This LEC test did not require any specific system build-out or subscriber penetration benchmarks to be met. In 1998, against a backdrop of seemingly limitless telecommunications capital financing, the FCC decided to accept franchise agreements with build-out requirements as showing that competition was present everywhere in a community, in lieu of requiring the entire LEC system to be built-

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<sup>39</sup> See, e.g., *In re Prestige Cable TV, Order Dismissing Rate Complaints*, Order, 12 FCC Rcd. 21,103, ¶ 4 (1997).

<sup>40</sup> Based on an audit of all Cable Service Bureau decisions related to enforcement of, 47 U.S.C. 623(c) Regulation of Unreasonable Rates, as reported in the Federal Communications Commission Record between January 1, 2000, and December 31, 2000. Of 36 reported decisions, 7 did not specifically mention the date of the initial complaint or date of order granting review of Local Franchising Authority decision.

<sup>41</sup> *In re TCI of Pennsylvania, Inc., Appeals of Local Rate Orders of the City of Pittsburgh, Pennsylvania*, CSB-A-0181 & CSB-A-0304, Memorandum Opinion and Order, DA 03-1151 (rel. Apr. 16, 2003), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-03-1151A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-03-1151A1.doc).

<sup>42</sup> *In re Marcus Associates Application for Review*, Order, File No. EB-02-TC-087 (2002), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-02-3546A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-02-3546A1.doc).

out. In 2001, the Cable Bureau declared effective competition to exist in Boston based on a franchise granted to RCN. The City asked the FCC to reconsider, providing evidence that RCN was available in only a few of the City’s neighborhoods, its financing had dried up, and that RCN would not be able to meet the franchise benchmarks. The City suggested that in the changed telecommunications climate, franchise agreements could not be substitutes for actual build-outs. In 2002, the FCC affirmed the effective competition decision, reasoning that RCN’s financial troubles would simply mean that it might take an extra year to build-out its system. One month after the FCC decision, RCN asked the City to convert its franchise agreement into an OVS license without a build-out requirement. The City residents no longer have the benefit of rate regulation, and RCN does not serve many more neighborhoods than it did in 2001.<sup>43</sup>

#### **D. Local Government v. FCC Level of Service to Subscribers.**

Local governments are concerned that the FCC is unnecessarily collecting fees from subscribers to cover the cost of regulation no longer performed by the FCC, while simultaneously cutting the revenue streams of the local governments which now have greater franchise administration costs and needs for revenue streams.

In 1994, Congress required regulatory agencies to recover the cost of regulation from the regulated industries. At the height of rate regulation, the FCC calculated its costs as \$0.49 per subscriber.<sup>44</sup> The FCC no longer regulates the CPST, no longer has a Cable Bureau, and there are 9.1 million more subscribers than there were in 1994; in effect, the FCC added \$33.7 million to subscribers’ bills in 2002 in return for little to no cable rate regulation.<sup>45</sup>

In contrast, local governments now regulate more companies in the public rights-of-way, and assist consumers with more complaints about more services. Yet through its *Cable Modem Order*, for 2002, the FCC permitted cable operators to use the public rights-of-way to generate an additional \$5.6 billion in cable modem revenues, while simultaneously reducing the rent paid by cable modem providers to local governments by \$280 million.

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<sup>43</sup> *In re Cablevision of Boston, Inc., Petition for Determination of Effective Competition*, Application for Review of Determination of Effective Competition *in re* Cablevision of Boston, Inc. (filed Aug. 20, 2001); *In re Cablevision of Boston, Inc., Petition for Determination of Effective Competition, Application for Review*, Memorandum Opinion and Order, 17 FCC Rcd. 4772 (2002); Open Video System Certification Application of RCN BecoCom, LLC (filed April 18, 2002), available at <http://www.fcc.gov/mb/ovs/rcnbos.doc>.

<sup>44</sup> 47 U.S.C. § 159(a); 47 C.F.R. § 1.1155; *In re Implementation of Section of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, Fourth Order on Reconsideration, 9 FCC Rcd 5795, ¶¶ 9, 12, nn.28, 35 (1994).

<sup>45</sup> *Third Report* at App. B Table 1; *Ninth Annual Report* at App. B Table B-1.

Consider the experience of Montgomery County, MD, with just under 206,000 cable subscribers, as an example of the misallocation of resources and revenues:<sup>46</sup>

- The FCC collected just over \$100,000 in regulatory fees from Montgomery County cable subscribers; Montgomery County collected \$600,000 less from cable operators in lost cable modem franchise fees.
- Among 68.8 million cable subscribers nationwide, the FCC handled 2143 complaints and inquiries about cable rates and billing, *i.e.*, about 3 billing and rate complaints or inquiries per 100,000 subscribers. Montgomery County’s cable office handled 1107 cable rate and billing complaints and inquiries, *i.e.*, about 500 per 100,000 subscribers.
- Among the 6.6 to 7.4 million cable modem subscribers, the FCC handled 26 complaints and inquiries about cable modem service *for the entire year*, or 4 complaints and inquiries per million cable modem subscribers. Among 35,000 cable modem subscribers, Montgomery County handled 396 complaints and inquiries about cable modem service, or 1 per 100 cable modem subscribers.

#### **E. The FCC Should Prevent, Not Promote, Cross-Subsidization.**

The FCC’s rate regulation rules are harming not only subscribers, but broadband competition as well. First, the FCC’s rate regulation rules force cable subscribers to subsidize broadband deployment by cable operators. Under the FCC’s rate regulation and equipment rules, cable operators have been permitted to recover the cost of upgrading their systems by raising the regulated rates of all basic subscribers.<sup>47</sup> These upgrades have enabled cable operators to provide Internet access and telephone service, and the FCC rate regulation rules permit cable operators to raise the rates of basic subscribers to pay for these upgrades, regardless of whether the customer subscribes to anything other than basic cable.

Second, the FCC’s rate regulation rules are not just resulting in higher cable rates for basic subscribers; the FCC’s rules are also providing a built-in rate subsidy to cable system operators, thus providing the cable industry with an artificial cost advantage over DSL and other competitive broadband providers. In contrast to cable rate regulation, in the mid-90s the FCC did not permit the telephone companies to increase the federally-controlled rates of basic telephone subscribers to recover the cost of providing video service over phone lines (*i.e.*, “video dial tone” service).<sup>48</sup> Today, cable modem has twice the number of subscribers and almost three times the number of access lines as ADSL.<sup>49</sup> By permitting one industry, but not

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<sup>46</sup> These comparisons are based on 2002 Quarterly Report data released by the FCC’s Consumer and Governmental Affairs Bureau, available at <http://www.fcc.gov/cgb>, and from complaint report information available upon request from the Montgomery County Office of Cable and Communications Services.

<sup>47</sup> See, e.g., *In re Social Contract for Time Warner*, Memorandum Opinion and Order, 11 FCC Rcd. 2788 (1995).

<sup>48</sup> See e.g., *In re Telephone Company-Cable Television Cross-Ownership Rules*, CC Docket No. 87-266 and RM-8221, 10 FCC Rcd 244, 247 (1994), available at <http://www.fcc.gov/searchtools.html>, “Search For Filed Comments – ECFS,” DA/FCC Number “94-269.”

<sup>49</sup> *June 2002 High Speed Report* at Tables 3 and 4.

another, to cross-subsidize from its captive rate payers, the FCC is manipulating competition between different forms of broadband service in a manner that Congress did not authorize.

Finally, because the FCC rules permit cable operators to charge more than they could in a competitive market – and the FCC has done nothing to encourage wireline competition to cable systems – there will always be room for the cable operator to offer a discount on basic cable rates (something that should not be possible if the FCC regulated rate was producing the rate that would be offered in a competitive market). Thus, cable operators are offering discounts on video programming cable service as a promotional benefit to encourage purchase and installation of cable modem service. These higher cable system build-out fees and cable-cable modem cross-market promotions may provide additional explanations as to why cable service rates continue to increase.

Local governments urge Congress to increase its administrative oversight of the FCC to eliminate practices that hinder efforts to achieve reasonable subscriber rates and practices that hinder competition.

## **V. CONCLUSION**

- Local government cable franchising has promoted deployment and protected subscribers.
- Increased wireline competition is needed to reduce subscriber rates.
- Congress should:
  - Require operators to disclose actual programming costs.
  - Review whether the 1994 à la carte tier pricing rules lead to lower rates before implementing à la carte pricing in 2003.
  - Instruct the FCC to implement rate regulation rules in a manner that prohibits unreasonable rates, eliminates absurd results, and reflects today’s competitive markets.

**APPENDIX A**

**Table 4: Cable Industry Revenue and Cash Flow: 1998 – 2002**

From *In re Annual Assessment of the Status of Competition in the Market For the Delivery of Video Programming*,  
MB Docket No. 02-145, Ninth Annual Report, 17 FCC Rcd 26,901, (2002)(“[Ninth Annual Report](#)”) at 15.

	1998	1999	98-99	2000	99-00	2001	00-01	2002	2001-2002
	Total	Total	% Change	Total	% Change	Total	% Change	Total	% Change
Basic Subscribers (mil.)	66.1	67.3	1.8%	68.5	1.8%	68.6	0.1%	69	0.6%
<b>Revenue Requests (mil.)</b>									
Basic Service and CPST Tiers	\$21,831	\$23,135	6.0%	\$24,729	6.9%	\$27,031	9.3%	\$28,492	5.4%
Premium (Pay) Tiers	\$4,758	\$4,696	-1.3%	\$5,115	8.9%	\$5,617	9.8%	\$5,533	-1.5%
Pay-Per-View	\$514	\$721	40.3%	\$751	4.2%	\$993	32.2%	\$1,143	15.1%
Local Advertising	\$1,675	\$2,000	19.4%	\$2,430	21.5%	\$2,430	0.0%	\$2,503	3.0%
Home Shopping	\$175	\$205	17.1%	\$239	16.6%	\$260	8.8%	\$284	9.2%
Advanced Analog and Digital Tier	\$445	\$919	106.5%	\$1,088	18.4%	\$2,365	117.4%	\$3,379	42.9%
High-Speed Internet Access, Cable Teleph. & interactive svcs.	\$133	\$542	307.5%	\$1,164	114.8%	\$2,835	143.6%	\$5,602	97.6%
Equipment and Install	\$2,631	\$2,424	-7.9%	\$2,451	1.1%	\$2,463	0.5%	\$2,491	1.1%
<b>Total Revenue (mil.)</b>	<b>\$32,162</b>	<b>\$34,642</b>	<b>7.7%</b>	<b>\$37,967</b>	<b>9.6%</b>	<b>\$43,994</b>	<b>15.9%</b>	<b>\$49,427</b>	<b>12.3%</b>
Revenue Per Subscriber	\$486.57	\$514.74	5.8%	\$554.26	7.7%	\$641.31	15.7%	\$716.33	11.7%
<b>Operating Cash Flow (mil.)</b>	<b>\$14,900</b>	<b>\$15,597</b>	<b>4.7%</b>	<b>\$15,674</b>	<b>1.1%</b>	<b>\$16,683</b>	<b>5.8%</b>	<b>\$18,806</b>	<b>12.7%</b>
Cash Flow Per Subscriber	\$225.42	\$231.75	2.8%	\$230.13	-0.7%	\$243.19	5.7%	\$272.55	12.1%
<b>Cash Flow/Total Revenue</b>	<b>46.3%</b>	<b>45.0%</b>	<b>-2.8%</b>	<b>41.5%</b>	<b>-7.8%</b>	<b>37.9%</b>	<b>-8.7%</b>	<b>38.0%</b>	<b>0.3%</b>

**APPENDIX B**

**Appendix B, Table B-1: Assessment of Competing Technologies**

From *In re Annual Assessment of the Status of Competition in the Market For the Delivery of Video Programming*, MB Docket No. 02-145, Ninth Annual Report, 17 FCC Rcd 26,901, (2002)(“[Ninth Annual Report](#)”) at 75.

Technology Used	June-98	June-99	June-00	June-01	June-02
(1) TV Households	98,000,000	99,400,000	100,801,720	102,184,810	105,444,330
Percent Change	1.03%	1.43%	1.41%	1.37%	3.19%
(2) MVPD Households	76,634,200	80,882,411	84,423,717	87,830,074	89,890,641
Percent Change	4.06%	5.54%	4.38%	4.60%	1.79%
Percent of TV Households	78.20%	81.37%	83.75%	86.42%	85.25%
(3) Cable Subscribers	65,400,000	66,690,000	67,700,000	68,500,000	68,800,000
Percent Change	1.95%	1.97%	1.51%	1.18%	0.00%
Percent of MVPD Total	85.34%	82.45%	80.19%	77.99%	76.54%
(4) MMDS Subscribers	1,000,000	821,000	700,000	700,000	490,000
Percent Change	-9.09%	-17.90%	-14.74%	0.00%	-30.00%
Percent of MVPD Total	1.30%	1.02%	0.83%	0.80%	0.55%
(5) SMATV Subscribers	940,000	1,450,000	1,500,000	1,500,000	1,600,000
Percent Change	-19.14%	54.26%	3.45%	0.00%	6.67%
Percent of MVPD Total	1.23%	1.79%	1.78%	1.71%	1.78%
(6) HSD Subscribers	2,018,200	1,783,411	1,476,717	1,000,074	700,641
Percent Change	-7.15%	-12.07%	-17.20%	-32.28%	-29.94%
Percent of MVPD Total	2.65%	2.20%	1.75%	1.14%	0.78%
(7) DBS Subscribers	7,200,000	10,078,000	12,987,000	16,070,000	18,240,000
Percent Change	42.66%	39.97%	28.86%	23.74%	13.66%
Percent of MVPD Total	9.40%	12.46%	15.38%	18.30%	20.29%
(8) OVS Subscribers	66,000	60,000	60,000	60,000	60,000
Percent Change	2100.00%	-9.09%	0.00%	0.00%	0.00%
Percent of MVPD Total	0.09%	0.07%	0.07%	0.07%	0.07%

Notes:

- (i) Some numbers have been rounded.
- (ii) The total number of MVPD households is likely to be somewhat less than the given figure since some households subscribe to the services of more than one MVPD. *See 1994 Report*, 9 ICC Rcd at 7480. However, the number of households subscribing to more than one MVCP is expected to be low. Hence the given total can be seen as a reasonable estimate of the number of MVPD households.

*“The Case for Competition and Effective Rate Regulation”*

JOINT CONGRESSIONAL TESTIMONY OF NATOA, NLC, USCM, NACO, AND TELECOMMUNITY  
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- (iii) The decline in OVS subscribers since 1998 reflects the conversion of some OV4 systems to franchised cable systems over the last three years.

**APPENDIX C**

**Appendix C, Table C-1: MSO Ownership in National Video Programming Services**

From *In re Annual Assessment of the Status of Competition in the Market For the Delivery of Video Programming*, MB Docket No. 02-145, Ninth Annual Report, 17 FCC Rcd 26,901, (2002)(“[Ninth Annual Report](#)”) at 80-82.

Programming Service	Launch Date	MSO Ownership (%)
Action Max	Jun-98	AOL Time Warner (100)
American Movie Classics	Oct-84	Cablevision (60)
Animal Planet	Oct-96	Liberty Media (39.2), Cox (19.7)
(a) Max	May-01	AOL Time Warner (100)
Black STARZ!	Feb-97	Liberty Media (100)
Canales (6 digital channels) *	Oct-98	Liberty Media (90)
Cartoon Network	Oct-92	AOL Time Warner (100)
Cinemax	Aug-80	AOL Time Warner (100)
CNN	Jun-80	AOL Time Warner (100)
CNN en Espanol	Mar-97	AOL Time Warner (100)
CNN Headline News	Jan-82	AOL Time Warner (100)
CNN International	Jan-95	AOL Time Warner (100)
CNNfn	Dec-95	AOL Time Warner (100)
Comedy Central	Apr-91	AOL Time Warner (50)
Court TV	Jul-91	Liberty Media (50), AOL Time Warner (50)
Discovery Channel	Jun-85	Liberty Media (50), Cox (24.6)
Discovery Civilization	Oct-96	Liberty Media (25), Cox (12.3)
Discovery en Espanol	Aug-98	Liberty Media (50), Cox (24.6)
Discovery Health	Jul-98	Liberty Media (50), Cox (24.6), Comcast (20)
Discovery HD Theatre	Jun-03	Liberty Media (50), Cox (24.6), Comcast (20)
Discovery Home & Leisure	Oct-96	Liberty Media (50), Cox (24.6)
Discovery Kids	Oct-96	Liberty Media (50), Cox (24.6)
Discovery Science Channel	Oct-96	Liberty Media (50), Cox (24.6)
Discovery Wings: The Aviation and Adventure Channel	Jul-98	Liberty Media (50), Cox (24.6)
E! Entertainment	Jun-90	Comcast (50)
Encore	Apr-91	Liberty Media (100)
Encore Action	Sep-94	Liberty Media (100)
Encore Love Stories	Jul-94	Liberty Media (100)
Encore Mystery	Jul-94	Liberty Media (100)
Encore True Stories	Sep-94	Liberty Media (100)
Encore WAM! America's Youth Network	Sep-94	Liberty Media (100)
Encore Westerns	Jul-94	Liberty Media (100)
5Star Max	May-01	AOL Time Warner (100)
FoxSports (2) channels	Various	Cablevision (50)
FoxSports Latin America	Nov-96	Liberty Media (50)

*“The Case for Competition and Effective Rate Regulation”*

JOINT CONGRESSIONAL TESTIMONY OF NATOA, NLC, USCM, NACO, AND TELECOMMUNITY  
MAY 6, 2003 SENATE COMMERCE COMMITTEE HEARING ON MEDIA OWNERSHIP IN VIDEO MARKETS

Programming Service	Launch Date	MSO Ownership (%)
G4 Video Gaming Network	Jun-02	Comcast (94)
GEMS International Television	Apr-93	Liberty Media (100)
Golf Channel	Jan-95	Comcast (91)
Hallmark Channel (formerly Odyssey)	Oct-93	Liberty Media (32.5)
HBO	Nov-72	AOL Time Warner (100)
HBO Latino	Nov-00	AOL Time Warner (100)
HBO 2	Oct-98	AOL Time Warner (100)
HBO Signature	Oct-93	AOL Time Warner (100)
HBO Comedy	May-99	AOL Time Warner (100)
HBO Family	Dec-96	AOL Time Warner (100)
HBO Zone	May-99	AOL Time Warner (100)
Home Shopping Network	Jul-85	Liberty Media (20)
In Demand	Nov-85	Comcast (55), AOL Time Warner (33), Cox (11)
Independent Film Channel	Sep-94	Cablevision (60)
International Channel	Jul-90	Liberty Media (90)
More MAX	Aug-91	AOL Time Warner (100)
Movie Plex	Oct-94	Liberty Media (100)
Much Music USA	Jul-94	Cablevision (75)
Outdoor Life Network	Jul-95	Comcast (100)
OuterMax	May-01	AOL Time Warner (100)
Ovation: The Arts Network	Apr-96	AOL Time Warner (4.2)
PIN (Product Information Network)	Apr-94	Cox (45)
Prevue Channel	Jan-88	Liberty Media (51)
QVC	Nov-86	Comcast (57), Liberty Media (43)
Sci-Fi Channel	Sep-92	Liberty Media (20)
Sneak Prevue (TV Guide)	May-91	Liberty Media (12)
Starz!	Feb-94	Liberty Media (100)
Starz! Cinema	May-99	Liberty Media (100)
Starz! Family	May-99	Liberty Media (100)
Starz! Theater	Mar-96	Liberty Media (100)
Style	May-99	Comcast (50)
TBS	Dec-76	AOL Time Warner (100)
TLC (The Learning Channel)	Nov-80	Liberty Media (50), Cox (24.6)
Thriller Max	Jun-98	AOL Time Warner (100)
Turner Classic Movies	Apr-94	AOL Time Warner (100)
USA Network	Apr-80	Liberty Media (20)
Viewers Choice 1-10 and Hot Choice (11 multiplexed channels)	Nov-85	Cox (20), AOL Time Warner (17)
WE	Jan-97	Cablevision (60)
WMAX	May-01	AOL Time Warner (100)

Sources: NCTA, *Directory of Program Services*, Cable Developments 2002 at 29-141.  
Liberty Media Corp. at [http://www.libertymedia.com/our\\_affiliates/video\\_programming.htm](http://www.libertymedia.com/our_affiliates/video_programming.htm)

**APPENDIX D**

**Table 1: Average Monthly Rate, by Component  
(Competitive and Non-Competitive Groups Combined)**

From *In re Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment*, Report On Cable Industry Prices, MM Docket No. 92-266, 17 FCC Rcd 6301, Table 6 (2002) (“[2002 Cost Report](#)”) at 8.

	July 1, 2002	July 1, 2001	12-Month Change	Percent Change
Basic service tier (BST)	\$12.57	\$12.84	\$0.27	2.1%
Cable programming service tier (CPST)	\$18.88	\$20.91	\$2.03	10.8%
Total programming services (BST and CPST)	\$31.45	\$33.75	\$2.30	7.3%
Equipment (set-top box and remote control)	\$2.97	\$3.24	\$0.27	9.1%
Programming and equipment combined	\$34.42	\$36.99	\$2.57	7.5%
Number of local channels	14.1	14.5	0.4	2.8%
Number of satellite channels	42.2	44.9	2.7	6.4%
Total channels on BST and CPST	56.3	59.4	3.1	5.5%
Programming rate per satellite channel	\$0.797	\$0.801	\$0.004	0.5%
Programming rate per channel overall	\$0.591	\$0.600	\$0.009	1.5%

**Table 6: Comparison between Competitive Strata and the Noncompetitive Group**

From “[2002 Cost Report](#)” at 11.

Date	Wireline Overbuild	DBS Overbuild	LEC	Low Penetration	Municipal	Non- Competitive
Average Monthly Rate						
July 1, 2001	\$34.03	\$37.13	\$35.03	\$34.30	\$24.35	\$37.13
July 1, 2000	\$31.45	\$34.25	\$32.55	\$32.57	\$23.40	\$34.54
Number of Channels						
July 1, 2001	56	53.3	65.3	52.9	51.4	59.3
July 1, 2000	52.7	46.5	62.4	49.5	50.8	56.2
Average Rate per Channel (Programming Only)						
July 1, 2001	\$0.587	\$0.727	\$0.489	\$0.663	\$0.447	\$0.603
July 1, 2000	\$0.578	\$0.761	\$0.483	\$0.674	\$0.437	\$0.594