

STATEMENT OF: EDWARD E. WHITACRE, JR.
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BEFORE:

UNITED STATES SENATE
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

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Good morning. Thank you, Chairman Stevens, Co-Chairman Inouye, and members of the Committee for offering me the opportunity to address the important subject of video competition.

I will confine my remarks to five basic points.

- *First*, more than twenty years after the passage of the Cable Act, cable operators still are not subject to effective competition.
- *Second*, the best evidence of the lack of effective video competition is that, unlike the pricing trends in every major segment of the communications marketplace, cable prices continue to rise – over three times the rate of inflation.
- *Third*, new video providers stand ready to bring real competition to the video market, but this cannot happen if they must first negotiate thousands of separate local franchises.
- *Fourth*, Congress should enact legislation that encourages video competition in the same way it has encouraged competition across the communications industry – by removing legacy regulatory barriers to entry.
- *Fifth*, in doing so Congress can and should protect legitimate local interests by both requiring that all video providers pay a reasonable, consistent fee to municipalities and maintaining the cities' long-standing authority over public spaces and rights-of-way.

Today, wireless, broadband Internet access, and traditional telephony services are all highly competitive – as reflected in declining prices and an array of choices for consumers.

Unfortunately, the same cannot be said for cable service. Between 1995 and 2004, the price for traditional cable service increased by 86% percent. Cable price increases continued in 2005.

While a number of the price increases were in the 6-to-8-percent range (still more than double the rate of inflation), some of the increases were truly striking, such as Charter's 25-percent increase in Fort Worth; Time Warner Cable's 14-percent increase in Houston; and Comcast's 16-percent increase in Spokane.

Cable operators will tell you that they do face significant competition, in the form of direct broadcast satellite ("DBS") services, but this is not the case. While DBS providers have taken share from the incumbents, this penetration has been uneven, and the existing DBS technology, standing alone, limits the ways in which Echostar and Direct TV can compete with cable companies. Cable overbuilders, thwarted by cable opposition, misuse of the franchise process, and lacking sufficient scale or resources, are present in just a small fraction of cable franchise areas. The proof is in the prices: Cable prices continue their steady, stubborn rise – in contrast to the price declines that characterize other communications services.

True competition for cable is, however, just around the corner. A number of providers are in the process of introducing robust, wire-based and advanced satellite video competition that can

match the scale of the incumbents and meet – and exceed – the technical capabilities of the cable plant.

AT&T already has begun offering video services in competition with cable, and we hope to ramp up significantly over the course of this year. Using a variety of technologies, including AT&T's IP-based Project Lightspeed technology and its integrated new DSL/satellite technology known as HomeZone, AT&T will offer an integrated suite of broadband-based voice, data and video applications, including interactive video services that will be unlike, and better than, the cable services available today. Indeed, AT&T will give customers unprecedented control over the way they watch TV, surf the web and use other broadband applications. We plan to make advanced video services available to nearly 80% of the households in our territory. The fiber-based Project Lightspeed component of our video offerings, in just its initial deployment, will be available to approximately 18 million households over the next three years.

These kinds of wire-based alternatives can truly make the competitive difference. In 2003, the GAO found that the rates of cable incumbents facing competition from a wire-based video provider are approximately 15-percent lower than in the absence of such competition. Likewise, FCC Commissioner Adelstein noted just last week in connection with the Commission's Annual Report on Video Competition that telco "investment could bring the most substantial new competition into the video marketplace that this country has ever seen." There are real-world examples: In just the last few months, the introduction of new video competition in places like Malibu, California, Herndon, Virginia, and Temple Terrace, Florida, have compelled the

incumbent cable operators to lower prices, freeze prices for the first time in years, or offer new features, like free broadband service.

The problem that AT&T and other new video entrants face is the uncertainty, delay and prohibitive costs driven by the current cable franchising process, which was designed for cable incumbents when they entered with a monopoly franchise.

- The process of franchise application, review, negotiation and approval routinely takes between 12 and 18 months – if all things go well. It took BellSouth almost three years to negotiate some of its key franchises in just two counties in Georgia. Likewise, Qwest expended three years of intensive effort just to renegotiate seven franchises in the Phoenix area and obtain eight others in areas around Phoenix, Denver and Salt Lake City. If the existing franchise process is applied to AT&T's video offerings, we would have to obtain as many as 2,000 separate local franchises. If we were somehow miraculously able to sign one franchise agreement every single business day of the year, it would still take over 7 and one-half years to complete this process.
- And delay is just one of the problems inherent in the current system. Our own experience with the now-defunct Ameritech New Media cable service proved to us how futile the franchising process can be. In over 40 communities, Ameritech had to abandon the franchise process, and its video investment and plans, sometimes after two or more years of negotiations. We faced a range of demands that would have rendered our plans uneconomic, including fees that exceeded the limit under federal law, extensive build-out requirements, as well as more outlandish requests, such as for the construction of fire stations or recreation centers.

These unreasonable demands added untold layers of complexity, cost, frustration and delay into what was already a difficult negotiation and approval process.

This outmoded and anticompetitive system will do nothing but stifle new competitive entry. Accordingly, we strongly encourage Congress to enact legislation that fosters new video competition by eliminating the municipal franchise process. In doing so, Congress need look no further than the success of wireless, Internet and traditional telephony services: New entrants were not saddled with the full weight of regulation designed for incumbents, competition flourished, and prices dropped.

At the same time, any reform legislation should provide that all video competitors pay a fee to municipalities in connection with their video services that is substantially similar to what cable operators pay under their franchise agreements. In addition, any law should expressly preserve local government's historical police power over the time, place and manner of a particular provider's use of public property. But any such rules must be clearly articulated and consistently applied on a nationwide basis.

In this regard, we applaud the efforts of Senators Ensign and McCain for introducing their bill, S. 1504, and Senators Smith and Rockefeller for introducing their bill, S. 1349. Both bills would reform the video regulatory system, protect important municipal interests, and, in the process, foster greater investment in broadband deployment and video competition.

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