Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Inquiry Concerning the Deployment of	)	
Advanced Telecommunications	)	
Capability to All Americans in a Reasonable	)	GN Docket No. 07-45
and Timely Fashion, and Possible Steps	)	
to Accelerate Such Deployment	)	
Pursuant to Section 706 of the	)	
Telecommunications Act of 1996	)	

COMMENTS OF THE NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS, THE NATIONAL ASSOCIATION OF COUNTIES, THE U.S. CONFERENCE OF MAYORS, AND THE NATIONAL LEAGUE OF CITIES IN RESPONSE TO THE NOTICE OF INQUIRY

I. INTRODUCTION

The National Association of Telecommunications Officers and Advisors ("NATOA"), the National League of Cities ("NLC"), the National Association of Counties ("NACo"), and the US Conference of Mayors ("USCM") submit these comments in response to the Notice of Inquiry ("NOI"), released April 16, 2007, in the above-captioned proceeding.

NATOA's membership includes local government officials and staff members from across the nation whose responsibility is to develop and administer cable franchising and telecommunications policy for the nation's local governments.

NLC is the nation's oldest and largest organization devoted to strengthening and promoting cities as centers of opportunity, leadership and governance. NLC is a resource and advocate for more than 1,600 member cities and the 49 state municipal leagues, representing 19,000 cities and towns and more than 218 million Americans.

NACo is the only national organization that represents county governments in the United States. It serves as a national advocate for counties; acts as a liaison with other levels of government; and provides legislative, research, technical and public affairs assistance to its members.

USCM is the official nonpartisan organization of the nation's 1,183 U.S. cities with populations of 30,000 or more. Its mission is to promote effective national urban/suburban policy, strengthen federal-city relationships and ensure that federal policy meets urban needs.

As representatives of local governments, NATOA, NLC, NACo, and the USCM are in the unique position of knowing firsthand how important broadband services are to our residents, businesses, and first responder personnel. There is no question that universal broadband access is vital to local and national economic growth, educational services, and the efficient functioning of government at all levels. It is essential that our police, fire and other emergency personnel have the communication tools necessary to assist them during times of man-made or natural disasters, such as 9/11 and Hurricane Katrina.

As we have often publicly stated, local governments support and encourage the deployment of broadband services to all our residents. Broadband acts to minimize the limitations of physical distance, bringing with it increased productivity and financial growth, increased public safety, and expanded educational opportunities.

Broadband has the ability to improve the quality of life in all our communities, but especially to those in rural areas, home to nearly one-third of our nation's population. It permits local community-based businesses to compete in the world marketplace.[1] And through telemedicine, it brings better and more advanced health care.[2] For these communities, broadband deployment is not merely a luxury, but rather, a basic necessity for robust economic competitiveness and an improved quality of life.[3]

Broadband helps alleviate traffic jams and save valuable resources through the increased use of telecommuting. Robust deployment can increase distance learning opportunities, promote public safety, deliver entertainment services, and improve communications between local governments and their constituencies. Local governments have long supported and encouraged broadband deployment in our communities through the grant of cable franchises that require the provider to serve all residents within the community within a reasonable period of time over the course of the agreement. Indeed,

---

[1] Colleen Landkamer, president of NACo, recently recounted the example of a rural elevator company based near her hometown of Mankato, MN that required access to high-speed broadband. The county and industry worked together and brought the needed service to the company. Doing so allowed the company to remain in the community and continue to operate its global enterprise. *See* Linda Haugsted, *Convention Speakers Call for Broadband Partnerships,* Multimedia News, May 7, 2007, *available at* http://www.multichannel.com/article/CA6439929.html.

[2] Marsha Zager, *Indiana Digital Gateway: Just What the Doctor Ordered,* KillerApp.Com, May 14, 2007, *available at* http://www.killerapp.com/content/publish/article_358.shtml.

[3] Unfortunately, "[a]reas with low population density and rugged terrain, as well as areas removed from cities, are generally more costly to serve than are densely populated areas and areas with flat terrain. As such, deployment tends to be less developed in more rural parts of the country." United States Government Accountability Office, *Broadband Deployment is Extensive throughout the Untied States, but It Is Difficult to Assess the Extent of Deployment Gaps in Rural Areas,* GAO-06-426 (May 2006), *available at* *http://www.gao.gov/new.items/d06426.pdf*.

recognizing the importance of broadband has induced hundreds of our communities to begin offering broadband services to help provide ubiquitous broadband connectivity for all their residents.[4]

With the continued migration of traditional telephony and video programming services to the Internet, the presence of multiple broadband providers will be essential to a highly competitive converged voice, video and data marketplace. Local governments welcome a truly competitive broadband marketplace, and the promise of choice, quality, and cost savings that a competitive market could bring to our residents.

The Commission should be commended on instituting this and other broadband-related proceedings.[5] The information obtained should provide all interested parties, including Congress, local governments, the industry, and the public, with insight into the current state of broadband deployment across the nation and how to improve and ensure the accuracy and usefulness of broadband deployment data. But unfortunately, these proceedings will not solve one of the biggest problems our country faces in this area and that is the absence of a national broadband policy. Indeed, "the United States is the only industrialized state without an explicit national policy for promoting broadband."[6]

In an effort to rectify this situation, Senator John Rockefeller (D-WV) recently introduced Senate Resolution 191, which calls for "establishing a national goal for the universal deployment of next-generation broadband networks to access the Internet and

---

[4] For example, at least seven communities in Tennessee have entered the broadband and cable television market. *See* Naomi Snyder, *Tennessee Towns Offer Cable as a New Civic Necessity*, The Tennessean, April 3, 2007, *available at* http://www.freepress.net/news/print/22143.

[5] *Development to Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Notice of Proposed Rulemaking (rel. Apr. 16, 2007); and *Broadband Industry Practices*, WC Docket No. 07-52, Notice of Inquiry (rel. Apr.16, 2007).

[6] Thomas Bleha, *Down to the Wire*, Foreign Affairs, May/June 2005, *available at* *http://www.foreignaffairs.org/20050501faessay84311-p40/thomas-bleha/down-to-the-wire.html*.

for other uses by 2015, and calling upon Congress and the President to develop a strategy, enact legislation, and adopt policies to accomplish this objective."[7] In the Resolution, Senator Rockefeller sets forth a number of proposals that are pertinent to this NOI.

II. DEPLOYMENT OF BROADBAND SERVICES

Section 706 of the Telecommunications Act of 1996 provides, in part, that the Commission "determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion." Towards this goal, the Commission collects data from broadband service providers, through Form 477 filings, that "relat[e] to the provision of services that deliver an information-carrying capability in excess of 200 kbps in at least one direction."[8] These filings, which are required from all providers, regardless of size, include information on the number of subscribers served, how those subscribers are served by technology, and a list of zip codes in which the providers serve at least one customer. The validity of this data has been questioned and criticized by many, including Congress and the Commission itself, and a notice of proposed rulemaking ("NPRM") has been issued seeking comment on how to improve the data collection process and more accurately identify those areas of the country where broadband deployment is scarce.[9] This NOI, however, is linked to the NPRM – and to the development of a national broadband policy – in that a proper definition of "advanced

---

[7] http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:sr191is.txt.pdf

[8] *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996,* GN Docket No. 07-45, Notice of Inquiry (re. Apr. 16, 2007) fn. 10.

[9] *Development to Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership,* WC Docket No. 07-38, Notice of Proposed Rulemaking (rel. Apr. 16, 2007).

telecommunications capability" must first be in place before one can even begin to measure the deployment of such services.

Definition of "Advanced Telecommunications Capability"

Among other things, the NOI seeks comment on how the Commission should define "advanced telecommunications capability" and "advanced services." The Commission questions whether its current definition – services and facilities with an upstream and downstream transmission speed of 200 kbps or greater – needs to be "altered" and whether the term "high-speed" should be redefined "to require a minimum speed higher than 200 kbps in one or both directions." The simple and logical response to both questions is a resounding "yes."

Clearly, the Commission's current definition for "advanced services" must be revised. In fact, Commissioner Michael Copps has criticized the current definition as being "a measure that was outdated even when it was introduced years ago and that has become increasingly untenable today, especially when one considers what consumers in other countries routinely expect and receive."[10] And others have criticized the Commission's standard of 200 kbps as too low to allow streaming video and other advanced applications. With the rapid advances in broadband technology, the current definition simply cannot support emerging technologies. In its Fourth Report to Congress in 2004, the Commission stated that the existing definitions of "advanced services," "advanced telecommunications capability," and "high-speed" are "not static"

[10] Statement of Commissioner Michael J.Copps re *Development to Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership,* WC Docket No. 07-38, Notice of Proposed Rulemaking (rel. Apr. 16, 2007).

and that most broadband providers were already "offering service well in excess of the minimum 200 kbps speed."[11]

Given that today's standard is recognized to be well in excess of the defined minimum, how should the definition be revised? Senator Rockefeller suggests that the "next-generation" broadband networks have the capability to transmit data at 100 megabits per second, in both directions. Indeed, 100 megabit connections are becoming commonplace in Europe and Asia. And Comcast recently announced that its next generation of cable modems that will permit users to download content at speeds of 150 megabits per second.[12] But such speeds represent theoretical ideals and may not be available when many users are transmitting over shared links or during busy hours of the day. Most importantly, such speeds will not be available to everyone, especially those living in more remote or rural areas where cable systems do not extend.[13]

But revising the definition of "advanced telecommunications capability" may not be as simple as merely increasing the definitional speed. Since we use this definition to measure consumers' access to broadband, we must first make the decision as to what we are more concerned with – the "quantity" of broadband deployment or the "quality" of that deployment.

---

[11] Federal Communications Commission, *Availability of Advanced Telecommunications Capability in the United States, Fourth Report to Congress*, GN Docket No. 04-54, FCC 04-208, p. 10 (rel. Sep. 9, 2004) ("Fourth Report to Congress").

[12] W. David Gardner, *Comcast Demonstrates 150-MbpsModem*, ITNews.com.au, May 10, 2007, *available at http://www.itnews.com.au/newsstory.aspx?CIaNID=51675*.

[13] However, with the emergence of new wireless broadband technologies - which may be more economically deployed and may become available in such areas - speeds will increase. It has been suggested that the use of "White Spaces" broadband could deliver speeds of up to 80 Mbps.

For example, the current speed of 200 kbps in each direction, according to the FCC's own report,[14] "permits users to play interactive games, use VoIP applications, listen to on-line music, and watch compressed video clips." This functionality – for some – may be sufficient and, because of availability, cost or a combination of these and other factors, these consumers will choose not to upgrade their broadband service. As a result, if the definitional speed is raised higher than 200 kbps, these consumers, even though they have access to broadband, will not be counted. Thus, if we are more interested in getting an accurate assessment of broadband deployment across the country – quantity – we must be careful in not increasing the speed to such an extent that a significant undercount occurs.

On the other hand, if we are more concerned with the "quality" of broadband deployment, the definitional speed should be increased to more accurately reflect current operational speeds that permit more of the features that many consumers now demand of their broadband providers, such as downloading of videos, video conferencing, and so on.

We suggest one option the Commission consider be some sort of tiered approach in defining "advanced telecommunications capability," similar in approach to the manner in which the Commission currently obtains information on deployment. The Form 477 categorizes broadband or high-speed connections into five tiers, based on the transfer rate in the connection's fastest direction: (1) greater than 200 kbps and less than 2.5 Mbps; (2) greater than or equal to 2.5 Mbps and less than 10 Mbps; (3) greater than or equal to 10 Mbps and less than 25 Mbps; (4) greater than or equal to 25 Mbps and less than 100 Mbps; and (5) greater than or equal to 100 Mbps. By adopting the data collection tiers

[14] Federal Communications Commission, *Availability of Advanced Telecommunications Capability in the United States, Fourth Report to Congress,* GN Docket No. 04-54, FCC 04-208, p. 12-13 (rel. Sep. 9, 2004) ("Fourth Report to Congress").

into the operational definition of "advanced telecommunications services," both quantity and quality of broadband deployment can be measured. As a result, all consumers, regardless of the speed of their selected service, will be counted.

However, it must be pointed out that one advantage of increasing the speed definition, and thus focusing on quality, would be to spur providers to offer faster service to their customers. Doing so would prevent providers from using the Commission's definition to argue that their snail-pace service is "high-speed." Yet, it could require upgrades to existing infrastructures that may be costly for smaller competitors.

In addition, the Commission should seriously consider addressing the issue of symmetry when revising its definitions. Currently, broadband is very asymmetrical; in other words, one can download quickly, but uploading is slower. Symmetry is essential where bandwidth needs are growing exponentially and high, symmetrical capacity is increasingly necessary for popular and commercially-significant applications, such as gaming, video-downloads, and video conferencing. Asymmetrical speeds inhibit collaborative use of the Internet, putting us at a competitive disadvantage with other countries where symmetrical speeds spur creativity and economic development. So long as the Commission's definitions allow low upstream speeds, the industry will not be encouraged to move towards greater symmetry.

Finally, the definition should be reviewed in light of the fact that Congress may take legislative action to encourage broadband deployment. The definition should be such that it encourages deployment to all Americans and supports private and public investment in advanced broadband technologies.[15]

[15] Representative Edward Markey (D-MA) is reportedly circulating draft legislation that would define "high-speed" Internet access as 2 mbps downstream and 1 mbps upstream.

Is Broadband Being Deployed to All Americans in a Reasonable and Timely Fashion?

The simple answer to this question is "no," even though the Commission reported that "more than 99% of the country's population lives in the 99% of Zip Codes where a provider reports having at least one high-speed service subscriber. Moreover, numerous competing providers report serving high-speed subscribers in the major population centers of the country."[16] These figures, however, do not distinguish between commercial and residential subscribers, meaning that the commercial market's use of broadband may be skewing the data of true availability to residential subscribers – those with whom we are most concerned as they have the fewest available broadband options.

But according to the International Telecommunication Union, the United States currently ranks 15th in the world in broadband penetration.[17] This is down from 11th place in 2004. Clearly, President Bush's goal of universal, affordable Internet access by 2007 will not be achieved.

And while we agree with Commissioner Deborah Taylor Tate's comments that the widespread deployment of broadband services to schools in Tennessee is commendable,[18] it is important to point out that roughly only 25% of households in the

---

[16] Federal Communications Commission, *High-Speed Services for Internet Access: Status as of June 30, 2006*, p. 4 (rel. Jan. 2007), *available at* www.fcc.gov/wcb/stats.

[17] Or 21st, according to the ITU's newer Digital Opportunity Index. *See* Statement of Commissioner Michael J.Copps re *Development to Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Notice of Proposed Rulemaking (rel. Apr. 16, 2007).

[18] Once again, we must express our concerns with the accuracy of the data collected and what it actually measures. While broadband may be accessible to nearly 100% of the nation's schools, how many schools actually *subscribe* to broadband services? How is service actually being deployed at the site? For example, is access provided to each classroom and available for multiple users? Or is it simply being deployed to administrative offices? And, in light of the Commission's recent Franchise decision, it would appear that many of these schools receiving cable modem service will no longer be able to afford to do so. As a result, the accessibility may, in fact, decrease if that Order becomes effective.

state subscribe to broadband. As a result, Tennessee currently ranks 37th in the country for broadband deployment.[19]

Furthermore, according to Hughes Communications, Inc., satellite may be the only broadband Internet choice available to as much as ten percent of US households. However, such services are often hampered by the fact that users are competing for limited time on the satellite.[20] Satellite services are also technically limited – latency and other problems with upstream transmission make satellite a less capable alternative for interactive voice and video applications. Perhaps most significantly, satellite broadband services are costly and, therefore, not a viable broadband choice for millions of Americans who cannot afford to pay a premium price.

Are There Barriers to Entry That Must Be Addressed?

At first blush, it would appear the answer to this question is "no." In fact, the Commission itself found that "several years of data" have shown a "steady increase in residential high-speed lines" since June 2006.[21] In fact, according to a recent report, "high speed lines (or wireless channels) connecting homes and businesses to the Internet at speeds that exceed 200 kbps in *at least one direction* increased from 51.2 million lines to 64.6 million lines during the first half of 2006. For the full twelve month period ending June 30, 2006, high-speed lines increased by 22.1 million, from 42.4 million lines

[19] Pat Miller, *Tennessee Underserved in High-Speed Internet*, The Tennessean, January 22, 2007, *available at* http://www.freepress.net/news/print/21171.
[20] http://cnn.technology.printthis.clickability.com/pt/cpt?/action=cpt&title=Satellite+Internet+a
[21] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, GN Docket No. 07-45, Notice of Inquiry, para. 15 (re. Apr. 16, 2007).

to 64.6 million lines."[22] And Chairman Martin recently commended the cable industry for its "lead in deploying broadband [that] forced the telephone companies to follow."[23]

What is important to note about this growth in broadband deployment, which has brought high-speed Internet access to millions of Americans, is that it was accomplished under the existing local franchising scheme. Providers using the public rights-of-way were required to comply with reasonable, locally-imposed build-out requirements that helped ensure that all residents, including our school children and public safety officers, and not just a select few, benefited from these services. It would be difficult to argue that this growth in broadband access could have been possible if the more than 30,000 local franchising authorities and more than 85,000 small government entities acted in such a manner as to prevent deployment of advanced service as some might assert.

Indeed, it would be foolish to conclude that local governments are delaying deployment of broadband services when municipalities themselves are offering such services – often in joint public/private ventures – in areas where such deployment has been non-existent or slow in coming.

But while local authorities actively encourage broadband deployment and look for creative solutions to hasten such deployment, the same cannot be said for the industry itself.

---

[22] Federal Communications Commission, *High-Speed Services for Internet Access: Status as of June 30, 2006*, p. 2 (rel. Jan. 2007), *available at* www.fcc.gov/wcb/stats. In addition, 28.9 million residential subscriber lines were provided by the cable industry through franchise agreements as of 2006. *See http://www.ncta.com/ContentView.aspx?contentId=59*.

[23] Remarks of FCC Chairman Kevin J. Martin, National Cable & Telecommunications Association, Las Vegas, NV, May 7, 2007 (Prepared for Delivery).

Anti-Competitive Behavior

1. Crush the New Guy

"This is a world in which the big get bigger."[24]

While not necessarily indicating anti-competitive behavior, it is troubling that, during the 2007 NCTA conference, representatives of the cable industry spoke enthusiastically of their size and dominance in the marketplace, while dismissing the idea that new competitive "upstarts" present a credible challenge. Dick Parsons, Time Warner Chairman/CEO, stated: "The notion that somehow the new kids on the block are taking over is a false notion. . . . We're getting control of our bodies . . . . And when we do, we're going to run the little guys down."[25] Curiously, these comments were made during a panel presentation entitled: "State of the Industry: Competition Works, Consumers Win!" It is difficult to see how consumers win when competition will be stifled through consolidation and acquisition of upstart competitors.

Such comments to crush the competition, however, may be more than *bravado* and may have some basis in fact. Recently, the United States District Court for the Eastern District of Pennsylvania granted class certification to a group of plaintiffs who filed an antitrust suit against Comcast.[26]

The plaintiffs, six non-basic cable subscribers in the so-called "Philadelphia cluster," filed suit against Comcast alleging that the company engaged in anti-competitive behavior by "acquir[ing] cable systems and cable subscribers from their competitors in

---

[24] Anne Becker, *NCTA: Big Cable Players: Amid Competition, Size Make Us Stronger*, Broadcasting & Cable, May 8, 2007, available at http://www.broadcastingcable.com/index.asp?layout=articlePrint&articleID=CA6440316.

[25] *Id.*

[26] *See* Memorandum, Caroline Behrend, et al. v. Comcast Corporation, et al., No. 03-cv-06604-JP, filed May 3, 2007, *available at http://www.paed.uscourts.gov/documents/opinions/07D0543P.pdf*. *Also see* Shannon P. Duffy, *Federal Judge Certifies Antitrust Class Against Comcast*, Law.com, May 9, 2007, *available at http://www.law.com/jsp/article.jsp?id=1178615087017*.

the Philadelphia and Chicago cable markets until the number of competing cable providers in these markets was substantially reduced. . . . Comcast then entered into agreements with those companies to avoid competition by allocating the nation's regional cable markets amongst themselves through swaps of their respective cable assets, including subscribers."[27] While the merits of the case have not yet been addressed by the court, the consumers' allegations of anticompetitive behavior against the company are troubling.

2. Rigged Spectrum Auctions?

According to two studies recently released by Media Access Project, a non-profit public interest telecommunications law firm, incumbent cable and teleco operators blocked potentially "disruptive" new entrants from winning licenses during the Commission's advanced wireless services auction in August and September 2006.[28] According to the reports, some cable operators and large wireless service providers used "signaling" to divide available licenses among themselves. As a result, these bidders paid lower prices for their licenses and helped "disrupt" new entrants from winning licenses. While we do not vouch for the validity of the studies, they do raise serious questions as to how future Commission auctions should be conducted to help ensure competition in the broadband marketplace. This is especially true with the upcoming auction of spectrum in the 700 MHz band, the so-called "beachfront" spectrum.

[27] *Id.*
[28] *See* http://www.mediaaccess.org/. *Also see* Kent Gibbons, *Studies: Incumbents Blocked New Rivals in Spectrum Auction*, Multichannel News, April 23, 2007, *available at* http://multichannel.com/index.asp?layout=articlePrint&articleID=CA6435898.

3. Exclusive Agreements and Multiple Dwelling Units

One real threat to broadband competition is that posed by exclusive service agreements with multiple dwelling units. While the Commission has begun a separate proceeding to address this issue in more detail, mention of this practice must be made here.[29]

For millions of Americans living in multiple dwelling units, such as apartments and condominiums, the ability to obtain competitive facilities-based services, such as broadband, is problematic. Indeed, access to many of the locations and facilities that competitors require are controlled by the incumbent operator or building owner through the use of exclusive service agreements. But effective competition in these settings will only be possible if all operators have reasonable and nondiscriminatory access to these locations and facilities. While wireless services present the opportunity to offer competitive broadband services, it is at most a partial answer to this anticompetitive behavior. As Commissioner Copps notes: "There is no reason why Americans who happen to live in multiple-dwelling units should have a narrower range of choices when it comes to video and broadband service than Americans who live in freestanding buildings."

However, it is important that any Commission action addressing this issue must include all telecommunications services; it must not pick and choose which services – and as a result, which companies – would be subject to any proposed rule or regulation.

[29] NATOA anticipates filing comments in *In the Matter of Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, MB Docket No. 07-51, Notice of Proposed Rulemaking (rel. Mar. 27, 2007).

4. Lawsuits and Prohibitions

Some local governments, due to deficiencies in service offerings, have sought to bring faster and cheaper broadband service to their communities, either on their own or in joint public/private ventures. But some of these activities, which would help bring broadband service to more rural communities, have been challenged in court and legislative hallways by the big telephone and cable companies in an attempt to prevent competition.

On the legal front, for example, when the city of Lafayette, Louisiana proposed expanding its fiber-optic network, Cox Communications, BellSouth, and a citizens group forced a referendum on this issue. After being approved by voters, BellSouth filed a lawsuit challenging the project's financing. And in Utah, Qwest Corporation sued a consortium of local governments that wanted to provide wholesale broadband service.[30]

Meanwhile, on the legislative front, more than a dozen states have enacted legislation preventing local governments from building their own networks. But state laws should encourage the development of municipal networks that can bring the many benefits of broadband to more people. In this vein, Senators Frank Lautenberg (D-NJ) and John McCain (R-AZ) introduced legislation in the 109th Congress that would have specifically permitted municipalities to offer low-cost broadband service. Facing opposition from the Bells, the legislation, "Community Broadband Act of 2005," was not enacted, though it is expected to be reintroduced in 2007.

If the Commission is truly committed to ensuring broadband deployment to rural and economically less attractive areas of our nation, it should enthusiastically encourage

[30]In addition, BellSouth challenged the city of Laurinberg's decision, arguing that North Carolina's state law precluded municipalities from doing so and Charter Communications tried to stop the Jackson (Tennessee) Energy Authority's project.

the development of municipal networks, a step taken by hundreds of communities across the nation, and denounce these state laws as anticompetitive and barriers to the provision of competitive broadband services.

III. CONCLUSION

Broadband is a public necessity. And developing a broadband policy – to ensure the universal deployment of affordable broadband to all Americans – is a national priority. But this goal can only be obtained by revising the existing definition of "advanced telecommunications capability," by prohibiting the anticompetitive behavior of the cable and phone companies, and by encouraging municipal broadband networks.

Respectfully submitted,

Libby Beaty
Stephen Traylor
NATOA
1800 Diagonal Road, Suite 495
Alexandria, VA 22314
(703) 519-8035
May 16, 2007