



ROBERT SACHS

PRESIDENT & CEO

NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

TESTIMONY BEFORE

HOUSE ENERGY AND COMMERCE COMMITTEE

SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET

“THE REGULATORY STATUS OF BROADBAND SERVICES”

U.S. HOUSE OF REPRESENTATIVES

JULY 21, 2003

Mr. Chairman, Ranking Member Markey, and Members of the Subcommittee:

On behalf of the National Cable & Telecommunications Association, I appreciate this opportunity to share with you the cable industry's views regarding what regulatory treatment, if any, is appropriate for broadband Internet services.

In my testimony today, I'd like to make three points. First, the widespread availability of broadband Internet service across the U.S. is largely the result of the cable industry's massive investment of private risk capital. This multi-billion dollar investment has created a service that has proved to be a fast-growing, highly valued service by consumers. Second, an important reason the cable industry's risk taking has greatly enhanced use of the Internet for millions of Americans is because FCC policies have avoided unnecessary regulation. Third, the cable industry supports policies that favor broadband competition over regulation. In the absence of any market failure – and there is none in the broadband market – any government intervention should be aimed at “deregulatory parity,” that is, regulate down, not up.

It's really hard to believe that cable modem service has existed as a consumer service only for about seven years, with most deployment and growth taking place since 1999.

I remember well one of the earliest public demonstrations of this new technology that my then employer, Continental Cablevision, conducted in the early-1990's at the Museum of Science in Boston. Frankly, few at the time believed that cable's hybrid fiber coax networks were suitable for data transport. After all, cable was “low-tech.” But the demo made instant converts.

To the credit of an entrepreneurial industry that was willing to take the risks, broadband has come a long way in a relatively short period of time. Cable operators made this investment without any clear understanding of how or whether government might decide to regulate this new service. And we continue to operate under some regulatory uncertainty.

Due in large measure to efforts of the cable industry, broadband is now available to more than 85% of U.S. households. This massive undertaking has involved upgrading over a million miles of plant with fiber optics and the latest digital technology.

More than 12 million consumer households subscribe to cable modem service. Over 15% of cable households today are cable modem customers. And among cable households that own PC's, over 25% are cable modem customers.

Cable internet access has been just that – access to the Internet and everything that's available on it. Companies have experimented with different business models. All allow consumers to choose their own home page with unfettered access to any content on the Internet.

Government regulatory policies can have strong effects on how rapidly broadband gains a mass market. The FCC's approach to cable modem service has certainly helped its development. In 1999, at the urging of dial-up ISP's and our telephone competitors, the FCC intensively studied

whether it should mandate access for competitive ISP's on the cable platform on government-set terms and conditions. In other words, common carriage.

Some insisted that unless the FCC acted to mandate carriage of multiple ISPs before cable's networks were even built, the end-to-end openness of the Internet would be lost. Our industry argued – indeed, we committed – that we would build out our broadband networks aggressively if we were not burdened by this type of unnecessary regulatory restraint. Forcing common carriage on cable would only delay deployment, we said. The FCC's decision not to head down the road of regulation allowed us to keep our commitment. The FCC announced a policy of vigilant monitoring of developments and has since reported to Congress on the successful rapid deployment of broadband by cable.

By 2002, court cases led the FCC to decide the regulatory classification of cable modem service. The FCC concluded that cable modem service is an “interstate information service” and not a “cable service” nor a “telecommunications service.”

The Commission examined the legislative history of the definition of “cable service” and concluded that it did not encompass the interactive access to the Internet that cable modem service affords to subscribers.

The Commission also found that the Communications Act did not permit the classification of cable modem service as a common carrier “telecommunications service.” Such a service, by definition requires that the provider offer “telecommunications” –transmission capacity – *directly to the public for a fee*, something cable operators do not do in the provision of cable modem service (or, for that matter, in providing traditional video programming services).

The Commission found that the transmission component of Internet access provided by cable operators is “part and parcel of cable modem service...integral to its other capabilities,” not a separate transport facility made available for public use. It therefore concluded that cable modem service, like Internet access service offered by other entities, is an “information service” delivered to subscribers “via telecommunications” rather than separate offerings of content and common carrier transport.

The Commission's finding that the “information service” classification best fits the attributes of cable modem service is also consistent with Congress' direction to insure that the Internet remains “unfettered by Federal or State regulation,” as much as possible. As you know, in a further rulemaking, the FCC is currently considering the full implications of its March 2002 decision.

Which brings me to my final point: to the extent the FCC believes that cable modem and DSL services should be subject to some version of equivalent regulation, it should adopt “deregulatory parity” – that is, the Commission should remove regulatory constraints, not add new ones.

NCTA has not participated in the FCC's rulemaking on the regulatory treatment of DSL, which the FCC is studying concurrently with its further notice on cable modem service. However,

as a general matter, we favor market competition over regulation and do not seek to impose regulatory requirements on competitors.

We do take issue with the suggestion by some companies that if DSL service remains subject, in whole or in part, to Title II regulation, cable modem service should be subjected to equivalent regulation. ILEC's are subject to Title II constraints for reasons related to their unique history, system architecture, and past conduct – none of which pertain to cable. Imposing those legacy regulations – and the costs associated with them – on cable for no reason other than to achieve regulatory parity will harm consumers by raising the price or lowering the quality of cable modem service. It would also provide a disincentive for new investment.

Promoting competition rather than regulating competitors should be the cornerstone of U.S. broadband policy. The cable industry's record with respect to broadband deployment clearly demonstrates that consumer benefits result when government policies encourage companies to invest and compete in the market.

In closing, I'm reminded of the wisdom of Thomas Jefferson, himself one of America's greatest innovators, who said: "That government is best which governs the least, because its people discipline themselves." A modern-day corollary for broadband Internet might be: *That government is best which governs the least, because market forces provide discipline.*

Mr. Chairman, we've come a long way in relatively short period of time in making broadband services widely available in the U.S. The challenges ahead are to make broadband ubiquitous in rural and urban America alike, enhance network capabilities and develop unique broadband content and applications that will further drive market penetration. I urge you and your colleagues to encourage the FCC to continue to give broadband Internet providers the market freedom to achieve these goals.

Thank you.