

**Oral Statement of the Honorable Ken Fellman,
Mayor of the City of Arvada, Colorado
As Delivered
On behalf of the
United States Conference of Mayors, National League of Cities,
National Association of Counties,
National Association of Telecommunications Officers and Advisors,
National Conference of Black Mayors,
Government Finance Officers Association,
International Municipal Lawyers Association and TeleCommUnity
Before the
House Committee on Energy and Commerce, Science and Transportation
Subcommittee on Telecommunications and the Internet
Washington, D.C.**

March 30, 2006

Mr. Chairman, Representative Markey, distinguished members of the subcommittee:

I want to thank you for the opportunity to appear here. I am the Mayor of Arvada, Colorado, and I appear before you today on behalf of organizations that represent elected and professional officials from nearly every municipal and county government in the U.S.

I commend you Mr. Chairman and your colleagues, Chairman Barton, Representatives Dingell, Markey and Pickering and Rush – who have worked diligently on these issues. Unfortunately, we have had less than 72 hours to read, review and consider the full impact of this draft legislation.

At the outset, we are concerned that this bill nationalizes what is presently an effective federal-local government partnership and will likely result in litigation.

This bill does respond favorably to some of the issues we raised with you in the past. However, we also have significant concerns which we would like to work with you to address.

In particular, we are very concerned that the bill is unclear as to its applicability to IPTV services. Certainly this debate will be in vain if like services are not treated alike. This issue needs to be addressed.

This bill appears to give telephone companies substantial relief from local franchising. It does not, however, provide consumers with the benefits that telephone companies have promised would follow. In particular, there are no assurances that more homes (especially those in rural communities) will actually get competitive broadband. Such assurances must be added to the bill.

We appreciate the effort of the members to keep local government whole with respect to the revenues. It appears that the gross revenues definition would largely do that. However, there

appear to be unintended consequences in a provision of the bill that would allow providers to deduct from gross revenues the costs of bonding, indemnity and even damages and penalties. We trust we can resolve this matter with the committee.

With respect to local public access, we hope that the committee would consider allowing local government to continue to receive the greater of 1 percent or the per subscriber equivalent that they receive today, as was done in Texas. In that way, no local government will be forced to terminate services that they are currently providing.

We are pleased that the bill recognizes that managing public rights of way is properly a function for local government. We hope you would agree that disputes pertaining to that authority do not belong at the FCC, but rather should be addressed in a local court, as is the case today. Similarly, we appreciate that the bill recognizes the authority of local government to provide services directly to our constituents.

We are concerned the bill does not provide subscribers with adequate recourse for consumer complaints. The FCC is not the appropriate venue to set these standards or address these complaints.

Local governments do not require new video entrants to deploy to an entire community immediately. Requiring that entire communities have access to service on a realistic and equitable timetable, however, is not an unreasonable barrier. Guarding against economic redlining and requiring that all neighborhoods in our communities see the benefit of competitive services is properly a function of local government and is therefore best enforced at the local level. The proposed bill does not yet provide sufficiently protect those interests.

Mr. Chairman and members of the committee: Local government officials recognize the value that competition brings to local residents and we've actively sought it. Contrary to what many have maintained, current law regarding video franchising has not stifled competition. Indeed, the lack of competition is the result of business decisions made by the telephone companies not to compete. Nationalizing franchising is not going to solve the problem of whether telephone companies actually enter the market and compete.

Furthermore, local video franchising has a long record of success. Those who are now making claims to the contrary have not been completely forthcoming about the nature of the franchising process, or about their own recalcitrance in franchise negotiations. To my knowledge, no telephone company engaged in this current debate has ever been denied a video franchise in any community where they have applied for one.

We believe, as you do, that the current law could be improved to further promote the provision of competitive video services to America's communities. We look forward to working with you and your staffs to find the best way to address our shared goal of greater competition and wider access to the most modern video services available.

Thank you.