Before the
FEDERAL COMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Implementation of Section 621(a)(1) of	)	
the Cable Communications Policy Act of 1984	)	MB Docket No. 05-311
as amended by the Cable Television Consumer	)	
Protection and Competition Act of 1992	)	

REPLY COMMENTS OF THE BURNSVILLE/EAGAN TELECOMMUNICATIONS COMMISSION; THE CITY OF MINNEAPOLIS, MINNESOTA; THE NORTH METRO TELECOMMUNICATIONS COMMISSION; THE NORTH SUBURBAN COMMUNICATIONS COMMISSION; AND THE SOUTH WASHINGTON COUNTY TELECOMMUNICATIONS COMMISSION

Stephen J. Guzzetta
Michael R. Bradley
BRADLEY & GUZZETTA, LLC
444 Cedar Street
Suite 950
St. Paul, Minnesota 55101

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TABLE OF CONTENTS

SUMMARY

Qwest Communications International Inc., the Broadband Service Providers Association and the Fiber-To-The-Home Council (the "FTTHC") have propounded unsupported and ambiguous claims about how local franchising of cable systems inhibits or prohibits the development of competition in the multichannel video distribution market in an attempt to convince the Federal Communications Commission (the "Commission" or the "FCC") to preempt or impair local franchising. Because there is no factual record of any widespread anticompetitive behavior by local franchising authorities, any regulations issued by the Federal would necessarily be arbitrary and capricious.

When considering the allegations leveled by the telephone industry and its supporters, it is important to recognize that local franchising authorities support competition in the delivery of video services and have actively sought to foster competition when the opportunity has arisen. It is also important to note that local cable system franchising advances important policy goals reflected in the Cable Communications Policy Act of 1984, as amended (the "Cable Act"). For instance, local cable system franchising allows local governments to ensure that cable systems are adequately designed and constructed so that services are available to all (to the extent possible), and that there are diverse sources of information that are not controlled by the companies that own the video and information content, and the distribution facilities. These interests and objectives are often embodied in franchise agreements in the form of compensation requirements negotiated for the use of scarce and valuable public rights-of-way. Franchise fees are another form of compensation (and are not limited to cost recovery as argued by the FTTHC). Accordingly, the elimination of compensation for right-of-way usage would raise Constitutional issues.

Contrary to telephone industry claims, the Cable Act's laudable goal of promoting competition in and of itself does not provide the FCC with plenary power to vitiate local franchising schemes that were recognized and preserved by Congress when it enacted the Cable Act. Competition is but one of the many goals articulated by Congress, including the goal of assuring that cable systems are responsive to the needs and interests of the local community. Congress clearly attributed importance to local franchising, as part of the dual regulatory framework codified by the Cable Act, and did not imbue the FCC with any authority under the Communications Act of 1934, as amended, to preempt or interfere with local franchising requirements and procedures. The Commission therefore has no authority to promulgate rules managing or preempting local cable system franchising pursuant to 47 U.S.C. § 541(a)(1), 47 U.S.C. § 201(b) or Section 706 of Telecommunications Act of 1996.

In any event, there is no problem that needs to be addressed, as neither level playing field provisions nor build-out requirements inhibit or prohibit video competition. Level playing field provisions, for instance, do not require a competitive provider's franchise terms and conditions to be identical to an incumbent cable service provider's and thus do not prevent competition or the deployment of advanced broadband networks. Similarly, build-out provisions can be structured in such a way that they take the financial condition of a new entrant into consideration and are not anticompetitive. Any delays in the franchising process are typically due to a competitive franchise applicant's behavior, and should not be attributed to local franchising authorities. In the rare event there is a delay, 47 U.S.C. § 541(a)(1) provides no recourse to an applicant because the plain language of that provision refers only to denials of a competitive franchise application.

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REPLY COMMENTS OF THE BURNSVILLE/EAGAN TELECOMMUNICATIONS COMMISSION; THE CITY OF MINNEAPOLIS, MINNESOTA; THE NORTH METRO TELECOMMUNICATIONS COMMISSION; THE NORTH SUBURBAN COMMUNICATIONS COMMISSION; AND THE SOUTH WASHINGTON COUNTY TELECOMMUNICATIONS COMMISSION

The City of Minneapolis, Minnesota, and the following municipal joint powers commissions respectfully submit reply comments in the above-captioned proceeding: the Burnsville/Eagan Telecommunications Commission (a municipal joint powers commission consisting of the cities of Burnsville and Eagan, Minnesota); the North Metro Telecommunications Commission (a municipal joint powers commission consisting of the cities of Blaine, Centerville, Circle Pines, Ham Lake, Lexington, Lino Lakes and Spring Lake Park, Minnesota); the North Suburban Communications Commission (a municipal joint powers commission consisting of the cities of Arden Hills, Falcon Heights, Lauderdale, Little Canada, Mounds View, New Brighton, North Oaks, Roseville, St. Anthony and Shoreview, Minnesota); and the South Washington County Telecommunications Commission (a municipal joint powers commission consisting of the municipalities of Woodbury, Cottage Grove, Newport, Grey Cloud

Island Township and St. Paul Park, Minnesota) (collectively, the "LFAs").[1] Although numerous telephone, telecommunications and broadband service providers filed comments in response to the notice of proposed rulemaking issued by the Federal Communications Commission (the "FCC" or the "Commission"),[2] these reply comments will primarily focus on a number of claims made by Qwest Communications International, Inc. ("Qwest"), the Broadband Service Providers Association (the "BSPA") and the Fiber-To-The-Home Council (the "FTTHC") in their initial comments to the Commission.[3]

I. **INTRODUCTION.**

Most of the telephone industry's comments in this proceeding rely on speculation, esoteric and unproven economic theory, anecdotal "evidence" and unsubstantiated claims of anticompetitive behavior by local franchising authorities. The facts show that local franchising authorities are utilizing the franchising processes established by state and local law, and preserved by Congress through the enactment of the Cable Communications Policy Act of 1984,

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[1] With the exception of the South Washington County Telecommunications Commission, the member cities of the various joint powers commissions award cable franchises to applicants. The joint powers commissions are generally responsible for enforcing and administering their member cities' cable franchises. The South Washington County Telecommunications Commission, however, is also empowered to award cable franchises on behalf of its member cities.

[2] *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Notice of Proposed Rulemaking, MB Docket No. 05-311 (Rel. Nov. 18, 2005) (the "NPRM").

[3] *See* Comments of Qwest Communications International Inc., *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Notice of Proposed Rulemaking, MB Docket No. 05-311 (Feb. 13, 2006) (the "Qwest Comments"), Comments of Broadband Service Providers Association, *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Notice of Proposed Rulemaking, MB Docket No. 05-311 (Feb. 13, 2006) (the "BSPA Comments"), and Comments of the Fiber-To-The-Home Council, *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Notice of Proposed Rulemaking, MB Docket No. 05-311 (Feb. 13, 2006) (the "FTTHC Comments").

as amended, 47 U.S.C. § 521 *et seq.* (the "Cable Act"), to promote competition and to advance federal objectives. Thus, action by the FCC is not needed or required.[4] In fact, any action the FCC might take to preempt or control local franchising based on the record in this proceeding would be arbitrary and capricious.[5]

II. LOCAL CABLE SYSTEM FRANCHISING ADVANCES IMPORTANT POLICY GOALS AND DOES NOT INHIBIT OR PROHIBIT VIDEO COMPETITION.

A. Local Cable System Franchising Does Not Inhibit or Prohibit Video Competition.

Qwest, the BSPA, the FTTHC and other telephone industry commenters and supporters seek to minimize the importance of local cable franchising by arguing that "competition" is the primary goal that should be pursued by the Commission to the detriment of other legitimate and extremely important objectives recognized and protected by Congress.[6] Local franchising and competition, however, are not mutually exclusive. Moreover, the importance of franchising has grown as the influence and capabilities of cable systems have grown. Cable systems once served merely to retransmit broadcast television signals. They have now, however, become a "dominant nationwide video medium,"[7] with many companies maintaining or upgrading to two-way transmissions used for cable modem service and video-on-demand. The development of these electronic highways has the potential to significantly change the way people live, work,

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[4] *See, e.g., Home Box Office, Inc. v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1977) (a "regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist.").

[5] *See, e.g., People of the State of California v. FCC*, 905 F.2d 1217, 1230 (9th Cir. 1990) (agency decision must be overturned if the decision lacks record support) and *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1977) (comments which are themselves speculative require no response).

[6] *See, e.g.*, the Qwest Comments at 14-20 and the FTTHC Comments at 43. It is important to note that the LFAs support competition in the delivery of video services and have actively sought to foster competition when the opportunity has arisen.

[7] H.R. Rep. No. 862, at 50 (1992), *reprinted* in 1992 U.S.C.C.A.N. 1231, 1232 (1992).

and interact with each other by providing users access to vast quantities of information, services and entertainment in a variety of forms. As a result, a local government has a compelling interest in ensuring that a cable system is adequately designed and constructed to help satisfy the community's cable-related needs and interests, that services are available to all (to the extent possible), and that the flow of information is not monopolized by the companies that own the video and information content and the distribution facilities. These interests are reflected in federal, state and local law.[8]

The foregoing interests are particularly strong because, in order to operate, cable systems must occupy scarce and valuable public property – property that the public effectively pays to acquire and maintain. Cable systems are typically located on poles and under rights-of-way throughout municipalities. The LFAs, as trustees of the public's interest in public rights-of-way, have a compelling interest in ensuring that cable operators utilize this public property in a way that benefits the entire community. This means, among other things, that the LFAs must ensure that public property is used in optimal ways and that the public receives fair compensation – in the form of franchise fees and other conditions – for the use of its public property.

These interests and others are protected, in part, through the franchising process. For example, during the franchising process, the LFAs are permitted to establish basic requirements for system design and construction (including build-out requirements), to charge a franchise fee for the use of public rights-of-way, and to require that cable operators provide facilities and

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[8] For federal law, *see e.g.,* 47 U.S.C. § 544 (requiring facilities and equipment); § 546 (c)(1)(D) (satisfying community's cable-related needs and interests); § 543 (ensuring reasonable rates); § 541(a)(3) (anti-redlining); and § 531 (access channels). *See also* 47 U.S.C. §§ 601(2) (purpose of Cable Act is to "assure that cable systems are responsive to the needs and interests of the local community" and to "encourage the growth and development of cable systems"); and 601(4) (purpose of the Cable Act is to "assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public . . .").

equipment and set aside channel capacity for public, educational and governmental use. Thus, the legislative history of the Cable Act explains:

> The ability of a local government entity to require particular cable facilities (and to enforce requirements in the franchise to provide those facilities) is essential if cable systems are to be tailored to the needs of each community [and the legislation] explicitly grants this power to the franchising authority.[9]

This is why the franchising process is so important to the LFAs.[10] The LFAs are responsible for protecting the interests of cable subscribers and the general public through the franchising process by identifying present and future cable-related needs and interests and translating those needs and interests into franchise requirements. Many of those requirements, which include PEG channel capacity and PEG studio facilities that are used to produce and cablecast city council meetings, candidate fora and election debates, are the very instruments of democracy that Congress has consistently protected through the enactment of the Cable Act and subsequent amendments. The LFAs have also utilized the franchising process to preserve and advance the local rate regulation authority established in the Cable Act. As rate regulation authorities, the LFAs have evaluated the rates charged by their cable operator and ordered refunds, thereby ensuring that subscribers are paying reasonable basic service and equipment rates. Given the acknowledged importance and benefits of local franchising, the balance of authority prescribed by Congress in the Cable Act should not be altered or upset based on specious claims by Qwest, the BSPA, the FTTHC and other telephone industry commenters and supporters.

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[9] *See* H.R. Rep. No. 934 (1984), at 26, *reprinted in* 1984 U.S.C.C.A.N. 4655, 4663 (1984) ("1984 House Report").

[10] Congress intended that: "the franchise process take place at the local level where [local] officials have the best understanding of local communications needs and can require cable operators to tailor the cable system to meet those needs." 1984 House Report at 24, *reprinted in* 1984 U.S.C.C.A.N. at 4661.

In their comments in this proceeding, Qwest, the BSPA and the FTTHC strenuously argue that local franchising is stifling the development of video competition.[11] The facts, however, belie the industry's arguments. As noted in the LFAs' initial comments, forty-seven competitive franchises have been awarded by municipalities across the State of Minnesota.[12] That is a significant amount of video competition that would never have resulted if there were true entry barriers in Minnesota.

Competition is also occurring on a national level. The FCC recognized this in its NPRM[13] and its *Twelfth Annual Report*.[14] The *Twelfth Annual Report*, for instance, states that the multichannel video program distribution market has continued to grow since 2004, and that "[c]ompetition in the delivery of video programming services has provided consumers with increased choice, better picture quality, and greater technological innovation."[15] These are clearly indicia of a healthy competitive environment. The *Twelfth Annual Report* also specifies that there are now 652 communities in forty-six states that are currently served, at least in part, by fiber-to-the-home networks, with 322,700 connected households.[16] This is clear evidence that advanced networks are being deployed nationwide notwithstanding local franchising. Qwest, for example, has been able to obtain franchise agreements for advanced video systems in Salt Lake City, Utah and other communities around the country. It is also important to note that the *Twelfth Annual Report* highlights the fact that broadband service providers have been facing

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[11] *See* the Qwest Comments at 4-5, 25, the BSPA Comments at 4 and the FTTHC Comments at 63.
[12] *See, e.g.*, Exhibit D to the Initial Comments of the LFAs in this proceeding.
[13] *See* NPRM at ¶8.
[14] *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Twelfth Annual Report, 2006 FCC LEXIS 1025 (2006) ("*Twelfth Annual Report*").
[15] *Id*. at ¶¶5-6.
[16] *Id.* at ¶15.

"financial difficulties."[17] Thus, it is evident that any delays broadband service providers have been experiencing in constructing and deploying networks is primarily attributable to their own financial limitations, not to local franchising.

Comments filed by the National Cable & Telecommunications Association also indicate that video competition is developing rapidly.[18] For instance, the NCTA Comments indicate that Verizon has obtained forty-two cable franchises from local franchising authorities in a variety of states.[19] Moreover, Verizon's Chairman and Chief Executive Officer has himself stated:

> I think that the law is the law. I think, we have to go out and get – and get franchise approvals and we're doing that and we're doing it aggressively. And we're queued up. We don't feel that there's any impediment to our rolling out FiOS during the year, 2006 . . . And as I – we've said before, every place where we – we instigate a vote, the vote usually comes out, you know, let's – let's create competition in this – in this marketplace.[20]

Further, as pointed out in the LFAs' initial comments, the paucity of litigation brought by Verizon and other companies under Section 621(a)(1) of the Cable Act, 47 U.S.C. § 541(a)(1), since 1992, the year § 541(a)(1) was amended to create a judicial remedy for unreasonable denials of competitive franchises, underscores the fact that local franchising authorities have not erected real regulatory barriers or other impediments that have inhibited or prohibited video competition.[21]

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[17] *Id*. at ¶ 90.

[18] *See* Comments of the National Cable & Telecommunications Association, *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Notice of Proposed Rulemaking, MB Docket No. 05-311, at 9-10 (Feb. 13, 2006) (the "NCTA Comments").

[19] *Id*.

[20] Final Transcript, VZ – Q4 2005 Verizon Earnings Conference Call, at 12 (January 26, 2006). A copy of the Final Transcript is attached hereto as Exhibit A.

[21] *See* Initial Comments of the LFAs at 25, n. 85. See *also* Comments of the National Association of Telecommunications Officers and Advisors, *et al.*, *In the Matter of*

AT&T Inc. ("AT&T") claims that "[a]d hoc coalitions or working groups of municipalities have likewise tended to worsen, not cure, the entry barriers created by local franchise authorities, fostering a race to the bottom in which individual LFA wish lists are combined to create even more onerous conditions on entry."[22] In other words, AT&T is alleging that joint powers entities and other forms of cooperation between local franchising authorities are anticompetitive. This is inaccurate and illogical. First and foremost, AT&T provides no support for its bald assertion. Second, AT&T's twisted logic suggests that municipal cooperation results in some sort of cumulative combination of needs and interests that increases the costs of market entry. That is not true. In fact, by cooperating, local franchising authorities create economies that can reduce the social obligations and costs a new entrant must assume. For instance, in some cases, only one PEG access studio facility must be built, rather than a separate facility in each community. In any event, the needs and interests of a coalition of municipalities will not typically be greater than the distinct needs and interests of the individual coalition members. Further, as noted in the LFAs' initial comments, joint powers commissions actually make it less burdensome and less costly to enter a particular market because it is often necessary to submit only a single franchise application for multiple communities and to simultaneously negotiate several franchise agreements with a single entity, rather than multiple local franchising authorities.[23]

Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, Notice of Proposed Rulemaking, MB Docket No. 05-311, at 22 (Feb. 13, 2006) (the "NATOA Comments").

[22] Comments of AT&T Inc., *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Notice of Proposed Rulemaking, MB Docket No. 05-311, at 29 (Feb. 13, 2006).

[23] *See* Initial Comments of the LFAs at 26-27.

B. Local Governments Are Permitted to Receive Compensation from Cable Service Providers for the Use of Valuable and Scarce Public Rights-of-Way.

The BSPA and the FTTHC criticize the fact that local franchising authorities may include compensation obligations in franchise documents.[24] Such compensation is required for the use of valuable and scare public rights-of-way. As the LFAs point out in their initial comments, the receipt of compensation for the use of public property is a longstanding principle of law.[25] This settled principle was recognized and incorporated into the Cable Act, which (among other things) permits local franchising authorities to establish requirements:

- "that channel capacity be designated for public, educational, or governmental use, and channel capacity on institutional networks be designated for educational or governmental use . . .";[26]
- "for facilities and equipment;"[27]
- for a franchise fee up to five (5) percent of a cable operator's gross revenues derived from the operation of the cable system to provide cable services;[28] and

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[24] *See, e.g.*, the BSPA Comments at 8 and the FTTHC Comments at 36-37.
[25] *See* the Initial Comments of the LFAs at 38-41.
[26] 47 U.S.C. § 531(a) and (b).
[27] 47 U.S.C. § 544. The legislative history of the Cable Act explains that this includes requirements for institutional networks, studios, equipment for public, educational and government use, two-way networks, and so on. In particular:

> Facility and equipment requirements may include requirements which relate to channel capacity; system configuration and capacity, including institutional and subscriber networks; headends and hubs; two-way capability; addressability; trunk and feeder cable; and any other facility or equipment requirement, which is related to the establishment and operation of a cable system, including microwave facilities, antennae, satellite earth stations, uplinks, studios and production facilities, vans and cameras for PEG use.

1984 House Report at 68, *reprinted in* 1984 U.S.C.C.A.N. at 4705.
[28] 47 U.S.C. § 542(a) and (b). The LFAs do not believe that this provision can be lawfully interpreted to proscribe the collection of franchise fees on revenues derived from information and other services offered over a cable system.

- for capital support for public, educational and governmental access ("PEG") facilities and equipment.[29]

Minnesota law also contains valid compensation requirements that are to be included in all franchises.[30] Despite this clear authority to require cable-related facilities and equipment, PEG channel capacity, franchise fees and PEG support, the telephone industry and its supporters claim that such compensation for the use of public rights-of-way is impermissible.[31] These claims must be rejected because they are not supported by federal and state law. Moreover, to the extent compensation requirements have an anticompetitive effect on video competition (which the evidence does not show), the FCC does not have the power to craft an appropriate remedy, because it cannot re-write the provisions of the Cable Act which authorize the compensation about which the telephone industry and its supporters are complaining.

In addition to questioning the lawfulness of compensation requirements established and/or preserved by the Cable Act, the FTTHC decries the amount of franchise fees that may be charged by the LFAs and other franchising authorities. More specifically, the FTTHC believes that the "Commission should ensure that while franchise fees may not exceed 5% of a provider's cable-related revenues, they are limited to fees that recover the LFA's administrative costs for managing and overseeing the use of the public ROW."[32] Section 622 of the Cable Act, 47 U.S.C. § 542, however, does not limit the franchise fees that may be imposed by a franchising authority to actual cost recovery. Rather, § 542 permits local governments to receive compensation, or rent, from cable operators for the use of public rights-of-way, subject to a

[29] *See, e.g.*, 47 U.S.C. § 542(a)(4)(B) and 47 U.S.C. § 542(g)(2)(C).
[30] *See, e.g.*, Minn. Stat. §§ 238.084, subd. 1(z) (a franchise must contain a provision establishing the minimum number of access channels on the cable system).
[31] *See, e.g.*, FTTHC Comments at 36-37.
[32] FTTHC Comments at 39.

federal cap.[33] Once again, the industry is asking the FCC to amend the Cable Act, which it cannot do. Moreover, it is important to point out that, by virtue of 47 U.S.C. § 542, the imposition of franchise fees cannot possibly be considered an unreasonable refusal to award an additional franchise under 47 U.S.C. § 541(a)(1). Likewise, franchise fee requirements cannot realistically be said to forestall competition because no franchise fees are paid until an operator generates revenues, and the amount of the fees paid are tied to the amount of gross revenues earned.

By seeking to reduce or eliminate franchise fees, the Regional Bell Operating Companies and other competitive providers are effectively attempting to obtain a "free pass" to utilize local governments' public property. If the FCC was to provide such a free pass (notwithstanding its lack of authority to do so), Fifth Amendment issues would be raised. Furthermore, if the FCC limited franchise fees charged to actual costs of managing and overseeing public rights-of-way, it would be violating 47 U.S.C. § 542(i), which provides that "[a]ny Federal agency may not regulate . . . the use of funds derived from . . . [franchise] fees . . ."

III. THE FCC DOES NOT HAVE THE AUTHORITY UNDER THE COMMUNICATIONS ACT TO PREEMPT OR INTERFERE WITH LOCAL FRANCHISING REQUIREMENTS AND PROCEDURES.

Qwest and the FTTHC devote a significant portion of their comments to arguing that the FCC has the authority to interpret and enforce Section 621(a)(1) of the Cable Act, 47 U.S.C. § 541(a)(1), and to adopt regulations preempting and/or managing local franchising processes and requirements.[34] The LFAs have already shown why the FCC has no authority under the Communications Act of 1934, as amended, to interfere with or to preempt local franchising of

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[33] As indicated above, the LFAs disagree with FTTHC's assertion that franchise fees are limited to cable-related revenues, if there is authority under state or local law to collect franchise fees on information and other service revenues.

[34] *See, e.g.*, the Qwest Comments at 3 and 14-20, and the FTTHC Comments at 43-57.

cable systems, and they will not recapitulate their comments here, even though they remain valid.[35] Suffice it to say that the Cable Act's laudable goal of promoting competition in and of itself does not provide the FCC with plenary power to vitiate local franchising schemes that were recognized and preserved by Congress when it enacted the Cable Act. Indeed, competition is but one of the many goals articulated by Congress, including the goal of assuring that "cable systems are responsive to the needs and interests of the local community."[36] Section 621(a)(1), 47 U.S.C. § 541(a)(1), reflects the importance Congress attributed to local franchising, as part of the dual regulatory framework codified by the Cable Act. Neither Section 621, 47 U.S.C. § 541, nor any other provisions of the Communications Act of 1934, authorize the FCC to upset the regulatory balance that was carefully crafted by Congress and that has successfully enabled the construction, deployment, upgrade and expansion of advanced cable systems around the country.

Notwithstanding the Commission's patent lack of authority to take action pursuant to the NPRM, the LFAs will address two creative, but untenable, arguments raised by the FTTHC. Those arguments are that the FCC may adopt regulations implementing § 621(a)(1) pursuant to Section 201(b) of the Communications Act of 1934, as amended, and Section 706[37] of the Telecommunications Act of 1996.[38]

A. The Commission Has No Authority to Promulgate Rules Managing or Preempting Local Cable System Franchising Pursuant to Section 201(b) of the Communications Act of 1934.

Relying primarily on *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999), the FTTHC states that the Commission may utilize 47 U.S.C. § 201(b) to prescribe regulations implementing

[35] *See* the Initial Comments of the LFAs at 27-42.
[36] 47 U.S.C. § 601(2).
[37] Section 706 of the Telecommunications Act of 1996, Pub. L. 104-104.
[38] FTTHC Comments at 47-50 and 51-52.

Section 621 of the Cable Act, 47 U.S.C. § 541.[39] That decision, however, merely holds that the Commission's rulemaking authority extends to its jurisdiction over common carriers under Title II of the Communications Act of 1934, including jurisdiction created by the local competition provisions of the Telecommunications Act of 1996, Pub. L. 104-104 (47 U.S.C. § 251, *et seq*.). In other words, *Iowa Utils. Bd*. applies only to Title II and does not authorize the FCC to issue regulations interpreting and enforcing provisions of Title VI of the Communications Act of 1934, as amended. Any other interpretation of *Iowa Utils. Bd.* would render the specific rulemaking provisions of Title VI superfluous, which is contrary to accepted tenets of statutory construction.[40]

At most, the reach of § 201(b) is ambiguous in light of *Iowa Utils. Bd*. The legislative history of § 201(b), however, dispels any ambiguity and makes clear that the FCC's rulemaking authority under § 201 was never intended to reach Title VI. This is evident because the 1938 amendment granting the FCC the authority to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act"[41] "relates only to information which comes from vessels at sea as to their location."[42] Section 201(b) therefore cannot be given the expansive interpretation propounded by the FTTH, and must be limited to Title II authority under the Communications Act of 1934.

This conclusion is supported by the principle of *ejusdem generis*, which compels the last sentence of § 201(b), upon which the FTTHC relies, to be construed in light of the specific provisions proceeding it. Those provisions refer exclusively to "interstate or foreign

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[39] FTTHC Comments at 47-51.
[40] *See, e.g.*, *United States v. Blasius*, 397 F.2d 203, 207 n. 9 (2nd Cir. 1968).
[41] 47 U.S.C. § 201(b).
[42] 83 Cong. Rec. 6291 (1938).

communication by wire or radio"[43] and to "charges, practices, classifications, and regulations for and in connection with such communications service."[44] There is no mention of cable service or cable systems. Accordingly, the last sentence of § 201(b) only gives the FCC rulemaking authority over interstate and foreign communications (for purposes of Title II), and does not apply to local franchising under Title VI and state law.[45]

B. <u>The Commission Has No Authority to Promulgate Rules Managing or Preempting Local Cable System Franchising Pursuant to Section 706 of Telecommunications Act of 1996</u>.

The FTTHC claims that the FCC "can find authority in Section 706 of the 1996 Act to support adoption of federal regulations implementing Section 621 and related provisions."[46] Section 706, however, pertains only to advanced telecommunications capability, which is defined as "high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics and video telecommunications using any technology."[47] Section 621(a)(1) of the Cable Act, 47 U.S.C. § 541(a)(1), pertains only to cable service, cable operators and cable systems, and thus falls outside the ambit of Section 706. Accordingly, the FCC cannot utilize Section 706 as a vehicle to adopt regulations implementing Section 621. When Congress intended to provide the FCC with rulemaking authority over cable television it did so in Title VI of the Communications Act of 1934, as amended.[48] Adopting regulations pursuant to Section 706 would therefore render several rulemaking provisions in

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[43] 47 U.S.C. § 201(a).
[44] 47 U.S.C. § 201(b).
[45] *See*, *e.g.*, *Illinois Citizens for Broadcasting v. FCC*, 467 F.2d 1397 (7th Cir. 1972) (FCC jurisdiction does not extend to the construction of the Sears Tower).
[46] FTTHC Comments at 51.
[47] *See* Section 706(c)(1) of the Telecommunications Act of 1996.
[48] *See*, *e.g.*, Section 623(b)(2) of the Cable Act, 47 U.S.C. § 543(b)(2), and Section 624(e) of the Cable Act, 47 U.S.C. § 544(e).

Title VI superfluous. There is, however, "a presumption against construing a statute as containing superfluous or meaningless words . . ."[49] Moreover, there is no clear intent that Congress intended Section 706 to eviscerate the dual regulatory scheme codified in the Cable Act, which has protected, respected and preserved local franchising as a form of fundamental state/local government sovereignty over public rights-of-way for over two decades. Consequently, the adoption of rules preempting or impairing local franchising would be prohibited by *Gregory v. Ashcroft*, 501 U.S. 452, 460-61 (1991).

It should also be emphasized that the predicate for Commission action under Section 706 has not been satisfied. The FCC may only act pursuant to Section 706 if it determines that advanced telecommunications capability is not being deployed to all Americans in a reasonable and timely fashion.[50] In its most recent report to Congress on the availability of advanced telecommunications capability in the United States, however, the FCC concluded that "the overall goal of Section 706 is being met, and that advanced telecommunications capability is indeed being deployed on a reasonable and timely basis to all Americans."[51] The FCC is therefore barred from utilizing Section 706 to promulgate regulations implementing Section 621 of the Cable Act.

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49 *United States v. Blasius*, 397 F.2d 203, 207 n. 9 (2nd Cir. 1968). *See also Aluminum Co. of America v. Dept. of Treasury*, 522 F.2d 1120, 1126-1127 (6th Cir. 1975); *Bird v. United States*, 187 U.S. 118, 124 (1902); *United States v. Powers*, 307 U.S. 214, 217 (1939); *United States v. Shaver*, 506 F.2d 699 (4th Cir. 1974); and *National Petroleum Refiners Ass'n v. FTC*, 482 F.2d 672, 689 (D.C. Cir. 1973).

50 Telecommunications Act of 1996, § 706(b), Pub. L. 104-104.

51 *See Availability of Advanced Telecommunications Capability in the United States*, Fourth Report to Congress, 19 FCC Rcd 20540 (2004).

IV. LEVEL PLAYING FIELD PROVISIONS DO NOT NECESSARILY INHIBIT COMPETITION OR THE DEPLOYMENT OF ADVANCED BROADBAND NETWORKS.

The BSPA and the FTTHC attack level playing field requirements on the ground that they are anticompetitive. Neither entity, however, provides compelling evidence that this is truly the case. The BSPA, for instance, claims that level playing field provisions "primarily serve to delay or limit the growth of competition by negatively impacting the availability or use of capital."[52] As shown above, however, broadband service providers have financial issues that are wholly unrelated to level playing field provisions and cannot be attributed to local franchising authorities.[53] Moreover, franchise commitments, including build-out and right-of-way compensation provisions, can be structured in such a way that they take the financial condition of a new entrant into consideration. As pointed out in the LFAs' initial comments, level playing field requirements do not require a competitive provider's franchise terms and conditions to be identical to an incumbent cable service provider's.[54] Thus, the LFAs and other local franchising authorities have the flexibility to craft franchise provisions that work for all parties. In some cases, for instance, it may be possible to convert the dollar value of an incumbent provider's franchise commitments into a per subscriber fee that can be paid by a competitive cable service provider. This approach would eliminate significant up-front capital expenditures that could possibly make it difficult for a particular provider to deploy its cable system.

It is evident from their comments that both the BSPA and the FTTHC subscribe to the fallacy that level playing field requirements mandate that a new entrant must agree to the

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52 BSPA Comments at 4.
53 *See* footnote 15, *supra*.
54 *See* Initial Comments of the LFAs at 42-44.

identical franchise obligations as the incumbent cable service provider.[55] As discussed above, the LFAs have already shown that this is not the case. Level playing field provisions have been uniformly interpreted only to require a competitive cable franchise to be similar or comparable to, or no more favorable or less burdensome than the franchise granted to the incumbent cable operator.[56] Thus, competitive providers are not necessarily forced to bear all the same costs and requirements as the incumbent provider at the outset of a franchise, or during periods where they do not have a significant subscriber base. Indeed, franchise commitments can be deliberately structured to limit the economic impact on a new entrant during the "start-up" phase of operations, while still ensuring that overall financial obligations are competitively neutral. This approach is logical because it is not in the interest of local governments to preclude or inhibit multichannel video competition or to establish conditions that would result in the failure of a new entrant (particularly when that entrant has placed facilities in public rights-of-way and such facilities would likely be abandoned in place in the event of a bankruptcy). Furthermore, the LFAs do not want to be put in the position of picking industry "winners" and "losers."

In the context of discussing level playing field provisions, the FTTHC asserts that letters of credit, bonds, and security deposits are insurmountable barriers to entry.[57] However, no concrete proof is provided. Bonds, letters of credit and security deposits are standard contract requirements and are not unique to cable franchises.[58] They do not have a chilling effect on

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55 *See* FTTH Comments at 30 and BSPA Comments at 4.

56 *See, e.g., Cable TV Fund 14-A, Ltd. V. City of Naperville*, 1997 WL 280692 at * 12 (N.D. Ill. 1997); *United Cable Television Service Corp. v. Connecticut Dept. of Public Utility Control,* 1994 WL 495402 at *5-*6 (Conn. Super. 1994); *Knology, Inc. v. Insight Communications Co*., 2001 WL 1750839 at *2 (W.D. Ky. 2001); and *WH Link, LLC v. City of Otsego*, 664 N.W.29 390, 396 (Minn. App. 2003).

57 FTTHC Comments at 30.

58 In fact, these instruments are often mandatory contract requirements specified by federal, state and local levels of government.

market entry or destroy economic viability in numerous lines of business. If they did, construction contractors and other businesses would not agree to bonds, letters of credit and security deposits – but they do. Moreover, such requirements are necessary to protect the public interest, because: (i) bonds and letters of credit are often used as a source of funds to repair and/or restore public rights-of-way and public property that have been damaged by an operator; and (ii) such instruments are frequently utilized to collect damages in the event an operator breaches its contract. Without bonds, letters of credit and security deposits, franchised cable operators would have an incentive to violate their franchises, knowing that many municipalities cannot afford extensive litigation to enforce contractual commitments. That is not good public policy.

Minnesota law requires cable operators to obtain and maintain a performance bond, or certificate of deposit, from the effective date of a franchise until all obligations with a franchising authority have been liquidated.[59] Given that there are forty-seven (47) competitive franchises in Minnesota, this requirement obviously has not inhibited competition.

V. BUILD-OUT REQUIREMENTS IN FRANCHISES ARE NOT ANTICOMPETITIVE.

The BSPA, Qwest and the FTTHC all assert that build-out requirements for a franchise area impair competition by rendering the construction of new cable systems economically impossible. The BSPA, for instance, claims that "[n]o new entrant – without any market share can be economically viable if it must undertake the same build-out responsibilities and obligations of an incumbent with market power."[60] Qwest argues that "[it] simply is not economically possible or rational for a second competitor entering a monopoly market to agree

[59] Minn. Stat. § 238.084, subd. 1(j).
[60] BSPA Comments at 5.

to build out its new facilities to the same extent as the incumbent constructed its monopoly facilities."[61] The FTTHC alleges that build-out requirements prevent the deployment of competitive networks because new entrants cannot make the numbers work.[62] None of these accusations, however, are supported or proven by objective, verifiable and irrefutable data. Rather, the industry makes self-serving, unsubstantiated statements based, in part, on biased economic theories propounded by astroturf organizations.[63] The FTTHC, the BSPA and Qwest expect the Commission to treat their statements as facts and to preempt or regulate local franchising based on these "facts." The FCC should reject such requests, as any rules or preemptive actions predicated on unreliable, unsubstantiated data would be arbitrary and capricious.

Contrary to the telephone industry's claims, build-out requirements do not necessarily prohibit the development of video competition. The fact that there are forty-seven (47) competitive franchises in Minnesota proves this is the case. Moreover, it is important to recognize that new entrants will not always be asked to agree to the "same" system build-out requirements as the incumbent cable service provider. Indeed, build-out requirements will generally be tailored, on a case by case basis, to reflect the economic capacity of a franchise applicant, an applicant's existing facilities and the housing density and geography of the franchise area. In Minnesota, there is a level playing field provision pertaining to "area served."[64] This provision does not, however, mandate identical build-out requirements for new

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[61] Qwest Comments at 6. It should be noted that the LFAs' franchises are not exclusive, and do not create a monopoly market for multichannel video program distribution.
[62] FTTHC Comments at 32-38.
[63] *See, e.g.*, the FTTHC's reliance on the PHOENIX CENTER POLICY PAPER NO. 22. The Phoenix Center for Advanced Legal and Economic Public Policy Studies is funded, in part, from contributions by Regional Bell Operating Companies.
[64] Minn. Stat. § 238.08, subd. 1(b).

entrants and incumbents.[65] There is still flexibility in determining how to build out the area to be served. In addition, federal law specifies that a franchising authority "shall allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area . . ."[66] This "reasonable" build-out standard in the Cable Act, coupled with judicial enforcement, could very well operate to prevent the LFAs and other franchising authorities from imposing build-out requirements that would destroy the economic viability of a new cable system. Thus, there is no need for any FCC action.

The FTTHC also claims that build-out requirements harm consumers.[67] This is an odd assertion because build-out provisions, particularly when addressing economic redlining issues, are specifically designed to protect consumers. Indeed, the very purpose of build-out requirements is to ensure that as many consumers as possible enjoy competition in the delivery of cable services, and the benefits of advanced cable networks, regardless of income. The laudable objective of ubiquitous network coverage (taking into consideration housing densities and other economic factors) certainly advances Congress' goal of ensuring that all Americans have access to state-of-the-art services[68] and that the existing digital divide is narrowed. The need for effective build-out requirements is underscored by the fact that SBC Communications (now AT&T) will focus its network deployment on "high-value" customers, while largely ignoring "low-value" customers in its franchise areas.[69] Absent reasonable build-out

[65] *See, e.g., WH Link, LLC v. City of Otsego*, 664 N.W.2d 390, 396 (Minn. App. 2003).
[66] 47 U.S.C. § 541(a)(4)(A).
[67] FTTHC Comments at 35.
[68] *See, e.g.*, the Telecommunications Act of 1996, § 706, Pub. L. 104-104.
[69] *See* NPRM at ¶ 6.

requirements, the United States may very well become a nation of information "haves" and "have nots," which is what the Communications Act of 1934 was, in part, designed to prevent.[70]

Ignoring the public benefits of build-out requirements, the telephone industry and its supporters claim that competitive franchise applications have been abandoned and that specific areas have been bypassed because of allegedly uneconomical build-out provisions.[71] It is important to note, however, that these self-serving claims are unsubstantiated. Neither Qwest nor the FTTHC has provided any unbiased economic analysis that shows specific build-out requirements have inhibited or prohibited competition in the multichannel video distribution market. It is simply an easy excuse for the industry to say that it exited or ignored a particular community because of purportedly onerous build-out requirements. This excuse is particularly transparent when a competitive cable service provider unilaterally refuses to talk with a municipality about system construction and then proceeds to bypass that community on the fallacious grounds that there is an uneconomical build-out requirement.

VI. THE FRANCHISING PROCESS AND LAWFUL FRANCHISE TERMS DO NOT CONSTITUTE A DENIAL OF A COMPETITIVE FRANCHISE APPLICATION FOR PURPOSES OF 47 U.S.C. § 541(a)(1).

Qwest and the FTTHC consistently argue that delays in the franchising process are equivalent to the unreasonable denial of a competitive franchise application.[72] Before addressing why this argument is legally flawed, it is important to point out that available evidence proves the franchising process typically does not delay the market entry of new cable systems. In Minnesota, for example, competitive franchises have frequently been awarded in two to six

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[70] *See, e.g.*, 47 U.S.C. § 151 (purpose of the Communications Act of 1934 is to "make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities at reasonable charges . . .").
[71] *See, e.g.*, FTTH Comments at 20 and Qwest Comments at 8-14.
[72] *See, e.g.*, Qwest Comments at 3, 13-14 and FTTHC Comments at 19-20 and 24-28.

months.[73] Such a timeframe cannot possibly be considered excessive or unreasonable, given the franchising process set forth in state law and given the fact that (i) a franchise application must be reviewed (in many cases), (ii) the terms of a franchise agreement must be negotiated, and (iii) City Council meeting schedules and ordinance adoption/publication requirements must be taken into consideration. In Texas, most of Verizon's franchise applications pre-dating statewide franchising were granted in under six months.[74] In fact, it appears that Verizon is obtaining franchises so quickly that it is unable to provide service until months after receiving authorization.[75] Thus, it is obviously Verizon's own financial and construction limitations that are slowing the deployment of competitive cable services – not local franchising. Moreover, when delays do result (which is rare), it is frequently the result of the competitive franchise applicant's behavior. Verizon, for example, likes to force its uniform agreements on municipalities, rather than working from existing cable franchises that reflect local needs and interests.[76] This can, in some cases, prolong discussions. However, such delays fall squarely on the shoulders of the competitive franchise applicants.

After making unsubstantiated claims that there are widespread, unreasonable delays in the local franchising process, Qwest and the FTTH effectively equate delay with the denial of a competitive franchise.[77] Section 621(a)(1) of the Cable Act, 47 U.S.C. § 541(a)(1), however, does not mention delays; it clearly and unambiguous refers only to unreasonable refusals to

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[73] *See* Exhibit B to the Reply Comments of the League of Minnesota Cities and the Minnesota Association of Community Telecommunications Administrators, *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Notice of Proposed Rulemaking, MB Docket No. 05-311, at 22 (March 28, 2006).

[74] NCTA Comments at 10.

[75] *Id*. at 11.

[76] *See* NATOA Comments at 30 and Exhibit C of the LFAs' Initial Comments at 14-15.

[77] *See, e.g.*, Qwest Comments at 3, 13-14 and FTTHC Comments at 19-20, 24-28.

award an additional franchise. In other words, § 541(a)(1) prohibits unreasonable denials of competitive franchise applications – not purported delays.[78] This is made clear by the last sentence of § 541(a)(1), which states that:

> Any applicant whose application for a second franchise has been denied by a final decision of the franchising authority may appeal such final decision pursuant to the provisions of Section 635 for failure to comply with this subsection.

47 U.S.C. § 541(a)(1). Moreover, the term "refuse," which is utilized in § 541(a)(1), is defined by Black's Law Dictionary to mean "deny, decline, reject."[79] Accordingly, there is no way § 621(a)(1) of the Cable Act can be properly construed to prohibit undefined "delays"[80] in the local franchising process, particularly when the applicant is responsible for the delay.

Qwest also seeks to convince the Commission that build-out requirements in franchises are inconsistent with 47 U.S.C. § 541(a)(1). Such a conclusion, however, is unsupported by the text of § 541(a)(1), which refers to denials of additional franchise applications. Build-out requirements clearly do not constitute a denial, much less the final determination of a denial which authorizes a judicial remedy.[81] Furthermore, §§ 541(a)(3) and 541(a)(4)(A) specifically countenance the inclusion of build-out provisions in franchises. Thus, Qwest is essentially asking the FCC to re-write the Cable Act to serve its purposes. As previously stated, the Commission is not empowered to do so.

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[78] Reasonable denials of competitive franchise applications are not proscribed by 47 U.S.C. § 541(a)(1). *See* the Initial Comments of the LFAs at 25-26.
[79] BLACK'S LAW DICTIONARY at 1282 (6th Ed. 1990).
[80] 47 U.S.C. § 541(a)(1) does not contain a timeline or deadline for acting on competitive franchise applications. If Congress had intended to impose a timeline or deadline on local franchising authorities, it would have explicitly done so, as it did in the context of franchise transfer applications. *See* 47 U.S.C. § 537 (providing that franchising authorities have 120 days to act upon a request for approval of a sale or transfer of a franchise).
[81] *See* 47 U.S.C. § 555(a).

VII. CONCLUSION.

For the foregoing reasons, the Commission should refrain from adopting rules and guidelines preempting and/or managing local cable system franchising.

CERTIFICATION PURSUANT TO 47 C.F.R. § 76.6(a)(4)

The undersigned signatory has read the foregoing Reply Comments of the Burnsville/Eagan Telecommunications Commission; the City of Minneapolis, Minnesota; the North Metro Telecommunications Commission; the North Suburban Communications Commission; and the South Washington County Telecommunications Commission and to the best of my knowledge, information and belief formed after reasonable inquiry, they are well grounded in fact and are warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and are not interposed for any improper purpose.

Respectfully submitted,

/S/ Stephen J. Guzzetta__________

Stephen J. Guzzetta
Michael R. Bradley
BRADLEY & GUZZETTA, LLC
444 Cedar Street
Suite 950
St. Paul, Minnesota 55101
(651) 379-0900
guzzetta@bradleyguzzetta.com

Attorneys for the LFAs

March 28, 2006

EXHIBIT A

FINAL TRANSCRIPT

Thomson StreetEvents℠

VZ - Q4 2005 Verizon Earnings Conference Call

Event Date/Time: Jan. 26. 2006 / 8:30AM ET

CORPORATE PARTICIPANTS

Ron Lataille
Verizon - SVP - IR

Doreen Toben
Verizon - EVP, CFO

Ivan Seidenberg
Verizon - Chairman, CEO

CONFERENCE CALL PARTICIPANTS

David Barden
Banc of America Securities - Analyst

John Hodulik
UBS Warburg - Analyst

Viktor Shvets
Deutsche Bank - Analyst

Simon Flannery
Morgan Stanley - Analyst

Jeff Halpern
Sanford C. Bernstein & Company, Inc. - Analyst

David Janazzo
Merrill Lynch - Analyst

PRESENTATION

Operator

Good morning and welcome to the Verizon Fourth Quarter 2005 Earnings Conference Call. At this time, all participants have been placed in a listen-only mode and the floor will be open for questions following the presentation. [OPERATOR INSTRUCTIONS] It is now my pleasure to turn the call over to your host, Mr. Ron Lataille, Senior Vice President - Investor Relations of Verizon.

Ron Lataille - *Verizon - SVP - IR*

Good morning, everyone. Welcome to our Fourth Quarter 2005 Earnings Conference Call. Thanks for joining us this morning. I'm Ron Lataille. With me this morning are Ivan Seidenberg, our Chairman and CEO; and Doreen Toben, our Chief Financial Officer. Before we get started, let me remind you that our earnings release, financial statements, the investor quarterly publication and the presentation slides are on the Investor Relations website. This call is being webcast. If you would like to listen to a replay, you can do so from our website.

I would also like to draw your attention to our Safe Harbor statement. Information in this presentation contains statements about expected future events and financial results that are forward-looking and subject to risks and uncertainties. Discussion of factors that may affect future results is contained within this presentation and is also contained in our SEC filings, which are on our website. This presentation also contains certain non-GAAP financial measures as defined under the SEC rules. As required by these rules, we have provided reconciliations of these non-GAAP measures to the most directly-comparable GAAP measures on the same web page as the presentation slides. As you know, we closed our merger transaction with MCI on January 6, 2006. As such, the results we will be discussing today are of those of the Verizon stand-alone business for the fourth quarter and full year 2005.

Before turning the call over to Doreen, I would like to direct you to some information on our reported and adjusted earnings. Adjusted earnings per diluted share for the fourth quarter were $0.64. On a reported basis, EPS was $0.59. For full year 2005, adjusted EPS was $2.56, representing 2% growth over $2.51 of adjusted EPS in 2004. Reported EPS was $2.65 in 2005 and $2.79 in 2004. The special items that make up the differences between reported and adjusted EPS are discussed in the earnings release and provided in reconciliation tables within our financial statements. For the fourth quarter of 2005, these items principally related to previously announced changes to management benefit plans, severance and relocation costs. With that, I will now turn the call over to Doreen.

Doreen Toben - *Verizon - EVP, CFO*

Thanks, Ron and good morning to everyone. Verizon delivered another quarter of strong operational and financial performance. Our strong fourth quarter capped the year in which we achieved some major strategic goals and strengthened our position in key growth markets. Our strategies are really starting to take hold and you can see it in our financial and operating results this quarter. As a result, we enter 2006 with excellent momentum and a business that is performing extremely well across the board.

I'll take you through the details of our fourth quarter results but here are the headlines. Customers are responding very strongly to our products. In fact, we set industry records in both wireless and broadband net adds. More new customers than any other wireless company, Telco or cable company has posted in a single quarter. We accelerated our revenue growth at 6.7%. We made important progress in creating the growth markets of the future with our EV-DO and FiOS initiatives, which are both gaining scale and customers. We also prepared for our merger with MCI, which positions us for growth in the large business market. And we showed, once again, that we can invest in growth and still generate solid cash flows, margin and earnings growth. All in all, we are pleased with the strong finish to the year with great momentum going into a very exciting 2006.

Now, let's take a closer look at our consolidated results, starting with revenues. On chart four, you can see our steady growth trajectory. Quarterly revenues increased by 1.2 billion or 6.7% and annual revenues grew 4.2 billion or 6%. Full year revenues were just shy of 75 billion, representing more than a 9 billion increase in three years. Our key growth areas are becoming an increasingly larger piece of our total revenues and compose nearly 60% of our fourth quarter total.

The next chart shows the components of our revenue stream and clearly demonstrates the increasing diversification of our revenue profile. We have three network businesses: Wireless, wireline, serving residential and business customers, wireline also includes a large and very healthy wholesale business. And an enterprise business. As you know, earlier this month, we completed our acquisition of MCI, which will increase our presence in the large business market. Our growth initiatives are diversifying our revenue profile and helping to mitigate our competitive risk. We are also gaining momentum with these initiatives across the entire business. You can see for yourself on this slide. Customer connections, the combination of switched access lines, broadband connections and wireless subscribers, up 5.7%. Wireless data revenue, now a 2.2 billion annual revenue stream, up more than 100%. Wholesale data traffic volumes with double-digit growth. And an increasing appeal among residential customers for some kind of bundle or package of products from us. Another key point here is that we are seeing increasing demand for our services across the board.

Turning to margins, we delivered our fourth straight quarter of margin growth, even as we're continuing to invest today for better growth tomorrow. Adjusted operating income margins, excluding pension and OPEB costs were 22.1% in the fourth quarter, an increase of 90 basis points sequentially and 190 basis points year-over-year. And as you know, growth initiatives initially create downward pressure on margins. Since we are committed to margin stability and ultimately to margin expansion, it is mission critical to drive other costs out of the business by increasing efficiencies and productivity throughout the entire organization. And I can assure you we never lose sight of that fact. We view driving down costs as a critical matter of financial execution, especially as we expect to continue to grow our customer base or have existing customers take multiple products and services from us. This is extremely important as we remain committed to capturing the growth opportunities that will drive future revenue and earnings growth.

During 2005, we maintained fairly consistent quarterly earnings performance, as you can see on the top of slide seven. For the year, adjusted EPS was $2.56, representing 2% growth over 2004. While this is modest growth, I believe it demonstrates our capacity to manage cost-effectively and offset the initially dilutive effects of growth initiatives. Final solutions for the full year 2005 was worth $0.15 as compared to the $0.04 in 2004. In addition, I would point out that the net pension and OPEB expense had a $0.30 negative impact on EPS in 2005, compared to a $0.21 in 2004. So, from a bottom line perspective, we were able to preserve earnings stability, even as we made significant investments in network platforms that will fuel future revenue and earnings growth.

Let's take a look at slide 8. 2005 was another year of strong cash generation and our balance sheet is stronger than ever, something that I'm particularly proud of. CFFO, which totaled 22 billion for the year, was strong in both the wireline and wireless business. Our 2005 capital spending was on target with previous guidance. The increase over 2004 spending reflects our focus on growth opportunities. In fact, 69% of our capital spending in 2005 was related to growth initiatives. Total debt levels were maintained in spite of the increase in capital spending and wireless spectrum purchases. Our credit metrics are the strongest they've ever been. For example, our net cash flow to debt ratios finished the year at over 50%, our best ever.

Let's begin our segment review with wireless. Simply put, these are the best wireless quarterly results from any carrier ever. If you take a look at any of the metrics from growth through profitability to loyalty, Verizon Wireless has equaled or surpassed its own industry record results. And we continue to demonstrate that the growth engine we have built just keeps getting better with time. Net adds for the quarter were an industry record 2.05 million. Retail post-paid net adds were 1.76 million for the quarter. Total customers now stand at 51.3 million, which is 17.2% higher than last year. For the full year, we added 7.5 million customers. I think that's a number that bears repeating. We added 7.5 million customers during the year. 7.1million of whom were retail post-paid. Our success is the result of capitalizing on opportunities and leveraging our strong fundamentals and networks to capture market share. And with our commitment to quality, we are seeing very strong customer loyalty. Our customer base is about 96% retail. Total churn of 1.22% tied our previous record and our retail post-paid churn of 1.02% was also near all-time lows. These results show that it really is the network and our award-winning service that attracts and retains customers.

Slide 10 shows our very strong revenue growth trends over the past five quarters. Total revenues grew 18.3%, reflecting the phenomenal growth that we had this quarter. Quarterly revenues have increased over $1.3 billion in just one year, which is incredible. As a matter of fact, I suggest there are very few 30 billion plus businesses that are growing revenues at this kind of pace. Service revenue was up 963 million or almost 15% compared with fourth quarter last year, driven by data usage and the good customer profile of new adds. Service ARPU was $49.36, down 1.9% year-over-year, representing about 100 basis point improvement in the year-over-year run rates from the second and third quarter. This improvement is attributable to increasing data usage as well as strong customer mix. Wireless data is an increasingly big part of the Verizon Wireless story. At 731 million, data revenue accounted for almost 10% of fourth quarter service revenues. Data contributed $4.85 of ARPU, up from $4.23 last quarter. Very strong sequential growth.

Almost half of our retail customers are data users, up significantly from this time a year ago. And we're seeing strong uptake on Broadband Access cards and PDAs from corporate customers, thanks to our extensive EV-DO network. The key to our success in wireless data is our commitment to investing in the network. The result is a first-mover advantage which has really separated us from our competition in terms of coverage and experience in delivering broadband services. Our EV-DO network gives us, by far, the most pervasive wireless broadband coverage of any carrier in the marketplace. We now offer 24 different EV-DO broadband devices, the most of any carrier. We have six PC cards, eight PDAs and 10 handsets in the market today. We have partnerships with Dell, HP and Lenovo to embed EV-DO chips in their laptops. We also recently launched the Windows Mobile Treo device. Customers are snapping up these products because of the growing set of multimedia applications that can be delivered to a mobile device. Verizon Wireless is leading this wave, as well.

We continue to see strong growth in V CAST and our just-launched V CAST music service has gotten rave reviews. V CAST music is unique. It is the most comprehensive mobile music service in the world. You can download full songs over-the-air to your handset and your Windows PC and you can transfer your existing collection of music downloads and CDs to your phone. The exciting thing is that we're really just at the beginning of the wireless broadband revolution. And we have the network and the products to really take advantage of this growth trend.

Of course, growth is only part of the Verizon Wireless story. We focus on profits and growth, not one or the other, but both. And you can see on slide 12 that's what we delivered in had the fourth quarter. We continue to grow with increasing profitability as our operating income margin expanded to a record 25.8% for the quarter. Quarterly EBITDA margins were 46.8%, up 36% year-on-year with a run rate of over 3 billion in each of the last three quarters. This is the best in the industry. Our already-low cash expense per subscriber hit its lowest level ever. And all of this, while we increased retail gross adds, very impressive.

Our low cost structure is the result of many efficiencies in the business, as well as our very balanced distribution mix. As you can see on slide 13, we have excellent cost metrics across the board. One key element is our superior distribution network, which saw 69% of our retail post-paid gross adds coming in through our direct channels in the quarter. Acquisition costs declined by 18.6%. Network costs continued to decline. Expenses per minute of use are down nearly 18%. We continue to drive customers to the most efficient means of doing business with us. The number of self-service transactions increased nearly 48% over the past year. Employee productivity increased by almost 5% as our focus on efficiency and quality in our call centers is paying off. When you're able to increase quality and decrease costs at the same time, you have the ingredients for a winning business model.

Let me wrap up wireless by saying this was another record-breaking quarter in which we expect that Verizon Wireless has increased its lead as a top carrier in the industry. Verizon Wireless has size and scale and a superb management team and organization that is executing its business model. This model is built upon the fundamentals of the best network, excellent customer service and innovative products and services. As you can see from our results, the Verizon Wireless machine is hitting on all cylinders. We have built significant momentum and are generating growth and profitability. We have an extremely loyal customer base, very low churn and a very high percentage of our customers on one or two-year contracts and we've introduced lots of new products and services. We also enter this year with a significantly enhanced spectrum position. And we have a business culture that is driven to deliver continuous improvement quarter after quarter, year after year. Our consistent investment has created the platform for innovations that will drive our growth.

Let's move to wireline, where we are seeing continued customer growth across the broadband, enterprise and wholesale markets. The big news is in broadband, where we now have 5.1 million customers, an increase of 1.7 million customers for the year, we added 613,000 in the fourth quarter alone. Our bundle penetration ended the year at 65%, up from 55% a year ago. And Freedom for Business packages have passed the 1 million mark, up 38% since last year. Almost half of these customers are on an annual contract. In wholesale, we also saw strong demand for DS1s and DS3s which grew by 12.5% year-over-year. All in all, we have seen steady increases in growth product penetration and we expect to see more of the same in 2006 which will help drive revenue growth in future quarters.

Our emphasis on growth products is transforming the revenue mix in the consumer market. As we have said before, this makes the traditional access line metric much less important as a gauge of revenue growth than it used to be. As you see on slide 16, growth in revenue generating units, RGUs, which we introduced last quarter, track much more closely with revenue performance than do access lines. We did lose 426,000 retail access lines in the quarter, which is an improvement over the last two quarters and from the fourth quarter of last year. We believe that the increase in broadband subscribers, the introduction of Freedom Essentials and other marketing activities help retain and win back customers. As a matter of fact, the fourth quarter marks the first time that our broadband net adds exceeded the decline in retail residential access lines. With regard to retail business line losses, we continue to see improvements over last year, especially when we exclude dial-up port disconnects as these contracts expire. Total wholesale voice connections, both UNE-P and retail declined by 323,000 during the quarter. So, overall, the increasing use of broadband connections by our customer base is redefining the traditional view of the wireline business and creating new opportunities.

Looking at wireline revenue trends, we did see increasing competition and technology substitution in 2005. We are responding in the marketplace with our broadband initiatives, new products and services, increased use of bundling and some pricing changes. As you can see, we were able to maintain a stable revenue base of about 9.4 billion each quarter. Although revenues were essentially flat on a sequential basis, fourth quarter revenues were down 1.8% year-on-year and full-year revenues were down 1.1%. Among the reasons which contributed to the fourth quarter and full year decline are the loss of revenues from discontinued activities. In the fourth quarter of 2005, this amounted to 127 million decrease over fourth quarter a year ago. For the full year, this represented a decline of 269 million. A large part of this decrease is from the termination of a large logistics management contract this past summer. You can expect about 80 to 100 million unfavorable effect in each of the next two quarters as a result of this issue. Another factor adversely affecting the fourth quarter comparison were revenues from our CPE business, which were lower than last year. In previous years, we saw CPE sales spike up in the fourth quarter but that did not occur this year. In the consumer market, fourth quarter revenues were down on a sequential basis and 1.1% year-over-year. For the full year, consumer revenues, which totaled 15.2 billion in 2005, were down only .4%. As I said earlier, this shows that we are mitigating the loss of revenue from access lines, with broadband, long distance and other services.

In the fourth quarter, average monthly revenue per customer was $51.50, up 3.9% year-over-year. Wholesale revenues increased by 33 million or 1.6% on a year-over-year basis. Sequentially, revenues were essentially flat. This market includes switched access, local wholesale products like UNE-P and resale. It also includes high speed, high capacity growth products, which are driving data growth in this market. I would mention that we now have 92% of our base of UNE-P customers on commercial agreements. We are scheduled to see some UNE-P price increases in 2006, which should provide an incremental margin opportunity.

Looking at business, revenues in the business market were 2.75 billion, down slightly on a sequential basis and down 126 million or 4.4% versus fourth quarter last year. As I mentioned before, our CPE business was part of the reason for this decline. In the highly-competitive small and medium-size business market, we have had success in retaining customers and have been actively marketing our Verizon Freedom for Business as well as DSL. Within the enterprise space, we are obviously looking forward to the upside opportunities now that the MCI merger has closed. More on this in a few minutes.

Quarterly data revenues continue to grow, increasing 9% year-over-year, driven by strong demand for high capacity and broadband products. Data transport drove most of the quarterly growth with 9.7% higher revenue than last year. For the full year, data revenues totaled 8.5 billion, an increase of 10.5%. Importantly, data is also becoming a more significant percentage of our overall wireline revenues. Now standing at 23.4%. Between our data products for business and the growing popularity of our consumer broadband products, we are well-positioned to benefit from the ongoing expansion of the market for high-speed, high-capacity services.

Now let's move to FiOS. We continue to see a strong and growing customer response to our FiOS data and video product offerings. Looking at the penetration rates for FiOS data, we are ahead of plan. We are seeing good customer acceptance and consistent monthly penetration gains. Last quarter, we told you that in the 35 markets where we have been actively marketing in for six months or more, average penetration was 12.4%. I want to give you an update, but in a slightly different and better way to look at our progress. In markets where we have been selling FiOS data for at least six months, the average penetration at the six-month mark for each was 9.2%. At this point, this includes more than 90 central offices. In markets where we have been selling FiOS data for at least nine months, the average penetration at the nine-month mark for each was 14%. At this point, this includes more than 35 central offices. These markets are spread throughout our footprint and compete with all the major cable players. These early penetration rates indicate that we are well on our way to achieving our goal of 30% penetration in five years.

In video, we are seeing great initial acceptance by customers. In Keller, Texas, our first video market, we have already achieved 21% penetration in only four months. Within the last few months, we also began selling FiOS TV in some other Texas markets as well as Temple Terrace in Florida and Herndon, Virginia. While it's a bit early to give you penetration rates, we are very pleased with our initial sales and just this week, we launched video in Massapequa Park, New York and Woburn, Mass. We will also be selling services in a California market very shortly. As we move forward, we expect to continually enhance our video product and differentiate it even more with converged capabilities. So, we're off to a strong start. From a deployment standpoint, by the end of 2006, we expect to have passed a cumulative total of 6 million premises or about 20% of our households. Going forward, we expect to pass about 3 million per year. As we gain scale and connections, we will also be able to drive more costs out of the business and we also expect that technology improvement will further drive down our network costs, as well.

Moving to our wireline margin, operating income margin, excluding pension and OPEB was 16.1% for 2005. In fact, we're targeting about a 16% margin for 2006. Of course, we normally see some variability in operating margins on a quarterly basis. The fourth quarter difference was largely train by our very high growth in DSL and FiOS deployment. I would mention that as we gain scale in DSL, we have turned the corner on EBITDA profitability, which should continue to improve and help margins going forward. Quarterly cash expenses were up 2.6% year-over-year. We continue to see significant opportunities for additional cost savings. We have many new cost initiatives, which I'll discuss in a minute, which will help stabilize telecom margin performance.

As you would expect, we continue to be focused on improving the wireline cost base. We closely manage our force levels, balancing them with our work volumes, shifting manpower whenever possible to support the fiber initiative. Our overall wireline head count ended the year at 141,000. We are also replicating the success achieved by our Partner Solutions Group, which significantly automated wholesale orders and reduced head count and costs. Over time with higher in the fourth quarter, on both a sequential and year-over-year basis. This was a result of us having to shift manpower to deal with the inordinately high damage and repair caused by the heavy rains, mainly in the month of October. Online bill payments are up 16% as we continue to drive customers to more efficient transaction-based services and we see further opportunities for savings in the areas of real estate and call center management.

So to sum up wireline, we are rapidly transforming this business around the customer's growing demand for broadband. We are investing in broadband capacity in our access network, developing differentiated broadband products across all segments of the market and creating new revenue opportunities in markets such as video. You see this strategy taking hold in the fourth quarter with our record-setting performance in DSL, strong performance in data and our earlier success with FiOS. In the meantime, we're holding our ground with steady revenues, stable margins and a relentless focus on costs. We're confident in our strong wireline business model. And our network will give us an unsurpassed strategic and product platform for growth in the broadband era.

I want to spend a few minutes sharing some information about our new business unit called Verizon Business, created by the acquisition of MCI. We believe this acquisition provides us with a great opportunity to further strengthen the power of the unified Verizon brand, particularly now that we can add wireless services to the product portfolio. We have an experienced management team in place with great leaders from wireline, Verizon Wireless and MCI. We have challenged these seasoned professionals with some very aggressive integration plans and some aggressive financial targets.

We have a lot of experience in mergers and acquisitions, both wireless and wireline, and I'm very confident in our ability to achieve the synergies. On slide 24, you see these synergy targets by year. These run rates are about 10% higher than we originally announced, primarily from realizing these savings earlier than originally forecast. The net present value of the synergies has increased from 7 to 8 billion. Network savings represent nearly half of the total, with workforce reductions and IT savings each representing about 20% of the totals we estimate at this time. One significant area for savings in the network category is third party access savings, that is, bringing more traffic on net. These savings will be realized through a combination of moving more Verizon Wireless traffic on net as well as moving our out of footprint access and long haul LD traffic to the former MCI network. In 2006, we expect these savings across Verizon to be well over 200 million. In the area of workforce reductions, we anticipate achieving a workforce reduction of about 7,000 people within a three-year period. More than half of this reduction will be from eliminating duplicate corporate staff and from the mass market business area. In the IT and systems integration area, we also see significant opportunities. As far as the transition costs needed to capture these synergies, you can see our estimated annual spread of these costs on the slides. In total, we expect to spend about 1 billion over the next three years. Integration capital spending is estimated to be between 1.6 and 1.9 billion over the same three-year period. We estimate about 550 million of that will be spent in 2006.

We have an aggressive go-to-market plan that will introduce the new Verizon Business to the marketplace. We hope to immediately enhance the customer experience with a more integrated approach to the sale of our wireless products. You can expect us to build upon Verizon and MCI's reputation for excellent service by transforming the service experience for our customers. We have a unique approach to business service delivery, called "Customer Service Surround". Our unique brand sales office structure places our account teams closer to our customers. Similarly, the Verizon Business Customer portal will put online service and account management tools at our customer's fingertips. From at your side support to online self-service and all points in between, our objective is to deliver an unmatched customer experience, geared to a customer's personal preferences. This will be a major element of the Verizon Business difference. And I want to emphasize that we see huge opportunities for margin improvement Verizon Business.

As we look across all three network businesses, we continue to see significant cost savings opportunities over the next several years. Verizon Services, our recently created organization to provide back office and support services across our businesses, is an example of how we intend to increase efficiencies through economies of scale and reduce duplication of efforts. We are also conducting an extensive review of our expansive real estate portfolio. We are convinced that we can capture savings and unlock value through this portfolio rationalization. Web-based customer self-service applications are also examples of ways we can increase the efficiency of our business. Our network investments are intended to grow revenues and significantly reduce maintenance and operating costs. Our fiber build is a perfect example of this. Our innovative and competitively priced products and services are increasing customer retention and helping to reduce the cost of churn. As we strive to stimulate revenue growth in all of our businesses, you can expect us to continue our relentless focus on reducing our cost structure.

Let me give you a couple of thoughts about how we're looking at 2006. As I said at the beginning of today's discussion, we are entering 2006 with excellent momentum. Our strategies are taking hold and customers are responding to our wireless and broadband products and services at record-setting levels, helping to diversify our revenue profile. These customer successes will continue to drive revenue growth in 2006. Our capital investments also enable growth. The investments in our network will result in market share gains and revenue growth. In addition, the resulting increase scale helps improve margins, earnings and return on invested capital. We previously stated that capital spending in 2006, excluding MCI, would be between 15.4 and 15.7 billion. With MCI, "all-in" capital spending is expected to be between 17 and 17.4 billion. The 1.6 to 1.7 billion incremental spending as a result of MCI, includes about 550 million of integration capital in 2006. With the MCI merger now complete, more experience with fiber and our EV-DO plans on track, we have a high degree of confidence in the stability of our 2006 capital program. From a total telecom capital spending perspective, we see 2006 as the peak expenditure level. We are very focused on maintaining stability in our margin as we grow the business. This morning, I have shared with you some of the cost-saving opportunities we see. Related to 2006 costs, let me give you a sense for net pension and OPEB expenses. As I noted earlier, net pension OPEB costs resulted in an unfavorable EPS impact of $0.30 in 2005. In 2006, we expect this total to be about $0.04 to $0.06 worse or $0.34 to $ 0.36 in total. As you know, we've taken steps to control future post-employment costs through changes in our management plan. As far as CFFO, we see improving cash flows, which will fund future investments in our networks and return value to shareowners.

We have set specific goals and targets for our three network businesses. All of these are focused on growth, both top and bottom line, and creating value for shareowners. Lastly, this past December, we announced our plans to divest our Verizon Information Services Directories business. We are moving full steam ahead with our bankers. We are well along in developing the necessary planning to successfully accomplish this disposition in 2006. We will provide you more information on this value-creating transaction when our exact plans become more definitive. Thanks, Ron and I will turn it back to you.

Ron Lataille - *Verizon - SVP - IR*

Thanks Doreen. Operator we're now ready to take some questions.

QUESTIONS AND ANSWERS

Operator

[OPERATOR INSTRUCTIONS] David Barden, Banc of America Securities.

David Barden - *Banc of America Securities - Analyst*

Hey, guys, good morning. [Congrats] on the quarter! Just wanted to ask a couple of questions on a couple of topics. First on the wireless side: Obviously and typically what's usually a lower margin fourth quarter, there was a big step down in CPGA, a big step down in cash costs per user. If we look ahead in '06, I was wondering if you could address some of those sustainability issues on those forces as we kind of look for where margins might wind up in the coming year. The second issue would be on the FiOS metrics that are coming out. Could you talk a little bit about whether those are being driven by conversions of existing subscribers in DSL or competitive winbacks? And then maybe the last issue would be on the directory spin. You know, whatever -- how it happens, there's going to be probably incremental borrowing capacity or cash coming into the parent company. Any early thoughts on what the intentions are to do with that incremental flexibility? Thanks a lot.

Doreen Toben - *Verizon - EVP, CFO*

Hey, David. Thanks. If I start with, I guess the first question on wireless margins. I guess what I would say is we target wireless margins in the, you know, sort of mid- to low 40s. That would be normal. To the extent that you didn't have the kind of growth, you know, you might actually kick it up a little bit. But I would think about the fact that we think there's lots more opportunity out there, there's a lot more -- at only 70% penetration, we think there's a lot more opportunity to grow, but the target sort of, you know, mid- to low 40s. On your -- the metrics, I guess, for fiber, I guess the -- the conversion rate from DSL is around 35%. Was there more with the DSL? That was it for DSL. Okay. And then Ivan, do you want to do the -- .

Ivan Seidenberg - *Verizon - Chairman, CEO*

Yes, David, on the question of use of cash with the directory divestiture, the way we think about this is, as Doreen pointed out in her opening remarks, we feel pretty good about the visibility of our -- of our spending this year, where we're going to put our capital. So, we don't see the issue of the use of cash from the directory as impacting the run rate of what we would do with organic investments in the -- in all three businesses, Wireless and Verizon Business as well as the Telco. Now, once we get a little further along into the year and we look at the form of the actual divestiture, our first focus there is to try to figure out a way to return value to shareholders using that cash. And as Doreen has talked about in the past, there are options to do lots of things, which is balance sheet improvement, reduce debt, buyback shares. So we'll -- as this unfolds during the year, we'll -- we'll take a careful look at that.

David Barden - *Banc of America Securities - Analyst*

Thanks, guys.

Ron Lataille - *Verizon - SVP - IR*

Operator, we're ready for the next question.

Operator

John Hodulik, UBS Warburg

John Hodulik - *UBS Warburg - Analyst*

Okay, thanks. Good morning.

Doreen Toben - *Verizon - EVP, CFO*

Hi John.

John Hodulik - *UBS Warburg - Analyst*

Hi. A couple of questions, first on the wireline margins, you had said in the past that FiOS would -- would create dilution of about $0.14 in '05. Can you update us on that, on how that -- how that turned out here in the fourth quarter? And then looking out into -- into '06, we got the 16% EBIT premargin -- or prepension margin guidance. What kind of dilution from FiOS and potentially from the, you know, video rollouts are included in that number? And then just real quick follow-up on the DSL growth, is this kind of --- similar to David's question on wireless -- is this a sustainable number? Is it being driven by the $15 plan? And how much -- you know, if you can maybe in round numbers, are you getting a nice kick from FiOS, as well?

Doreen Toben - *Verizon - EVP, CFO*

Okay, I think on the FiOS question, it was $0.04 in the third quarter, it kicked up to $0.05 in the -- in the fourth quarter. So, that was the incremental dilution. I think I did say, you know, in the text, that in '06, we sort of expect a $0.10 to, you know, $0.15 additional dilution on top of that. A lot of it based on success base, so that's sort of why the range. Yes, that would be already built into the 16% target that we're -- that we've talked about. On the DSL, I think, you know, about 50% of the net adds are coming from you know, from the 1495. However, very, very, very low migration, which is -- which is something that's good. The people are really staying with their existing higher speeds. And as far as the ability to kick up, I mean the penetration of broadband is still very low, you know, in the country at 35%. So, we do think that there's a lot more opportunity, you know, we still have all the dialup guys converting, that's a lot of what's happening with the 1495. So, we think that there is still a lot more opportunity on broadband into '06.

John Hodulik - *UBS Warburg - Analyst*

Okay. Great. Thanks.

Doreen Toben - *Verizon - EVP, CFO*

Okay.

Ron Lataille - *Verizon - SVP - IR*

Thank you, John, operator, next question.

Operator

Viktor Shvets, Deutsche Banc.

Viktor Shvets - *Deutsche Bank - Analyst*

Yes, good morning, everybody. Thank you very much. Just looking at the dilution from media products, just following in from John's comment, how should we think about programming cost as as well as subscriber position costs in 2006? You launched a number of media markets this year and you're going to launch further as we go through 2006. What kind of operational expenses should we reporting into our models? And how media expenses and SAK are going to be amortized through the P&L? Thank you.

Doreen Toben - *Verizon - EVP, CFO*

Okay, hi, Viktor. Let's make sure I understand your question. The $0.10 to $0.15 obviously has the video piece in it. I would suggest that it probably ramps during the year, you know, as you start to have more success base, if you're thinking about how it spreads, right, you're going to -- you're going to ramp it up through the end of the year. And on -- as far as the -- you're asking like what we're capitalizing and what we're expensing piece of it? On the video piece, I guess it's really mostly capital.

Viktor Shvets - *Deutsche Bank - Analyst*

Right, so, you'll be -- you'll be -- you'll be capitalizing and then amortizing over a number of years, is it?

Doreen Toben - *Verizon - EVP, CFO*

Yes. And I guess different pieces would have different lives to, you know, what we're -- what we're amortizing in.

Viktor Shvets - *Deutsche Bank - Analyst*

Okay. Thank you.

Ron Lataille - *Verizon - SVP - IR*

Thanks, Viktor. Operator, next question.

Operator

Simon Flannery, Morgan Stanley.

Simon Flannery - *Morgan Stanley - Analyst*

Okay, thanks very much. Good morning. Ivan, there's been a lot of talk out of Europe about Vodafone being pressured to sell their stake in Verizon Wireless. Can you just talk about whether that's something you would still like to do and whether do you think there might be some opportunity this year? And secondly, can you talk about the regulatory environment around video franchising? Any sort of movement in Washington or in the states, to try to get that moving along more quickly? Thanks.

Ivan Seidenberg - *Verizon - Chairman, CEO*

Yes, on the Vodafone question, like everyone else, we were very interested in what we read and heard about the -- the Vodafone earnings call. Our position has pretty much been the same all along and maybe I -- I take a moment to clarify where we are in this. First of all, we've had no direct indication from Vodafone that they've changed their position. So, we're as anxious as anyone else is to see how the -- the conversation that started the other day materializes. To the extent, however, that there is a change of a view coming from Vodafone, we clearly would be interested in increasing ownership of Verizon Wireless, whether in stages or actually acquiring 100% of it. I would add that we also recognize that the put option is not the preferred vehicle for Vodafone to facilitate any transaction. That was exactly the issue we had when they were considering the purchase of AWE. So -- so, Simon, we are very open and willing to consider negotiation around that to make sure that it's efficient for both sides and it's -- we can maximize value for both parties. You know, when you think about it, Verizon Wireless has gone through an extraordinary run here. It's -- it's created a lot of value for both sides. And that I think that it's a good time to think about this and so we would stand ready to work on that. One other point that -- that I would make is that, as we think about this, just so that Verizon shareholders would understand how we think about this, Doreen and I have -- have talked about this, and our view is to the extent possible, we would try to do anything here if it was -- if it was given to us by Vodafone, with as much cash as possible. And so, for example, like everybody understands, the Omnitel ownership, perhaps the -- the divestiture of VIS would all be -- be part of how we would think about funding, funding the whole operation. So, I think we need to give Vodafone some room to think through what they want to do. But our position, Simon, has been what it's always been. If the opportunity came to be, we would be -- we would stand ready to work with them.

Simon Flannery - *Morgan Stanley - Analyst*

Good. And on the video franchising?

Ivan Seidenberg - *Verizon - Chairman, CEO*

Yes, on that we feel that we're making good progress here. We have a few more franchises working. We have plans for several hundred more to file. There've been a couple of break throughs in several states, in which legislatures have taken votes on it. We even have one state, believe it or not, where the -- where the local cable association has taken a positive position on -- on where we are. So, I think, Simon, the way we see this, is we're going to continue the -- the sort of community by community approach that we've started. But we feel we are getting traction in several states. We're taking a look at the broader picture. I'm sure you know that next week there's a hearing in Washington on this subject. So, I think there's a lot of momentum building, and we're taking the position we're going to do this step by step, but also look for the sort of broader policy opportunity and we feel that the -- the stars are lining up for public officials to take a more aggressive stance on this over the next several months.

Simon Flannery - *Morgan Stanley - Analyst*

Great. Thank you.

Ron Lataille - *Verizon - SVP - IR*

Thanks, Simon. Operator next question please.

Operator

Jeff Halpern, Sanford Bernstein.

Jeff Halpern - *Sanford C. Bernstein & Company, Inc. - Analyst*

Good morning, guys. Ivan, if I could just follow up -- two questions, if I could follow up on your answer to Simon's question just now. I was wondering if you have any sense of what the difference in timing looks like between a state level approval process for franchising versus a municipal -- municipality by municipality one? And then, Doreen, is there any way you can give us a similar kind of update as you did last quarter on where we are on things like operating expense savings and capital savings that you're seeing in markets that have had FiOS for six or nine months or longer?

Ivan Seidenberg - *Verizon - Chairman, CEO*

Yes, quickly, I don't think there's a big issue associated with timing. I don't think there's, by the way, any story there. I think that the law is the law. I think we have to go out and get -- and get franchise approvals and we're doing that and we're doing it aggressively. And we're queued up. We don't feel that there's any impediment to our rolling out FiOS during the year, 2006. Admittedly as we go into two seven and '08, we'll need to be more aggressive because we'll be in more communities. But by that time, I'm sure we will have so much success with -- with the early deployment, that the whole political environment starts to -- to change as we go forward. We've already seen that. And as I -- we've said before, every place where we -- we instigate a vote, the vote usually comes out, you know, let's -- let's create competition in this -- in this marketplace. So, we do have some -- some things in the regulatory process we need to work through, but I don't think there's any -- any timing issue that we have to face anytime in 2006.

Simon Flannery - *Morgan Stanley - Analyst*

Great.

Doreen Toben - *Verizon - EVP, CFO*

Okay, and Jeff, on the operation -- operation savings or on the capitol savings, I think at this point, the scale -- the amount of [how] homes that we really have connected, it's really to small to have, you know, to have a lot of data. What we get is antidotal at this point. So, it is -- it is -- we do track -- say when there's weather-related, you can see that the trouble reports from those -- those homes, you know, don't vary at all. But as far as, you know, being able to say it's "X" amount of dollars at this point, I think we need, you know, some more time and some more scale before we can really get our hands on that definitively.

Simon Flannery - *Morgan Stanley - Analyst*

Okay, thanks.

Ron Lataille - *Verizon - SVP - IR*

Thanks, Jeff. Operator, next question, please.

Operator

David Janazzo, Merrill Lynch

David Janazzo - *Merrill Lynch - Analyst*

Good morning. Doreen, you had talked about workforce and, of course, with -- with MCI you'll have about 250,000 employees, and you had mentioned 7,000 over -- over a three-year period. Can you comment a bit on -- on the overall strategy of -- of head count management?

Doreen Toben - *Verizon - EVP, CFO*

In all [well] -- in the different units if I – starting like with wireless, in wireless, I think what we've seen is, you know, you'll see increases because of its growth, plus we've had different strategies in wireless, where we're actually putting people in stores. So, to the extent that you're actually putting a store within a store, you're actually growing your head count. If I move over to the Telco, they will have, you know, some reduction level this year and part of it will be, you know, a straight reduction. The other piece is, you know, they're going to move some people really on to the FiOS plan. So, they have a fairly significant number that they're going down. But some of it is, in fact, a shift from the base into capital. And the 7,000 that we talked about, a lot of it, very heavily loaded front-end loaded of that 7,000 over the first two years. So, you'll see a substantial number going down, a lot in the mass markets initially. Okay?

David Janazzo - *Merrill Lynch - Analyst*

And then in terms of the Telco, you mentioned a reduction level in – in '06. Any further clarification on that?

Doreen Toben - *Verizon - EVP, CFO*

No, at this time I'm not going to give you a number.

David Janazzo - *Merrill Lynch - Analyst*

Okay. Thank you.

Ron Lataille - *Verizon - SVP - IR*

Thanks Dave. Operator, now I'd like to turn the call over to Ivan Seidenberg for some concluding comments.

Ivan Seidenberg - *Verizon - Chairman, CEO*

Okay, just a couple of thoughts here. Hopefully as -- as investors and owners look at our Company this quarter, there's a couple of things that -- that we would like you to consider as you do your analysis and you look out into the future about us. First of all, hopefully you see that – or as Doreen said, our strategies are taking root, we're gaining some momentum. There is a greater shift of our overall top line focused on the growth markets. You can see that in all of the markets that we have significant opportunities. Our Telco is gaining customers. We recognize we need to convert the investments in FiOS and DSL and LD into bottom line results and we're anxious to -- to prove that. The VZ Business to us, that is a bottom line story of getting synergies out and generating improvements in -- in cash year-over-year. The wireless story speaks for itself. It's both the top and the bottom line story and it's one of raising the bar and widening the lead. But while that's happening, hopefully that – that everyone sees that wireless looks at the market as having more unlimited opportunities, rather than a closing, a ceiling on it. There's plenty of growth available for us, and with the kind of engine that our team has built, we're in good shape.

There's always a lot of discussion about returning value to shareholders. The only comment that I would like to make on that is, that as we finish 2005, we took steps with our pension for management. We – we just took a step, last month, to increase our share buyback capability from 80 to 100 million shares. We have focused on the divestiture of VIS and the quick go-to-market for the MCI combination. So, we feel we're in a better position, as we move into 2006, by executing on our plan, showing that we have good solid results and good -- good operating focus. But at the same time, the Company will have increased flexibility to deal with how we return value to shareholders during the year. The -- the new starter this week, as we were preparing for this call, obviously the new interest and perhaps acquiring a greater ownership share in Vodafone. While there's still a lot of work to be done and we have to be sure we -- we know where Vodafone comes out, that's another opportunity that, if it came to us, we would be more than delighted to -- to go forward. So, with that, we feel like we had a good quarter. And that we're poised to continue the momentum into 2006. Thanks.

Ron Lataille - *Verizon - SVP - IR*

Thank you, everybody. For joining our call. And have a good day.
