W-7-d.

Memorandum Date: January 25, 2006
Order Date: February 8, 2006

TO:	Board of County Commissioners
DEPARTMENT:	County Administration Office
PRESENTED BY:	Peter Thurston, C&ED Coordinator
AGENDA ITEM TITLE:	ORDER/IN THE MATTER OF PROVIDING STAFF DIRECTION FOR PREPARING A LANE COUNTY ECONOMIC DEVELOPMENT TELECOMMUNICATIONS STRATEGIC PLAN

I. MOTION

It is moved that the Order be adopted in the matter of providing staff direction for preparing a Lane County Economic Development Telecommunications Strategic Plan

II. AGENDA ITEM SUMMARY

This memorandum/Order discusses priorities and actions to begin preparing a Lane County Telecommunications strategic plan. Should Lane County prepare a strategic plan as part of achieving economic development goals? A plan would provide the basis for making comments to the Federal Telecommunications Commission and Congress on Lane County telecommunication needs in areas of interest identified by the National Association of Counties (NACo) and the National Association of Telecommunications Officers and Advisors (NATOA). The telecommunications strategy will include the interests of cities, educational districts and others interested in improving the local economy through a coordinated broadband development strategy. Specific objectives will include: a) coordination of Public Access and Government (PEG) channels with other local franchise authorities (LFAs); b) providing county-wide education channel(s) for workforce training, college courses, and distance learning opportunities; c) provision for Board of Commissioners public meetings to be shown on all cable television systems in Lane County, d) direction to staff and Economic Development Standing Committee (EDSC) to monitor telecommunications legislation and recommend comments to Congress and the Federal Communications Commissions about Lane County's telecommunications needs, including: the use and management of local public rights or way, franchise of cable television, development of PEG channels, and economic development.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

Telecommunications facilities and utilization in the local economy has developed at an ever-increasing pace over the past few decades. At the same time global commerce has become more dependent on the use of broadband telecommunications and the entire field of telecommunications providers has converged. Where cable television, telephone, satellite television, and internet communications were differentiated in the 1980s, the 1996 Telecommunications Act attempted to spur more competition among providers of these service by allowing greater ability to consolidate and compete. The promise of lower prices and efficient telecommunications systems throughout the county was not delivered, according to a Common Cause study (Attachment A) on May 9, 2005. The National Association of Counties (NACo) prepared in the 2004 a platform and resolution (Attachment B) that still provides guidance today on the telecommunications needs of counties across the country.

Lane County does not have a current plan for encouraging broadband access in all communities of the county. According to a first-of-its-kind MIT/Carnegie Mellon study, released in December 2005, broadband has a direct positive effect on economic development. The study results are available with the Board Secretary. Attachment C is a brief listing of key findings of the study, including the observation that "a portfolio of broadband-related policy interventions that is reasonably balanced (i.e., also pays attention to demand-side issues such as training) is more likely to lead to positive economic outcomes than a single-minded focus of [broadband] availability".

Lane County Board of Commissioners has participated in cable television franchises over the past several decades and supported development of broadband system in the region. The incumbent phone provider (Qwest) has upgraded many central offices in the state to handle Digital Subscriber Lines (DSL). However, the result is still a patchwork of broadband availability.

B. Policy Issues

From an economic development perspective the primary issue is availability of broadband services in all Lane County communities, and possibly ubiquitously available mobile wireless access (Wi-Max), and how this can help meet county business development and workforce development goals. Another policy issue is the impact of prospective legislation that may remove local control over county rights of way by allowing telecommunications providers access under federal authority. Other policy issues relate to education, distance learning, development and use of PEG channels and retention of local authority to construct and operate telecommunications systems as determined necessary. The NACo policies (Attachment B) cover many of these topics and the letter from national agencies expressing concern about the BITS II legislation (Attachment D) points up the need to have local policies to support these initiatives. The Oregon Costal Zone Management Association recently published an economic development strategy for the Oregon coast communities based on development of a coordinated Wi-Max system. The is strategy provides an excellent starting point for a county-wide telecommunications strategy.

The Order provides direction to staff, with EDSC oversight, to begin formulating a telecommunications plan for Lane County that may provide overall guidance for development of comprehensive telecommunications services. Such a plan will provide the basis for evaluating cable television services, wireless internet and telephone services, and other developing technologies that will be needed in the future to promote economic development, maintain public safety, develop interoperability of emergency services, coordinate among all public services to provide reliability, redundancy and efficiency, and support the development of private sector telecommunications services that keep Lane County on the cutting edge of competitiveness.

C. Board Goals

Lane County Strategic Plan goals include the following outcomes that are affected directly and indirectly by cable television services: 1) "work for a strong regional economy" . . . is enhanced when people in all communities of the county have access to meetings of the Board of Commissioners that promote economic development; 2) providing "opportunities for citizen participation in decision-making, voting, volunteering, and civic and community involvement" . . . are directly affected by education and government information on cable television channels; 3) "ensuring the public's safety . . . emergency preparedness . . . [and] law enforcement" . . . is facilitated through public access channels. Many other public benefits are derived when public channels are available in a uniform way wherever cable television facilities exist.

The Board of Commissioners has expressed the objective of providing public access to Board of County Commissioner meetings on cable television channels throughout the county. To date, this objective has not been included in a formal action of the Board of County Commissioners.

Lane County has a practice of coordinating information to the Oregon Delegation in Congress to implement county-wide goals. To be most effective in delivering public safety, public services, and economic development programs, Lane County needs to deliver a consistent and well planned message about the telecommunications needs of the region.

All of the above activities contribute to development of a stronger regional economy, provides for more opportunities for family wage jobs, improves educational/training capacity, and builds the base for Lane County businesses and entrepreneurs to compete in the global economy.

D. Financial and/or Resource Considerations

The primary result of a telecommunications strategy for Lane County is the economic development benefits derived from a stronger broadband system. Retaining the federal cable television franchising authority will help Lane County retain franchise feed revenue in the general fund and support telecommunications capacity at all levels. Lane County's franchise revenue from cable television providers is about $400,000 per year. This revenue source is at risk, as described in the analysis, below, if federal legislation removes local governments' from the local franchise process. As indicated in Attachment D, the BITS II bill redraft from this past year "pulled back from significant progress on local issues . . . [and]. . . does not protect local governments' core police powers."

Possibly the greatest financial impact is on the local economy. Efficient and effective telecommunications services county-wide, coordinated emergency services communications, telecommunications systems for education and training must be developed and improved. Private telecommunications companies have not provided such services at affordable prices in rural communities. The result of inefficient and outdated telecommunications systems is lower competitiveness in all areas. Highly efficient telecommunications will provide the base for unlimited opportunities and the resulting economic improvement, more stable taxes to support public services, and an open and competitive system of communications.

Staffing for the various components of telecommunications planning, franchise negotiations, management of consultants, and monitoring development of systems is not sufficient to develop coordinated telecommunications with an area of over 4,600 square miles, including: (1) cable television franchise negotiations and monitoring, (2) development of a county-wide telecommunications plan, and (3) facilitation of facilities that support this plan. At this time, the estimated commitment of these telecommunications activities in 2006 is 25 percent of the Community and Economic Development Coordinator's time, and targeted consultant services. This is sufficient time and resources to negotiate franchise agreements in 2006 and 2007, and keep Lane County engaged in legislative and regulatory issues, and carry out intergovernmental and interagency coordination. A well thought-out and consistent telecommunication plan will require additional resources and is the way to bridge the information and distance gaps. This is analogous to building and maintaining roads for commerce and public benefit, a practice for which Lane County was originally created and continues today. Telecommunications provide the electronic highways of the future.

E. **Analysis**

The underlying question is: what is the cost and benefit from committing time and resources to these activities? What legal authority exists for Lane County government to affect change in cable TV franchises or telecommunications capacity in the county? What is at risk of Lane County does nothing to establish a plan for improved telecommunications infrastructure, starting with influencing national and state decisions about local government authority in these matters? A telecommunications plan will address these issues, place them in perspective, and provide the basis for on-going policy choices.

By way of example, the results of no telecommunications planning for county-wide cable television services over the past three decades has resulted in a patchwork of cable TV systems of various capacities and a variety of DSL, satellite, cell phone, and wireless systems. Even with two franchised cable service providers (one urban-area and another rural-area) during the past decade, the capacity has not been developed to deliver essential public information over the cable systems (such as Board of Commissioners meetings) to a county-wide audience, much less county-wide general service or government emergency information programming. This lack of a way to reach all residents through the most pervasive method of information and entertainment (television) has a negative impact on people's perception of their government. The rural areas are isolated by distance from governmental actions and elected officials. The lack of connection and interaction with local government likely affects voters' view of county government initiatives.

The question before the Board is whether to continue the ad hoc process of the past, or develop a telecommunications strategy in the coming decade that aims to provide all residences of the county with access to telecommunications-based education, training, governmental services information, interactive capacity, and other public services. The risk of doing nothing is that telecommunication systems will continue to develop randomly and may not be fully compatible. One trend that will certainly continue without a strategy is that the rural communities will be the last to have access to essential telecommunications services. By their location they are the places that need competitive broadband access the most.

Political and Regulatory Influences. All of the issues of local control mentioned above may be swept away if federal legislation and regulatory activities by the Federal Communications Commission remove involvement in franchise of cable television, internet services, local government networks, and possibly right-of-way (ROW) authority. Attachments B and D provide background and recent information from local government national organizations, such as NLC, NACo, and others. It is important to stay in touch with these issues as significant changes are made beginning in January 2006 and over the next couple years.

F. Alternatives/Options

The Board may adopt all or components of the Order, amend portions of the Order, or decide not to take any action at all. There is no requirement that any action be taken.

Option 1 – Adopt the Order as presented to develop a telecommunications strategy for the county and inform elected and appointed officials of Lane County's needs to implement the telecommunications strategy.

Option 2 – Decide that one or more of the items in the proposed Order should be removed or modified, then adopt the amended Order.

Option 3 – Determine not to adopt any of the provisions of the Order at this time.

V. TIMING/IMPLEMENTATION

Congressional and FCC hearings are planned for the next several months to consider cable television franchise and telecommunications policies related to local government authority. The Federal Communications Commission comment period on issues addressed in Attachment B closes on February 13, 2006. A letter will be prepared for the Board Chair's signature following recommendations of NACo and NATOA guidelines. A telecommunication plan to formulate policies can begin in the coming months for presentation to the Board in the latter part of 2006. The EDSC will bring additional comments on legislation or regulations for the Board's consideration in coming months.

VI. RECOMMENDATION

It is recommended that the Order be adopted including direction to: 1) initiate a Lane County Economic Development Telecommunication Strategic Plan, with oversight by EDSC, for future adoption by the Board of Commissioners, and 2) authorize EDSC to monitor legislation and regulatory issues and recommend polices for BCC adoption, and 3) inform the Oregon Delegation about Lane County's initiatives and involvement in essential telecommunications issues.

VII. FOLLOW-UP

A draft telecommunications plan for Lane County will be prepared, with EDSC oversight, with input from local government franchise authorities (cities) for Board consideration in late 2006, and the Oregon Delegation will be advised of Lane County interests to maintain competitive delivery of telecommunications service and county involvement in the facilitation and delivery of telecommunication services that promote the public interests of Lane County residents.

VIII. <u>ATTACHMENTS</u>

ORDER
A – Fallout from the Telecommunication Act of 1996, by Common Cause
B – NACo Telecommunications and Technology Platform
C – Measuring Broadband's Economic Impact, from Broadband Properties
D – Letter from NACO, NATOA, and others on national telecommunications legislation

\BCC LC Telecommunications Plan 2-06.doc

IN THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

ORDER NO.	**) IN THE MATTER OF PROVIDING STAFF DIRECTION FOR) PREPARING A LANE COUNTY ECONOMIC DEVELOPMENT) TELECOMMUNICATIONS STRATEGIC PLAN**

WHEREAS, Lane County is a local franchise authority for cable television, owns and manages public rights of way, provides support for education through PEG channel operations, operates a public safety network, has provided funding for broadband projects, and supports economic development activities, including business development and workforce development, and

WHEREAS, reliable public safety, information about county government, and public involvement telecommunications facilities of similar bandwidth capacities are essential in all Lane County communities, and

WHEREAS, the Board of Commissioners has reviewed information about the impacts of broadband on economic development and determined that the competitiveness of Lane County businesses and strength of the local economy rely significantly on broadband systems development, NOW, THEREFORE, IT IS HEREBY:

ORDERED that the following actions shall be undertaken to encourage competitive telecommunications services, economic development, public safety, interactive distance learning and educational opportunities, universally available local government information, and information that promotes public involvement in their local governments:

1) Lane County will prepare a telecommunication plan based on the principles encouraged by the National Association of Counties (NACo) and the National Association of Telecommunications Officers and Advisors (NATOA), including appropriate local government involvement in: a) Right of Way (ROW) control by local governments, b) involvement in franchising local cable television services, including provisions for public access, education, and government (PEG) channels, c) retention of the right of local governments to facilitate, own and operate telecommunications systems as they determine in the public interest, d) funding (development and operation) of public safety/national security systems, and e) promotion of other initiatives that provide local governments the flexibility to use new technology that best meets community and economic development needs.

2) Lane County will advise the Oregon Delegation to Congress, and other elected and appointed officials, and the Federal Communications System (FCC), of the county initiative in promotion of essential telecommunications services and to ensure that federal authorities and legislation do not place an unreasonable

burden on local governments without appropriate consideration and authority to deliver essential local services, including all of the subjects listed in paragraph 1), above. The Economic development Standing Committee (EDSC) to the Board of County Commissioners will review legislative issues and recommend testimony to the US Congress and the FCC in coming months.

Signed this 8th day of February, 2006.

Bill Dwyer, Chair
LANE COUNTY BOARD OF COMMISSIONERS

APPROVED AS TO FORM
Date 2/1/06
Lane County
Teresa Wilson
OFFICE OF LEGAL COUNSEL

The Fallout From the Telecommunications Act of 1996

Unintended Consequences and Lessons Learned

COMMON CAUSE
Holding Power Accountable

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May 9, 2005

ACKNOWLEDGEMENTS

This report was written and researched by Celia Viggo Wexler, and edited by Mary Boyle. Matt Shaffer collected and analyzed the federal campaign finance and lobbying data for this report from records compiled by the Federal Election Commission and Secretary of the Senate, respectively. Mark Cooper, director of research for the Consumer Federation of America, was an invaluable guide and resource for this report.

ABOUT COMMON CAUSE EDUCATION FUND

Established by Common Cause in February 2000 as a separately chartered (501)(c) (3) organization, the Common Cause Education Fund (CCEF) seeks to promote open, honest and accountable government through research, public education and innovative programs.

EXECUTIVE SUMMARY

This study tells the story of the Telecommunications Act of 1996 and its aftermath. In many ways, the Telecom Act failed to serve the public and did not deliver on its promise of more competition, more diversity, lower prices, more jobs and a booming economy.

Instead, the public got more media concentration, less diversity, and higher prices.

Over 10 years, the legislation was supposed to save consumers $550 billion, including $333 billion in lower long-distance rates, $32 billion in lower local phone rates, and $78 billion in lower cable bills. But cable rates have surged by about 50 percent, and local phone rates went up more than 20 percent.

Industries supporting the new legislation predicted it would add 1.5 million jobs and boost the economy by $2 trillion. By 2003, however, telecommunications' companies' market value had *fallen* by about $2 trillion, and they had shed half a million jobs.

And study after study has documented that profit-driven media conglomerates are investing less in news and information, and that local news in particular is failing to provide viewers with the information they need to participate in their democracy

Why did this happen? In some cases, industries agreed to the terms of the Act and then went to court to block them. By leaving regulatory discretion to the Federal Communications Commission, the Act gave the FCC the power to issue rules that often sabotaged the intent of Congress. Control of the House passed from Democrats to Republicans, more sympathetic to corporate arguments for deregulation. And while corporate special interests all had a seat at the table when this bill was being negotiated, the public did not. Nor were average citizens even aware of this legislation's great impact on how they got their entertainment and information, and whether it would foster or discourage diversity of viewpoints and a marketplace of ideas, crucial to democratic discourse.

Now, as Congress once again takes up major legislation to change telecommunications policy, and as it revisits the Telecom Act, major industries have had nearly a decade to reinforce their relationships with lawmakers and the Administration through political donations and lobbying:

- Since 1997, just eight of the country's largest and most powerful media and telecommunications companies, their corporate parents, and three of their trade groups, have spent more than $400 million on political contributions and lobbying in Washington, according to a Common Cause analysis of federal records.

- Verizon Communications, SBC Communications Inc., AOL Time Warner, General Electric Co./NBC, News Corp./Fox, Viacom Inc./CBS, Comcast Corp., Walt Disney Co./ABC, and the National Association of Broadcasters, the National Cable & Telecommunications Association, and the United States Telecom Association together gave nearly $45 million in federal political donations since 1997. Of that total, $17.8 million went to Democrats and $26.9 million went to Republicans.

- These eight companies and three trade associations also spent more than $358 million on lobbying in Washington, since 1998, when lobbying expenditures were first required to be disclosed.

All this investment once again gives radio and television broadcasters, telephone companies, long-distance providers, cable systems and Internet companies a huge advantage over average citizens.

While these corporations have different, and sometimes opposing views on individual provisions of a new Telecom Act, their overriding desire is for less federal regulation. A new Telecommunications Act could be written "in a matter of months, not years," and be a "very short bill," focused on an almost complete deregulation of the telecommunications industry, said F. Duane Ackerman, chairman and CEO of BellSouth Corporation. "The basic issue before the Congress is simple," Ackerman said. "Can competition do a better job than traditional utility regulation?"

SOFT MONEY AND PAC DONATIONS FROM SELECT TELECOMMUNICATIONS AND BROADCASTING INTERESTS TO NATIONAL PARTIES AND FEDERAL CANDIDATES 1997-2004

DONOR	DEMOCRATIC	REPUBLICAN	OTHER	TOTAL
Verizon Communications	$2,960,619	$6,378,916	$10,000	$9,349,535
SBC Communications Inc	$3,746,222	$6,223,285	$2,600	$9,972,107
AOL Time Warner	$2,593,615	$2,709,777	$0	$5,303,392
General Electric Co. NBC	$1,865,580	$2,987,015	$4,000	$4,856,595
Walt Disney Co/ABC	$2,282,059	$1,631,862	$0	$3,913,921
NCTA	$1,286,570	$1,996,221	$0	$3,282,791
NAB	$874,183	$1,835,340	$0	$2,709,523
News Corp/FOX	$473,157	$1,672,857	$0	$2,146,014
Viacom Inc CBS	$547,963	$924,632	$0	$1,472,595
Comcast Corp	$566,650	$778,875	$0	$1,345,525
USTA	$317,214	$788,509	$0	$1,105,725
Total	$17,795,831	$26,928,592	$16,500	$44,738,923

Soft money donations to national political parties include donations through 2002, when they were banned by the Bipartisan Campaign Reform Act. Totals include donations from executives and/or affiliates.

FEDERAL LOBBYING EXPENDITURES BY SELECT TELECOMMUNICATIONS AND BROADCASTING INTERESTS FROM JANUARY 1998 TO JUNE 2004

YEAR	1998	1999	2000	2001	2002	2003	2004
General Electric Co/NBC	$7,280,000	$7,934,024	$16,020,000	$15,430,000	$13,020,000	$17,200,000	$8,440,000
Viacom Inc/CBS	$1,000,000	$1,000,000	$1,000,000	$1,000,000	$1,000,000	$1,250,000	$700,000
News Corp/FOX	$1,460,000	$1,180,000	$1,240,000	$2,300,000	$2,560,000	$2,840,000	$1,320,000
Walt Disney Co/ABC	$1,538,800	$3,300,000	$3,860,000	$4,600,000	$3,820,000	$5,960,000	$2,020,000
AOL Time Warner	$4,020,000	$4,360,000	$4,820,000	$3,500,000	$3,100,000	$4,100,000	$2,080,000
SBC Communications Inc	$5,280,000	$9,440,000	$7,208,000	$7,003,395	$6,341,334	$5,204,064	$5,692,350
Verizon Communications	$21,260,000	$4,880,000	$6,360,000	$6,660,000	$6,460,000	$7,060,000	$3,020,000
Comcast Corp	$440,000	$480,000	$620,000	$810,000	$2,480,000	$2,400,000	$1,620,000
NAB	$5,200,000	$4,900,000	$5,200,000	$5,940,000	$7,120,000	$7,440,000	$3,560,000
NCTA	$4,800,000	$3,160,000	$5,920,000	$6,040,000	$4,220,000	$5,040,000	$3,540,000
USTA	$1,320,000	$1,720,000	$1,740,000	$2,000,000	$2,160,000	$7,720,000	$4,680,000
Total	$53,598,800	$42,354,024	$54,488,000	$55,283,395	$52,281,334	$64,214,064	$36,672,350

But before Congress listens to this call for less regulation, it is important to understand the changes Telecommunications Act of 1996 put into motion, and how those changes drastically redrew the media landscape, often to the detriment of the public.

The Telecommunications Act of 1996:

- Lifted the limit on how many radio stations one company could own. The cap had been set at 40 stations. It made possible the creation of radio giants like Clear Channel, with more than 1,200 stations, and led to a substantial drop in the number of minority station owners, homogenization of play lists, and less local news.

- Lifted from 12 the number of local TV stations any one corporation could own, and expanded the limit on audience reach. One company had been allowed to own stations that reached up to a quarter of U.S. TV households. The Act raised that national cap to 35 percent. These changes spurred huge media mergers and greatly increased media concentration. Together, just five companies – Viacom, the parent of CBS, Disney, owner of ABC, News Corp, NBC and AOL, owner of Time Warner, now control 75 percent of all prime-time viewing.

- The Act deregulated cable rates. Between 1996 and 2003, those rates have skyrocketed, increasing by nearly 50 percent.

- The Act permitted the FCC to ease cable-broadcast cross-ownership rules. As cable systems increased the number of channels, the broadcast networks aggressively expanded their ownership of cable networks with the largest audiences. Ninety percent of the top 50 cable stations are owned by the same parent companies that own the broadcast networks, challenging the notion that cable is any real source of competition.

- The Act gave broadcasters, for free, valuable digital TV licenses that could have brought in up to $70 billion to the federal treasury if they had been auctioned off. Broadcasters, who claimed they deserved these free licenses because they serve the public, have largely ignored their public interest obligations, failing to provide substantive local news and public affairs reporting and coverage of congressional, local and state elections.

- The Act reduced broadcasters' accountability to the public by extending the term of a broadcast license from five to eight years, and made it more difficult for citizens to challenge those license renewals.

"Those who advocated the Telecommunications Act of 1996 promised more competition and diversity, but the opposite happened," said Common Cause President Chellie Pingree. "Citizens, excluded from the process when the Act was negotiated in Congress, must have a seat at the table as Congress proposes to revisit this law."

Attachment B

TELECOMMUNICATIONS & TECHNOLOGY

STATEMENT OF BASIC PHILOSOPHY

Counties play a major role in the nation's communications system as regulators, service providers, and consumers of communications services. County officials have a responsibility to ensure that the public interest is being served by communications providers, regardless of the delivery platform. The social goals and public good expected from our citizens must be ensured. This includes public, educational government access, public and homeland security matters, and protecting the interests of special needs citizens.

The expanding communications system has become a critical component of a successful economic development policy as counties work to attract and retain skilled jobs and industries, and counties labor as first responders to homeland security threats and events. Homeland security has required a much wider role for counties in securing the Nation. Adequate communications systems and information access is vital to meet this growing responsibility. It is therefore imperative County officials play an increasing role in the future of communications policy.

Technology has changed the future of county governance, and the evolving opportunities for counties to utilize technology to provide timely and effective service are immense.

Faster computer networks, wireless Internet access, enhanced broadband services, new public safety systems, geospatial information applications and technologies not yet deployed, will make the county of the future more responsive and meaningful to county residents. County officials must be prepared to adapt to this changing environment.

POLICIES AND PRACTICES

1. **Encouraging Competition and Development of new Technologies:** It is in the counties' interest to encourage competition among communications and technology providers and to support the development of new technologies for government and public use.

2. **Preemption of local authority:** Counties need to be concerned about retaining authority as trustees of public property and as protectors of public safety and welfare. The 1996 Telecommunications Act, which forms the framework for the nation's communications policy, acknowledges the balance between federal, primarily through the Federal Communications Commission, and state and local authority. NACo opposes any actions that would undermine this shared responsibility and any federal or state preemption of counties' traditional powers in these areas. NACo opposes efforts to restrict or prohibit, at state and federal levels, county or municipal ownership of communications facilities when such services are unavailable or are made prohibitively expensive by the lack of adequate competition. Counties, however, should not use their economic capacity to unfairly compete with private sector providers.

3. **Financial Assistance for Enhanced Telecommunications Capacity:** Telecommunications play an important role in county government operations and the delivery of services. Counties use advanced telecommunication systems for a full range of public, and law enforcement services.. Some counties are developing their own institutional communications networks to link varies county departments and agencies. Nothing in federal policy should undermine the ability of counties to develop such infrastructure.

NACo believes state and federal governments should provide financial assistance for these initiatives and should encourage efforts to improve coordination across jurisdictions and systems, especially for public safety and homeland security issues. Access charges for completion of calls on the local public switched telephone network need to continue in some form to assure rural counties retain adequate communications services.

4. Public Safety Frequencies: Public safety communications is one of the most important elements of county law enforcement and emergency response capabilities. NACo believes that the Federal Communications Commission should assure that public safety frequency bands are not subject to interference from commercial operations on nearby frequencies, and that any future allocation of public safety frequency bands be designed to avoid any such conflicts. NACo supports the FCC maintaining authority over public safety spectrum management, rather than transferring authority to the National Telecommunications and Information Administration.

5. Wireless E911: The National Association of Counties encourages the timely deployment and implementation of Wireless Enhanced 911 for a nationwide, seamless communications infrastructure for the delivery emergency services as envisioned by the "Wireless Communications and Public Safety Act of 1999 (911 Act)".

6. Communications Assistance for Law Enforcement Act (CALEA): The ability of law enforcement to have access to systems providing voice communications to enforce our laws is extremely important to help deter criminal and terrorist activity. All platforms, regardless of technology should provide such access as required by CALEA.

7. Interoperability: Communications inter-operability, for both voice and data, is critical to coordinate the response to disasters and joint law enforcement efforts. This is important between agencies of local government, as well as, between the various local, state, and federal agencies. A broad interpretation should be made as to which entities should be included in an interoperability plan. NACo supports efforts to improve interoperability for public safety purposes, and believes the state and federal governments should assist counties with the costs associated with migrating to viable interoperability standards. Congress should provide funding to local governments, as part of a comprehensive strategy, to improve public safety and emergency management interoperability.

8. Wireless Communications Facilities Siting: Counties have a regulatory role regarding the siting of tower and antenna facilities. Section 704 of the 1996 Telecommunications Act details the procedures for shared authority for siting personal wireless facilities. With the exception of decisions based on the health effects of radio frequency (RF) emissions, local authority is preserved with minimal limitations supporting nondiscriminatory, timely action. Even in the case of RF emissions the law clearly requires that the facilities operate in compliance with RF emission standards.

Counties must have the ability to investigate complaints and verify compliance and local taxpayers should not bear the costs of these investigations. NACo believes any disputes between counties and the industry should continue to be resolved in the courts on a case-by-case basis. No Federal actions should undermine local government's zoning authority.

9. Television Towers: There was no intent in the 1996 Telecommunications Act to apply Section 704 to the deployment of broadcast transmission facilities. It is the interest of local governments for broadcasters to convert to digital television, as quickly as possible, in order to free additional spectrum for public safety purposes. Counties have an obligation to their constituents to ensure that, to the extent possible, the public health, safety and welfare are not endangered or otherwise compromised by the construction, modification or installation of broadcast towers. NACo believes nothing should preempt local government authority to reject new tower applications upon finding of adequate existing facilities.

10. Emergency Services Communications: Counties' ability to communicate with citizens during a public safety emergency, whether natural or man-caused, is critical. Media consolidation, particularly in the radio sector, has raised serious concerns about the ability of local stations to meet their public safety obligations. The FCC should review the requirements on broadcasters to ensure the needs of local government to contact their citizens are met.

11. Media Consolidation Cross Ownership and Local Services: Along with concerns raised by media consolidation for public safety, county officials are concerned about the loss of local content, civic discourse, and advertising opportunities for local business. As a matter of economic development, local media outlets are important vehicles for promoting local opportunities and business. Local media outlets are an important component of the community and as so, should participate in the civic aspects of the community. County officials should work with media outlets to assure ample opportunity for public debate. Congress and the FCC should review limiting media diversity through cross ownership of media outlets including newspapers and their online offerings.

12. Rights of Way: Counties own substantial amounts of public rights-of-way, which many telecommunication providers want to use extensively to construct their own communications networks These are valuable local government real estate assets worth billions of dollars that are held in trust by local governments to benefit the local community.

Federal and state governments must recognize the authority of local governments to protect the public investment, to balance competing demands on this public resource and to require fair and reasonable compensation from communications providers for use of the public rights-of-way on a nondiscriminatory (but not necessarily identical) basis. Rights-of-way disputes between communications companies and local governments should be resolved in local jurisdictions.

In order to use the right-of-way, private communications companies should be required to enter into a franchise agreement with local government which sets the terms and conditions of such use/access. Local governments must be able to require universal services that include nondiscriminatory pricing and equal access to all its citizens as a requirement for granting a franchise.

Because disruption to streets and businesses can have a negative impact on public safety and industry, local governments should have control over allocation of the rights-of-way and be able to ensure that there is neither disruption to other "tenants" or transportation nor any diminution of the useful life of the right-of-way. Local governments must have the right to analyze the legal, financial, and technical qualifications of any communications provider wanting to use the public right-of-way and shall have the right not to issue a franchise to an unqualified applicant.

13. Cable Television: Cable television exerts an enormous influence on the lives and culture of many county residents and is becoming an essential source of information. Federal law is clear that counties may, through the franchising process, monitor the performance of cable television operators to ensure that the operators provide quality service to consumers in all sections of a franchise area. The ability of local franchising authorities should be enhanced through action by the Congress and Administration to protect the interest of consumers in quality, yet affordable, cable television services, and to enact laws which encourage greater competition for the cable franchises and in the cable industry, and which encourage the availability of fiber optic cable as rapidly and as widespread as possible, so that rural areas have the same capabilities as urban areas.

Cable franchising authorities must continue to have the ability to require through the franchise process the following components:

- explicit approval to transfer a franchise.
- the ability to deny a renewal application for cause, i.e., renewals cannot be considered automatic
- the right to solicit competitive bids from other cable operators.
- immunities from monetary damages when local government actions are consistent with the Cable Act of 1984.
- the ability to terminate a cable operator for cause to ensure that it is not more profitable for an operator to violate a franchise agreement than to follow it.
- the ability to require cable operators to carry all local broadcast signals.
- the ability to define reasonable notice to subscribers of rate and service changes.
- the ability to regulate the equipment or any transmission technology such as system capacity, extent of use of fiber optic cable, homes per node, bandwidth for digital carriage, or amplifiers per cascade. While the FCC retains the authority to develop technical standards, Congress retained for local franchise authorities the ability to enforce these standards. Retaining this authority will go a long way to ensure uniform customer service and signal reliability in rural and suburban areas.
- cable operators must lease cable to whomever wants to offer competitive programming.
- all programming which is available on cable must be available to other technologies such as satellite.
- the ability to require PEG (Public, Education,

Government) channels as part of the franchise agreement.
- the ability to require universal cable service. This is particularly important to rural and low-income residents who traditionally have been denied service.

Franchise fees are, in part, the rent cable operators pay for the use of public rights of way. Operators should not pass through to basic subscribers those rental expenses associated with non-subscriber services.

NACo also strongly opposes the pass through to cable customers of "non-subscriber" revenue, such as advertising and other commissions, and opposes the itemization of franchise fees stemming from such actions.

14. Consumer Protection: Counties have a major role to play in protecting consumer interests, including a strong consumer protection process. Congress should protect consumers from monopoly pricing power in the absence of effective competition. Every effort should be made to promote competition between providers to ensure consumers are receiving an appropriate range of services at the lowest possible cost. Companies wishing to provide communications or video services, including traditional telephone companies or cable operators, must be subject to safeguards to protect consumers against cross subsidies. NACo believes counties have the right to review mergers and acquisitions when such activity might result in the reduction of competition in the local marketplace.

15. Broadband Deployment: NACo strongly supports legislation and administrative policies that help counties attract broadband services regardless of population. This includes supporting legislation that provides tax credits to telecommunications providers that develop broadband in rural and under-served communities, and provides for broadened eligibility and additional federal agency loan authority or extension of credit to telecommunications providers that deploy broadband in rural communities.

In supporting expanded broadband service, NACo shall maintain a neutral position on the differing technologies and policy initiatives promoted by the various elements of the communications industry that are seeking to obtain a competitive advantage in retaining or expanding market share. NACo should also support Federal legislation and policies and programs that make training and computers available to low-income communities so that their residents can take advantage of broadband service. To encourage access, consumer choice, competition and diversity, NACo believes any customer of a high-speed Internet service should be allowed to have access to any ISP of their choice.

16. Universal Service: NACo supports the goals of national universal service to assure the affordability of communications service in parts of the country where it would otherwise be more expensive. NACo supports both "Lifeline" and "Linkup" as tools to implement universal access for low-income and limited access individuals. The Federal Communications Commission and state utility commissions should provide guidance as to what services should be eligible for support from the Universal Service Fund, and the sources of additional funding should the Congress find such that an expansion of eligible services is warranted.

NACo opposes any abuse of the Universal Service Fund by any level of government for non-eligible activities or projects. NACo opposes any federal actions to preempt state universal service programs.

17. E-rate: NACo supports the "E-rate program to provide affordable access by citizens to the services and information available on the Internet. The E-rate was enacted as part of the Telecommunications Act of 1996 as part of the Universal Service Program (which makes telephone service available and affordable to almost all Americans). The E-rate provides discounts to public and private schools, libraries and consortia on telecommunications services, Internet access and internal networking equipment and facilities. NACo opposes any misuse of E-rate funding by any jurisdiction.

18. On-line Privacy and security: As counties expand their "e-governance" initiatives, more personal information will be collected, stored, and potentially, made available to the public through county website. Consumers are becoming more aware of the potential uses of personal information for purposes other than those intended, and are becoming more concerned about how counties are going to respond. Because of security compromises in the private sector, constituents expect counties to protect their private information. County privacy policies should be reflective of community values, and should follow best available practices to meet those values.

NACo also supports initiatives and systems to secure personal and county information from "hackers" or other illegitimate uses. While every effort should be made to protect private information, NACo supports reasonable liability limits for counties if information that counties control is compromised. If information is compromised, counties should have procedures and policies for notifying affected individuals.

Third party vendors should be expected to conform to county privacy policies and practices to maximize the security of private information. Franchise and other agreements should allow for contractual requirements for maintaining privacy. At the same time, counties should consider policies that protect the public's private information from the misuse by public employees. Counties should also consider adopting "Freedom of Information Act" policies that provide for public disclosure without compromising private information.

19. Taxation: The Telecommunications Act of 1996 did not change or impair any state or local government authority to tax telecommunications providers. NACo needs to ensure:

- No actions are taken by Congress, the Federal Communications Commission, or the courts to preempt local authority on either fees or taxes or land use authority.
- Any federal action that affects communications fees or taxes must be revenue neutral to the locality generally, between providers, and allow for a growth in tax revenue as the service or industry grows.
- County tax policy should be technology neutral for like services.
- Tax policy must recognize the cost to local government of the use of public property or facilities.
- Use of advanced communications services should not be a means of escaping local taxation.
- There must be recognition of local diversity in the taxation of communications services.
- Tax simplification should not be a vehicle used by the federal government to undermine county government's ability to retain taxing authority and revenue streams.

20. Geospatial Information Systems: Geospatial Information Systems (GIS) are critical tools for county officials to make appropriate land use decisions, manage existing infrastructure, and maintain adequate linkages between the county's land base and its government and maximize the use of resources as first responders to homeland security threats and events. NACo encourages member counties, other local governments, states, tribal entities and the private sector to engage in a coordinated effort that will lead to standardized best practices and land record modernization as well as a solid digital infrastructure, in particular cadastral data.

NACo supports the effort of the federal government to coordinate the collection and dissemination of GIS data (based on common interoperable data standards) by the federal, state, local and tribal governments through programs. The common data standards should be designed to: 1) maximize the degree to which unclassified GIS data from various sources can be made electronically available; and 2) promote the use of GIS for better governance due to increased data sources and sharing of geographic data by all levels of government. Congress should provide funding to facilitate this effort.

TELECOMMUNICATIONS AND TECHNOLOGY RESOLUTIONS

Resolution on Preserving Local Video Franchising Authority

Issue: Preserving local video franchising authority

Adopted policy: NACo supports existing authority requiring local franchises for the build-out of video services, and would oppose legislative efforts to mandate statewide or national franchises, particularly for new entrants.

Background: Under Title XI of the Communications Act, local governments were given the authority to require cable companies to obtain a local franchise for the build-out of their cable systems. All cable companies have complied with this requirement and have entered into franchise agreements. These agreements often contain specific programming requirements, build-out schedules, consumer protections, the public, educational and governmental channels made available on the system — among other important local requirements. They are also required to pay a franchise fee to local government up to five percent of gross revenues from their basic cable tier.

As technology has changed to an Internet Protocol (IP) enabled world, traditional phone companies will soon have the ability to provide video services similar, if not exactly like, current cable offerings. In order to speed deployment, they have expressed an interest in obtaining a "national franchise", or a "statewide" franchise to bypass the time needed to negotiate individual franchise agreements with local governments. In hearings, Members of Congress have indicated a willingness to consider this approach. The cable industry has responded that while they have such agreements, and expect new entrants to meet the same requirements, if the franchising structure is changed, they would want to be treated the same.

Fiscal/Urban/Rural Impacts: They could be considerable. If the current franchising structure is changed, there could be substantial decreases in franchise fees, consumer protection could be compromised, and local influence over programming could be lost.

Resolution on Consumer Protections in Wireless Billing

Issue: Consumer Protections in Wireless Billing, including full disclosure of "plan change triggers"

Adopted policy: NACo supports full and obvious disclosure of all service charges in wireless billing and any potential changes to wireless calling plans that can be triggered through the passive payment of charges.

Background: County governments are often the first line of defense for consumers. While the FCC has recently extended their "Truth-in Billing" requirements to wireless phones (March 10, 2005), their requirements deal more with how charges are explained and how they are presented to the consumer. The typical consumer rarely reads all the fine print on the bill they receive each month, and some wireless carriers have used this deficiency to their advantage by making service plan changes effective if the consumer does not specifically "opt-out" of the changes. If the consumer does not challenge the change, and pays the bill, the changes are considered accepted. The use of this fine print trigger mechanism has significant implications for consumers.

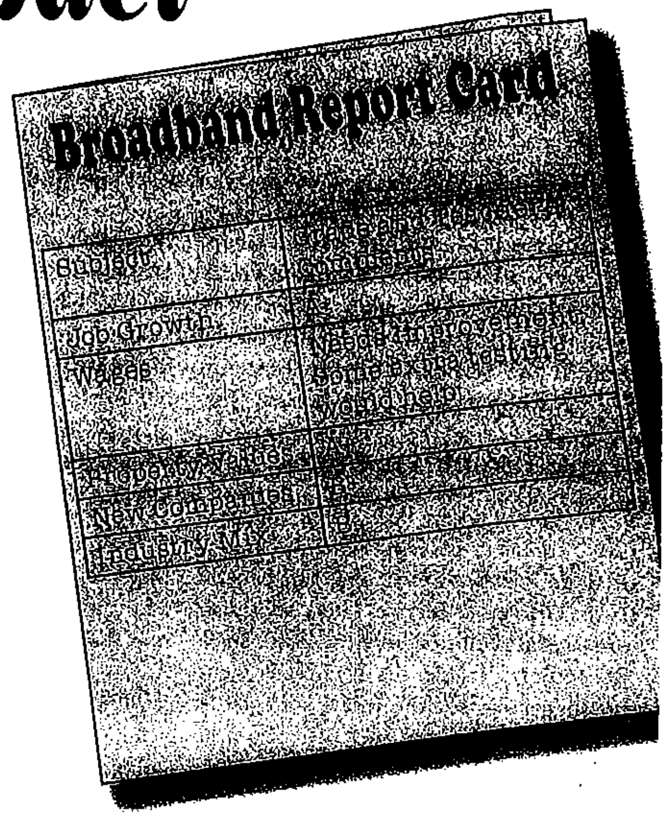
Fiscal/Urban/Rural Impacts: TBD.

Attachment C

Measuring Broadband's Economic Impact

From 1999 to 2002, American communities with broadband access did significantly better than those without

By William H. Lehr, Carlos A. Osorio.
Sharon E. Gillett ■ *Massachusetts Institute of Technology*
Marvin A. Sirbu ■ *Carnegie Mellon University*



" . . . broadband access does matter to the economy, just as common sense would say it should . . ."

" . . . broadband enhances economic activity, helping to promote job creation both in terms of the total number of jobs and the number of establishments in communities with broadband . . ."

" . . . the mean growth in rent . . . employment, number of establishments, and share of establishments in IT-intensive sectors were all higher in the communities with broadband . . ."

" . . . we find a substantial positive impact for broadband availability on the growth in total employment."

" . . . broadband has a significant positive effect on the growth in the number of business establishments . . ."

" . . .broadband access does enhance economic growth and performance, and . . . the assumed (and oft-touted) economic impacts of broadband are real and measurable.

"The present study has several clear implications for policy-makers. The most obvious and important implication is that broadband does matter to the economy."

"Broadband is clearly related to economic well-being and is thus a critical component of our national communications infrastructure."

Attachment D

November 30, 2005

The Honorable Joe Barton
Chairman
Committee on Energy and Commerce
The U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Fred Upton
Chairman
Subcommittee on Telecommunications
and the Internet
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable John D. Dingell
Ranking Member
Committee on Energy and Commerce
The U.S. House of Representatives
2322 Rayburn House Office Building
Washington, DC 20515

The Honorable Edward J. Markey
Ranking Member
Subcommittee on Telecommunications
and the Internet
Committee on Energy and Commerce
2322 Rayburn House Office Building
Washington, DC 20515

Dear Committee Leaders:

On behalf of the nation's local elected officials and their advisors, we thank you for the opportunity to testify at the Subcommittee on Telecommunications and the Internet's November 9th hearing on draft legislation to create a statutory framework for Internet Protocol and Broadband Services.

For three decades local governments have used cable franchising authority to achieve nearly universal deployment of broadband advanced services and to protect consumers to the extent we have authority. Only wire line competition reduces cable rates and enhances service. Therefore, let there be no mistake, local governments want competition, as fast and as much as the market will sustain.

We appreciated your efforts and leadership to engage local governments, along with all other impacted parties, as the committee drafted "BITS I." While BITS I was not something local governments would have put forward, we recognized that there was a significant effort to address issues of importance to cities and counties. We were prepared to continue to work towards a reasonable compromise.

Unfortunately, the revised draft, "BITS II," severely tested local governments' optimism because it pulled back from significant progress on local issues. In particular, we believe that the language of the draft does not protect local governments' core police powers.

We hope to have the chance to continue working with the committee to ensure that any final legislation addresses the following top concerns of local governments. These include:

1. Preserving local governments' ability to manage streets and sidewalks in the public rights-of-way.

2. Ensuring that no loopholes are created for undermining city and county revenues. Streamlining the franchise process does not mean that local governments and citizens should subsidize telecommunications companies' business plans. Telephone companies have agreed they would pay applicable fees for the use of public streets and sidewalks.

3. Protecting the public safety needs and interests of the community. In addition to fees, local governments receive in-kind benefits such as institutional networks for public safety and public access channels that facilitate communication with citizens under the current system. Local governments can support replacing the current negotiation process with adequate cash support shared equally among all competitors.

4. Enforcing local governments' management of public rights-of-way and revenue measures through mechanisms such as auditing, reviewing documents, and recourse to the courts, if needed.

These requests are reasonable, do not stand in the way of meaningful reform, and are in many circumstances conceded by the telecommunications companies that seek change. Most important, these values are shared by most members of Congress and the Energy & Commerce Committee.

Thus, there appears to be no conceptual disagreement: the difficulties have arisen in the details of the legislative language. At the hearing, Chairman Upton made clear that it was the intent of the Subcommittee in its staff draft of the telecommunications rewrite to ensure that local governments preserves its management authority over local rights-of-way.

Accordingly, we are hopeful that we will have the opportunity to iron out these details with the committee prior to markup. We look forward to working together to further secure America's future economic growth by offering citizens a modern communications infrastructure that includes the provision of broadband service and video by competing providers.

Sincerely,

Tom Cochran
Tom Cochran
Executive Director
The U.S. Conference of Mayors

Donald Borut
Executive Director
National League of Cities

Larry Naake
Executive Director
National Association of Counties

Libby Beaty
Elizabeth Beaty
Executive Director
National Association of Telecommunications Officers and Advisors

Jeffrey L. Esser
Executive Director and CEO
Government Finance Officers Association

cc: U.S. House of Representatives Energy and Commerce Committee Members

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