

Item: 78

SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM

SUBJECT: Legislative - Agenda 2006 (Federal)

DEPARTMENT: County Manager's Office/County Attorney's Office DIVISION: _____

Susan Dietrich Ext. ^{SS}

AUTHORIZED BY: Cynthia A. Coto

Contact: Sally A. Sherman Ext. 7224

Agenda Date 06/13/06 Regular Consent Work Session Briefing
Public Hearing – 1:30 Public Hearing – 7:00

Package Contents

	<u>Page</u>
Top <u>FEDERAL</u> Legislative Priorities	2
Federal Funding Request	5
Top Federal Legislative Issues for Monitoring	9
Items of Interest	10

Reviewed by:
Co Atty: _____
DFS: _____
Other: _____
DCM: _____
CM: 
File No CML01

Top Federal Legislative Priorities

1. Oppose any bills that preempt local government authority.

S.2113 - Oppose

Title: A bill to promote the widespread availability of communications services and the integrity of communication facilities, and to encourage investment in communication networks.

Sponsor: Sen DeMint, Jim [SC] (introduced 12/15/2005) Cosponsors (1)

Latest Major Action: 12/15/2005 Referred to Senate committee. Status: Read twice and referred to the Committee on Commerce, Science, and Transportation.

(Bill Previously Provided)

SUMMARY AS OF:

12/15/2005--Introduced.

Digital Age Communications Act of 2005 - Makes it unlawful for any provider of electronic communications service to participate in unfair methods of competition, or unfair or deceptive practices, in or affecting electronic communications networks and services.

Prohibits the Federal Communications Commission (FCC) from denying an application to assign or transfer control of a communications license, permit, or certificate unless it is in violation of the Communications Act of 1934 (the Act) or a specific FCC rule or regulation.

Repeals the Act's application to universal service three years after the enactment of this Act.

Authorizes the Federal-State Joint Board on universal service to periodically recommend to the FCC modifications as to which basic electronic communications services are to be supported by federal universal service support mechanisms. Directs the FCC to: (1) promulgate rules to reform the universal services contribution mechanism and adopt a new mechanism; and (2) revise its current universal service fund system to establish a single universal service fund which shall be the exclusive federal universal service support mechanism.

States that it shall be U.S. policy: (1) to integrate federal, state, and local regulation of electronic communications networks; (2) that such networks and their services be governed by a single, minimally pervasive regulatory regime; (3) to eliminate rate regulation and rate-setting when feasible; and (4) to create incentives to invest in new technologies and to encourage the deployment of advanced electronic communications services.

Authorizes continued state regulation of rates for basic stand-alone local service.

ALL ACTIONS:

12/15/2005:

Read twice and referred to the Committee on Commerce, Science, and Transportation.

COSPONSORS(1), ALPHABETICAL No Florida

COMMITTEE(S):

Committee/Subcommittee:	Activity:
<u>Senate Commerce, Science, and Transportation</u>	Referral, In Committee

2. Cable Franchise Fees

R.5252 - Oppose

Title: To promote the deployment of broadband networks and services.

Sponsor: Rep Barton, Joe [TX-6] (introduced 5/1/2006) Cosponsors (55)

Latest Major Action: 5/17/2006 Placed on the Union Calendar, Calendar No. 259.
(Attachment A, Page __)

House Reports: 109-470

MAJOR ACTIONS:

5/1/2006 Introduced/originated in House
6

5/17/06 Reported by the Committee on Energy and Commerce. H. Rept.
109-470.

5/17/06 Placed on the Union Calendar, Calendar No. 259.

ALL ACTIONS:

5/1/2006:

Referred to the House Committee on Energy and Commerce.

5/17/2006 6:09pm:

Reported by the Committee on Energy and Commerce. H. Rept. 109-470.

5/17/2006 6:09pm:

Placed on the Union Calendar, Calendar No. 259.

COSPONSORS(55), ALPHABETICAL [followed by Cosponsors
withdrawn]: (Sort: by date)

Rep Diaz-Balart, Lincoln [FL-21] -
5/9/2006

Rep Meek, Kendrick B. [FL-17] -
5/11/2006

Rep Miller, Jeff [FL-1] - 5/11/2006

Rep Stearns, Cliff [FL-6] - 5/1/2006

Rep Wexler, Robert [FL-19] -
5/11/2006

Rep Diaz-Balart, Mario [FL-25] -
5/11/2006

Rep Feeney, Tom [FL-24] -
5/11/2006

Rep Foley, Mark [FL-16] - 5/11/2006

Rep Hastings, Alcee L. [FL-23] -
5/11/2006

Rep Mack, Connie [FL-14] -
5/17/2006

COMMITTEE(S):

Committee/Subcommittee:	Activity:
<u>House Energy and Commerce</u>	Referral, Reporting

Alcalde & Fay – Update (5-22-06)

In late April, the House Energy and Commerce Committee approved the Communications, Opportunity, Promotion, and Efficiency (COPE) Act of 2006 (HR 5252). This bill would establish a national video franchise for cable operators, which would affect rights to obtain franchise fees.

The Senate Commerce Committee released the draft of its telecom reform bill. The Senate bill preserves local franchise authorities' ability to negotiate rights-of-way management at the local level. The bill also preserves the ability of state or local franchise authorities to access up to 5 percent of gross revenues. However, the National League of Cities, the National Association of Counties, the U.S. Conference of Mayors and the National Association of Telecommunications Officers and Advisors assert, "while the bill ostensibly preserves local franchising authority, the net effect is that it strips local authority...to determine virtually all franchise terms."

The groups complained to the Senate Commerce Committee that the bill would send disputes about the rights-of-way to the FCC rather than the courts. That approach "abandons commitments to keep localities financially whole," permits Bell companies to "pick and choose which neighborhoods they wish to serve," and could potentially preempt locally imposed telecommunications taxes, the groups charged.

The four associations are seeking legislation preserving "level playing fields" and maintaining franchising authority within the local community.

In a related development, a study by the Congressional Budget Office found that the COPE Act would impose costs of up to \$350 million on state and local governments by 2011 – exceeding the threshold established by a law on unfunded federal mandates to the states.

"By prohibiting intergovernmental entities from charging certain cable providers more than 1 percent of gross revenue to provide [public, educational and governmental] programming, enacting the bill would lead to a loss in state and local revenues," CBO wrote.

Federal Funding Request

A.	Pedestrian Overpass (Howell Branch Road & SR 426)	\$6 million
B.	Cross Florida Greenways Trail – Seminole County /Winter Springs	\$2.5 million
C.	State Road 46 – Regional Evacuation Route (SR 415 to US 1)	\$8 million
D.	Upsala Landfill Restoration	\$2 million
E.	Computer Aided Dispatch System	\$900,000
F.	Replacement of Large Print Library Books	\$100,000
G.	Regional Alternative Water Supply Program	\$2 million
H.	Eastern Connector	\$500 million
I.	Wilson’s Landing (Added to the List per BCC direction on 3/28/06)	\$2.1 million

Congressional Appropriations Process – Alcalde & Fay (5-22-06)

The House of Representatives has begun its writing and consideration. By week’s end the House anticipates floor consideration of the following appropriations bills; Agriculture; Energy and Water Development; Homeland Security; Interior and Environment; and Military and Veteran Affairs.

The House Appropriations Committee has not taken up the following appropriations bills, in which many projects are currently pending consideration: Transportation, Treasury and Housing and Urban Development; Science, State, Commerce and Justice; and Labor, Health and Human Services, and Education.

The Senate Appropriations Committee has not begun consideration of the appropriations bills. In most cases, final decisions on project funding are made during conference negotiations between the House and Senate Appropriations Committees, after the Senate has completed its work on the bills.

A. Pedestrian Overpass (Howell Branch Road & State Road 426) - \$6 m

Request - \$6.0 million under the Transportation and Community System Preservation Program account in Fiscal Year 2007 Transportation Appropriations Bill to construct a pedestrian overpass at the intersection of Howell Branch Road and State Road 426.

The project serves as a regional trail/pedestrian link between Seminole and Orange Counties. It was approved by the MetroPlan Orlando Board as part of the Long Range Plan 2025 in 2004.

Recently, the County has completed the south link of the Cross Seminole Trail, which terminates at the Orange County Line. Orange County will be tying into this section of the trail which will provide a connection to the downtown Orlando Area. The trail serves both recreational and commuter users. In Seminole County it intersects with State Road 426 and Howell Branch Road. Approximately 50,000 cars a day pass through this intersection. The pedestrian overpass will enhance the safety at this intersection. The total cost of the project is \$6.0 million for design, right-of-way and construction. Neither the County nor the State has funds at this time.

B. Cross FI Greenways Trail – Seminole County/Winter Springs - \$2.5m

Request - \$2.5 million under the Transportation and Community System Preservation Program account in the Fiscal Year 2007 Transportation appropriations Bill to develop the Cross Florida Greenways Trail in Seminole County/Winter Springs.

The Cross Florida Greenways Trail is part of a planned connection to Orange County and a regional trail system connection to the Seminole County trail system and eventually part of the Florida National Scenic Trail System. The section of the trail in which the County is seeking funds is in Winter Springs between Layer Elementary School and Old Sanford/Oviedo Road.

The project was approved by the MetroPlan Orlando Board as part of the Long Range Plan 2025 in 2004.

The trail serves work, recreational and school access purposes. It also is a “mission link” for a multi-county trail and; therefore, is significant in terms of need and importance. The total cost of the project is \$2.5 million. The County can contribute \$500,000 to this project.

C. State Road 46 – Regional Evacuation Route (SR 415 to US 1) - \$8m

Request - \$8 million under the Transportation and Community System Preservation Program account in the Fiscal Year 2007 Transportation Appropriations Bill to develop State Road 46 from State Road 415 to US Highway 1.

The funds sought would cover the project development and environment (PD&E) phase of this project, which expands State Road 46 to 4-lanes from State Road 415 to US Highway 1 in Brevard County. Widening State Road 46 would significantly

improve travel on a regional basis and provide an upgraded hurricane evacuation route.

The total cost of the project is \$120 million. The project in Seminole County was approved and adopted by the MetroPlan Orlando Board in 2004 as part of the Long Range Plan.

The County expects the funds to be provided by the Florida Department of Transportation which would be the agency to implement the project since it is a State roadway and serves traffic on a regional basis. As an evacuation route, it directly serves Orange, Seminole, Volusia and Brevard Counties. Indirectly, it would serve as a primary or secondary route for other coastal Counties along the east coast of Florida.

D. Upsala Landfill Restoration - \$2m

Request - \$2 million under the Environmental Programs and Management Account in the Fiscal Year 2007 Interior and Environment Appropriations Bill for the remediation and restoration of the closed Upsala Landfill site. The work would include the environmental study, engineering and construction needed to reclaim the former landfill and adjacent sludge disposal area. The approximate 24 acre former disposal site would be converted into a park that would serve the residents of Seminole County and region.

E. Computer Aided Dispatch System- \$900,000

Request - \$900,000 under the Law Enforcement Technology and Interoperability Grants program in the Fiscal Year 2007 Science, State, Justice and Commerce Appropriations Bill for a computer aided dispatch (CAD) system.

Due to the complex nature of the County's first response system and the increase in call activity, improvements to the County's technology are required to effectively and efficiently dispense the proper resources to a variety of scenarios. The current system in place has been outdated due to call volume capacity and requires numerous upgrades to integrate technology such as Automatic Vehicle Locator (AVL) systems, Mobile Data Terminals (MDT), enhanced Mobile Data Collection reporting systems with integration to local hospitals, and an enhanced Incident Command Operational System to handle large scale incidents as well as Hazardous Materials and Weapons of Mass Destruction response.

The system is a jointly used by the County and the Cities of Sanford, Lake Mary, Oviedo, Winter Springs, Longwood, Casselberry and Altamonte Springs. It provides communications for general EMS, Fire, Rescue response, many facets of Special Response and serves as ancillary support to other functions such as Animal Control services.

F. Replacement of Large Print Library Books- \$100,000

Request - \$100,000 under the Institute of Museum and Library Services account in the Fiscal Year 2007 Labor-HHS-Education Appropriations Bill to replace large print library books.

Large print books are used more and more by people who are not visually impaired. They are used by the senior citizens whose vision has declined; they are used by stationary bicycle and treadmill users; they are used by speed readers; they are used by students with reading difficulties; they are used by patients recovering from head injury or stroke. This use, on top of the intense traditional use of large print books by the visually impaired, has put a strain on the Large Print Collection of the Seminole County Public Library System.

The current Large Print Collection cannot fulfill the rising demand for this format. In order to make the Large Print Collection a more contemporary and viable collection, \$100,000 would be used to purchase approximately 2,800 large print volumes (average \$37.00 per large print volume as determined by library sources, 2004/2005 U. S. Statistical Abstracts and Bowker Annual Library and Book Trade Almanac.

G. Regional Alternative Water Supply Program - \$200,000,000

Request - \$2,000,000 under the State and Tribal Assistance Grant account in the Fiscal Year 2007 Interior & Environment Appropriations Bill to assist in the design of the Yankee Lake Regional Surface Water Facility for augmentation of the reclaimed water system to offset potable ground water demands.

The project will serve the Northwest/Northeast Service Areas of the County as well as provide resources to the Seminole, Lake Mary, and Sanford Tri-Party Re-claim System. St. Johns River Water Management District (SJRWMD) has determined, through studies conducted since the mid-1990's that the withdrawals from the Upper Floridian aquifer may result in adverse environmental impact. This project will help us meet the St. Johns River Water Management District regulatory controls along with possible grant funding from SJRWMD up to a maximum \$12,000,000 for construction

H. Eastern Connector- \$500m

Support Congressman Mica's request of \$500,000,000 for the connector that runs from SR 417 south of Sanford to I-95 in Volusia.

I. Wilson's Landing - \$2.1m (Added to the List per BCC direction on 3/28/06). The cut-off for submittals for funding was March 16, 2006. Will continue to pursue other funding options, i.e. grants.

Top Federal Legislative Issues for Monitoring

- A. **Support** – Funding for the FIRE Act and the County's grant application
- B. **Support** – Funding for the State Homeland Security Grant Program
- C. **Support** – County's grant application for the Pre-Disaster Mitigation Program
- D. **Support** – County's grant application for the Hazard Mitigation Grant Program
- E. **Support** – Funding as “universal service contributions” under Section 254 of the Communications Act of 1934
- F. **Support** – Funding of the Community Service Block Grant (CSBG) program
- G. **Support** – County's grant application for a Health Community Access Program (HCAP) Grant

Items of Interest

- Seminole County Legislative Day in Washington, DC
May, 16 & 17, 2006
- Federal Lobbyist – Alcalde & Fay --- Skip Bafalis/Jim Davenport

H.R.5252
Communications Opportunity, Promotion, and Enhancement Act of 2006
(Introduced in House)

HR 5252 IH

109th CONGRESS
2d Session
H. R. 5252

To promote the deployment of broadband networks and services.

IN THE HOUSE OF REPRESENTATIVES

May 1, 2006

Mr. BARTON of Texas (for himself, Mr. RUSH, Mr. UPTON, Mr. PICKERING, Mr. STEARNS, Mr. BUYER, Mrs. BLACKBURN, Mr. GILLMOR, Mr. SHADEGG, Mr. RADANOVICH, Mr. ROGERS of Michigan, Mr. FERGUSON, Mr. NORWOOD, Mr. WHITFIELD, Mr. SHIMKUS, Mrs. MYRICK, and Mr. BURGESS) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To promote the deployment of broadband networks and services.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title- This Act may be cited as the 'Communications Opportunity, Promotion, and Enhancement Act of 2006'.

(b) Table of Contents-

Sec. 1. Short title; table of contents.

TITLE I--NATIONAL CABLE FRANCHISING

Sec. 101. National cable franchising.

Sec. 102. Definitions.

Sec. 103. Monitoring and reporting.

TITLE II--ENFORCEMENT OF BROADBAND POLICY STATEMENT

Sec. 201. Enforcement of broadband policy statement.

TITLE III--VOIP/911

Sec. 301. Emergency services; interconnection.

TITLE IV--MUNICIPAL PROVISION OF SERVICES

Sec. 401. Government authority to provide services.

TITLE V--BROADBAND SERVICE

Sec. 501. Stand-alone broadband service.

Sec. 502. Study of interference potential of broadband over power line systems.

TITLE VI--SEAMLESS MOBILITY

Sec. 601. Development of seamless mobility.

TITLE I--NATIONAL CABLE FRANCHISING

SEC. 101. NATIONAL CABLE FRANCHISING.

(a) Amendment- Part III of title VI of the Communications Act of 1934 (47 U.S.C. 541 et seq.) is amended by adding at the end the following new section:

SEC. 630. NATIONAL CABLE FRANCHISING.

(a) National Franchises-

(1) ELECTION- A person or group that is eligible under subsection (d) may elect to obtain a national franchise under this section as authority to provide cable service in a franchise area in lieu of any other authority under Federal, State, or local law to provide cable service in such franchise area. A person or group may not provide cable service under the authority of this section in a franchise area unless such person or group has a franchise under this section that is effective with respect to such franchise area. A franchising authority may not require any person or group that has a national franchise under this section in effect with respect to a franchise area to obtain a franchise under section 621 or any other law to provide cable service in such franchise area.

(2) CERTIFICATION- To obtain a national franchise under this section as authority to provide cable service in a franchise area, a person or group shall—

(A) file with the Commission a certification for a national franchise containing the information required by paragraph (3) with respect to such franchise area, if such person or group has not previously obtained a national franchise; or

(B) file with the Commission a subsequent certification for additional franchise areas containing the information required by paragraph (3) with respect to such additional franchise areas, if such person or group has previously obtained a national franchise.

(3) CONTENTS OF CERTIFICATION- Such certification shall be in such form as the Commission shall require by regulation and shall contain--

A) the name under which such person or group is offering or intends to offer cable service;

(B) the names and business addresses of the directors and principal executive officers, or the persons performing similar functions, of such person or group;

(C) the location of such person or group's principal business office;

(D) the name, business address, electronic mail address, and telephone and fax number of such person or group's local agent;

(E) a declaration by such person or group that such person or group is eligible under subsection (d) to obtain a national franchise under this section;

(F) an identification of each franchise area in which such person or group intends to offer cable service pursuant to such certification, which franchise area shall be--

(i) the entirety of a franchise area in which a cable operator is, on the date of the filing of such certification, authorized to provide cable service under section 621 or any other law (including this section); or

(ii) a contiguous geographic area that covers the entirety of the jurisdiction of a unit of general local government, except that--

(I) if the geographic area within the jurisdiction of such unit of general local government contains a franchise area in which a cable operator is, on such date, authorized to provide cable service under section 621 or any other law, the contiguous geographic area identified in the certification under this clause as a franchise area shall not include the area contained in the franchise area of such cable operator; and

(II) if such contiguous geographic area includes areas that are, respectively, within the jurisdiction of different franchising authorities, the certification shall specify each such area as a separate franchise area;

(G) a declaration that such person or group transmitted, or will transmit on the day of filing such declaration, a copy of such certification to the franchising authority for each franchise area for which such person or group is filing a certification to offer cable service under this section;

(H) a declaration by the person or group that the person or group will comply with the rights-of-way requirements of the franchising authority under subsection (f); and

(I) a declaration by the person or group that--

(i) the person or group will comply with all Commission consumer protection and customer service rules under section 632(b) and subsection (g) of this section; and

(ii) the person or group agrees that such standards may be enforced by the Commission or by the franchising authority in accordance with subsection (g) of this section.

(4) LOCAL NOTIFICATION; PRESERVATION OF OPPORTUNITY TO NEGOTIATE-

(A) COPY TO FRANCHISING AUTHORITY- On the day of filing any certification under paragraph (2)(A) or (B) for a franchise area, the person or group shall transmit a copy of such certification to the franchising authority for such area.

(B) NEGOTIATED FRANCHISE AGREEMENTS PERMITTED- Nothing in this section shall prevent a person or group from negotiating a franchise agreement or any other authority to provide cable service in a franchise area under section 621 or any other law. Upon entry into any such negotiated franchise agreement, such negotiated franchise agreement shall apply in lieu of any national franchise held by that person or group under this section for such franchise area.

(5) UPDATING OF CERTIFICATIONS- A person or group that files a certification under this section shall update any information contained in such certification that is no longer accurate and correct.

(6) PUBLIC AVAILABILITY OF CERTIFICATIONS- The Commission shall provide for the public availability on the Commission's Internet website or other electronic facility of all current certifications filed under this section.

(b) Effectiveness; Duration-

(1) EFFECTIVENESS- A national franchise under this section shall be effective with respect to any franchise area 30 days after the date of the filing of a completed certification under subsection (a)(2)(A) or (B) that applies to such franchise area.

(2) DURATION-

(A) IN GENERAL- A franchise under this section that applies to a franchise area shall be effective for that franchise area for a term of 10 years.

(B) RENEWAL- A franchise under this section for a franchise area shall be renewed automatically upon expiration of the 10-year period described in subparagraph (A).

(C) PUBLIC HEARING- At the request of a franchising authority in a franchise area, a cable operator authorized under this section to provide cable service in such franchise area shall, within the last year of the 10-year period applicable under subparagraph (A) to the cable operator's franchise for such franchise area, participate in a public hearing on the cable operator's performance in the franchise area, including the cable operator's compliance with the requirements of this title. The hearing shall afford the public the opportunity to participate for the purpose of identifying cable-related community needs and interests and assessing the operator's performance. The cable operator shall provide notice to its subscribers of the hearing at least 30 days prior to the hearing.

(D) REVOCATION- A franchise under this section for a franchise area may be revoked by the Commission--

(i) for willful or repeated violation of any Federal or State law, or any Commission regulation, relating to the provision of cable service in such franchise area;

(ii) for false statements or material omissions knowingly made in any filing with the Commission relating to the provision of cable service in such franchise area;

(iii) for willful or repeated violation of the rights-of-way management laws or regulations of any franchising authority in such franchise area relating to the provision of cable service in such franchise area; or

(iv) for willful or repeated violation of the antidiscrimination requirement of subsection (h) with respect to such franchise area.

(E) NOTICE- The Commission shall send a notice of such revocation to each franchising authority with jurisdiction over the franchise areas for which the cable operator's franchise was revoked.

(F) REINSTATEMENT- After a revocation under subparagraph (D) of a franchise for a franchise area of any person or group, the Commission may refuse to accept for filing a new certification for

authority of such person or group to provide cable service under this section in such franchise area until the Commission determines that the basis of such revocation has been remedied.

(G) RETURN TO LOCAL FRANCHISING IF CABLE COMPETITION CEASES-

(i) If only one cable operator is providing cable service in a franchise area, and that cable operator obtained a national franchise for such franchise area under subsection (d)(2), the franchising authority for such franchise area may file a petition with the Commission requesting that the Commission terminate such national franchise for such franchise area.

(ii) The Commission shall provide public notice and opportunity to comment on such petition. If it finds that the requirements of clause (i) are satisfied, the Commission shall issue an order granting such petition. Such order shall take effect one year from the date of such grant, if no other cable operator offers cable service in such area during that one year. If another cable operator does offer cable service in such franchise area during that one year, the Commission shall rescind such order and dismiss such petition.

(iii) A cable operator whose national franchise is terminated for such franchise area under this subparagraph may obtain new authority to provide cable service in such franchise area under this section, section 621, or any other law, if and when eligible.

(c) Requirements of National Franchise- A national franchise shall contain the following requirements:

(1) FRANCHISE FEE- A cable operator authorized under this section to provide cable service in a franchise area shall pay to the franchising authority in such franchise area a franchise fee of up to 5 percent (as determined by the franchising authority) of such cable operator's gross revenues from the provision of cable service under this section in such franchise area. Such payment shall be assessed and collected in a manner consistent with section 622 and the definition of gross revenues in this section.

(2) PEG/I-NET REQUIREMENTS- A cable operator authorized under this section to provide cable service in a franchise area shall comply with the requirements of subsection (e).

(3) RIGHTS-OF-WAY- A cable operator authorized under this section to provide cable service in a franchise area shall comply with the rights-of-way requirements of the franchising authority under subsection (f).

(4) CONSUMER PROTECTION AND CUSTOMER SERVICE STANDARDS- A cable operator authorized under this section to provide cable service in a franchise area shall comply with the consumer protection and customer service standards established by the Commission under section 632(b).

(5) CHILD PORNOGRAPHY- A cable operator authorized under this section to provide cable service in a franchise area shall comply with the regulations on child pornography promulgated pursuant to subsection (i).

(d) Eligibility for National Franchises- The following persons or groups are eligible to obtain a national franchise under this section:

(1) COMMENCEMENT OF SERVICE AFTER ENACTMENT- A person or group that is not providing cable service in a franchise area on the date of enactment of this section under section 621 or any other law may obtain a national franchise under this section to provide cable service in such franchise area.

(2) EXISTING PROVIDERS OF CABLE SERVICE- A person or group that is providing cable service in a franchise area on the date of enactment of this section under section 621 or any other law may obtain a franchise under this section to provide cable service in such franchise area if, on the date that the national franchise becomes effective, another person or group is providing cable service under this section, section 621, or any other law in such franchise area.

(e) Public, Educational, and Governmental Use-

(1) IN GENERAL- Subject to paragraph (3), a cable operator with a national franchise for a franchise area under this section shall provide channel capacity for public, educational, and governmental use that is not less than the channel capacity required of the cable operator with the most subscribers in such franchise area on the effective date of such national franchise. If there is no other cable operator in such franchise area on the effective date of such national franchise, or there is no other cable operator in such franchise area on such date that is required to provide channel capacity for public, educational, and governmental use, the cable operator shall provide the amount of channel capacity for such use as determined by Commission rule.

(2) PEG AND I-NET FINANCIAL SUPPORT- A cable operator with a national franchise under this section for a franchise area shall pay an amount equal to 1 percent of the cable operator's gross revenues (as such term is defined in this section) in the franchise area to the franchising authority for the support of public, educational, and governmental use and institutional networks (as such term is defined in section 611(f)). Such payment shall be assessed and collected in a manner consistent with section 622, including the authority of the cable operator to designate that portion of a subscriber's bill attributable to such payment. A cable operator that provided cable service in a franchise area on the date of enactment of this section and that obtains a national franchise under this section shall continue to provide any institutional network that it was required to provide in such franchise area under section 621 or any other law. Notwithstanding section 621(b)(3)(D), a franchising authority may not require a cable operator franchised under this section to construct a new institutional network.

(3) ADJUSTMENT- Every 10 years after the commencement of a franchise under this section for a franchise area, a franchising authority may require a cable operator authorized under such franchise to increase the channel capacity designated for public, educational, or governmental use, and the channel capacity designated for such use on any institutional networks required under paragraph (2). Such increase shall not exceed the higher of-

(A) one channel; or

(B) 10 percent of the public, educational, or governmental channel capacity required of that operator prior to the increase.

(4) TRANSMISSION AND PRODUCTION OF PROGRAMMING-

(A) A cable operator franchised under this section shall ensure that all subscribers receive any public, educational, or governmental programming carried by the cable operator within the subscriber's franchise area.

(B) The production of any programming provided under this subsection shall be the responsibility of the franchising authority.

(C) A cable operator franchised under this section shall be responsible for the transmission from the signal origination point (or points) of the programming, or from the point of interconnection with another cable operator under subparagraph (D), to the cable operator's subscribers, of any public, educational, or governmental programming produced by or for the franchising authority and carried by the cable operator pursuant to this section.

(D) Unless two cable operators otherwise agree to the terms for interconnection and cost sharing, such cable operators shall comply with regulations prescribed by the Commission providing for--

(i) the interconnection between two cable operators in a franchise area for transmission of public, educational, or governmental programming, without material deterioration in signal quality or functionality; and

(ii) the reasonable allocation of the costs of such interconnection between such cable operators.

(E) A cable operator shall display the program information for public, educational, or governmental programming carried under this subsection in any print or electronic program guide in the same manner in which it displays program information for other video programming in the franchise area.

PURPOSE AND SUMMARY

The purpose of the Communications Opportunity, Promotion, and Enhancement Act of 2006 is to promote the deployment of broadband networks and services. The bill does so by: (1) creating a streamlined, pro-competitive national process under which companies can enter the cable service market with new, advanced networks capable of providing broadband video, voice, and data services; (2) authorizing the Federal Communications Commission (FCC or the Commission) to enforce its Broadband Policy Statement and the principles incorporated therein on a case-by-case basis so that consumers continue to have access to lawful content, applications, and services of their choosing that are available over the public Internet; (3) facilitating and requiring the provision of 911 and enhanced 911 (E911) services to consumers by Voice Over Internet Protocol (VOIP) providers; (4) ensuring that municipalities have the option to provide telecommunications, information, and cable services to their communities; (5) ensuring consumers have the option to purchase broadband services on a stand-alone basis; and (6) facilitating the development of multi-function, multi-platform wireless devices capable of offering a range of converging broadband services.

BACKGROUND AND NEED FOR LEGISLATION

Currently, a cable operator generally must obtain a local franchise from a local franchising authority (LFA) before it can offer cable service in a local community. See 47 U.S.C. Sec. 541(b)(1). There are thousands of such LFAs, and each one can impose disparate restrictions on a cable operator. When localities first began franchising cable operators, there was typically only one cable operator in each local community. In fact, some communities granted exclusive cable franchises. Moreover, no companies were yet providing other types of multichannel video programming distribution (MVPD) services such as direct broadcast satellite (DBS) service. In that context, it made sense for municipalities to impose rate and service regulations on their lone cable operators.

Since then, however, DBS service has developed. Two companies, Echostar and DirecTV, now offer DBS service nationally, offering multichannel video service in competition with each other and with cable companies. According to a recent FCC report, DBS providers have captured almost 28 percent of the MVPD market. See In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, MB Docket No. 05-255, Twelfth Annual Report, 21 FCC Rcd 2503, 72 (2006) (Video Competition Report). Moreover, Congress now prohibits LFAs from granting exclusive cable franchises, see 47 U.S.C. Sec. 541(a)(1), which enables cable 'overbuilders' to enter each local market in competition with the incumbent cable providers. In 1996, Congress also lifted a statutory prohibition against the provision by local telephone companies of video programming directly to subscribers within the phone companies' telephone service areas, and created 'open video system' (OVS) provisions to facilitate phone companies' entry into the video business. See Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 124 (repealing 47 U.S.C. 533(b) and creating 47 U.S.C. 571, 573.)

Against this backdrop, there is less need for local regulation of cable services, which was predicated in part on the presence of only a single provider. Unfortunately, there is

evidence that cumbersome local regulations are hindering competition. Indeed, according to the FCC, overbuilders have only 1.5 percent of the MVPD market. See Video Competition Report, at 14. In a proceeding the FCC launched in November 2005 to examine the barriers to competitive entry that the local cable franchising regime creates, non-incumbent cable operators listed local regulations as one of the reasons they have been unable to penetrate the market. See *In re Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Notice of Proposed Rulemaking, 20 FCC Rcd 18581 (2005). In particular, they have pointed to 'buildout' requirements, which force them to serve entire communities regardless of the economic or business case for such deployment. According to these providers, such requirements are a large reason why they have difficulty attracting investment capital and why they are reluctant to enter new markets. Similarly, Congress' attempts to facilitate phone company entry into the video business through the OVS provisions have been frustrated by local regulation. Despite Congress' goal of creating a streamlined, national process for OVS entry, a court challenge brought by the municipalities resulted in the application of local franchising requirements to OVS providers. See *City of Dallas v. FCC*, 165 F.3d 341 (5th Cir. 1999).

A number of entities, including telephone companies, are once again seeking to offer competitive cable services. The requirement to negotiate thousands of agreements with LFAs, and the obligations the LFAs impose, are delaying such entry, however, as well as the consumer benefits that such entry would provide.

Cable service is interstate in nature, as the United States Supreme Court recognized as far back as 1968 in its *Southwestern Cable* decision, 392 U.S. 157 (1968). A significant amount of video programming carried on cable systems is produced by national networks and distributed across state lines to a national audience. The same facilities that carry cable services are also carrying increasing amounts of Internet-protocol-based broadband video, voice, and data services that cross state, as well as national, borders. A patchwork of disparate municipal regulations can hinder the deployment of advanced broadband networks that will bring increasingly advanced and competitive services to consumers. Such a patchwork can delay the rollout of cable services as cable operators have to maneuver through thousands of local negotiations and sets of rules.

This bill seeks to address this concern and strike the right balance between national standards and local oversight. Thus, the bill creates an alternative, national cable franchise process that companies may opt into in lieu of the local franchising process.

Recognizing the role of localities, however, the bill: (1) preserves municipalities' existing authority to collect a franchise fee of up to 5 percent of gross revenues from cable service; (2) preserves the municipalities' authority to manage their local rights-of-way, so long as such management is reasonable, competitively neutral, and nondiscriminatory; (3) continues to require carriage of public, educational, and governmental (PEG) channels, and allows municipalities to require holders of a national franchise to increase the number of PEG channels over time; (4) preserves institutional networks (iNets) used for governmental and other public safety purposes; (5) allows municipalities to collect, in addition to the 5 percent franchise fee, another one percent of gross revenues from cable services to support PEG channels and institutional networks; (6) requires the FCC to establish national consumer protection and customer service standards that the municipalities may enforce; and (7) creates a strong

antidiscrimination provision that prohibits holders of a national franchise from discriminating in the provision of cable service to a group of consumers based on the income of that group.

By creating an alternative, streamlined national franchise process with a market-based approach, while recognizing the appropriate role of localities, the bill will reduce barriers to video entry by both large and small providers. The result will be increased competition, lower prices, enhanced service quality, and the deployment of new and innovative broadband video, voice, and data services over advanced, facilities-based networks. The deployment of new, advanced networks will stimulate the economy and increase employment in the United States, and the increased competition will provide consumers with more disposable income.

Title II of the COPE Act provides the FCC with explicit authority to enforce its Broadband Policy Statement, adopted by the FCC on August 5, 2005. See *In re Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, and other Matters*, CC Docket No. 02-33, Policy Statement, 20 FCC Rcd 14986 (2005) (Broadband Policy Statement or policy statement). The Broadband Policy Statement was adopted on the same day that the FCC conformed its classification of broadband Internet access services offered by wireline facilities-based providers consistent with the U.S. Supreme Court's decision in the *Brand X* case. See *National Cable & Telecommunications Ass'n v. Brand X Internet Services*, 125 S. Ct. 2688 (2005) (*Brand X*). In *Brand X*, the Supreme Court held that the FCC's conclusion that cable-modem service is an information service under the Communications Act rather than a telecommunications service is a lawful construction of the Act.

By classifying both high-speed cable-modem services and broadband Internet access services offered by wireline facilities-based providers as information services, the Commission clarified that such services are beyond the scope of the common carriage regulations of Title II of the Communications Act, which requires carriers to have charges, practices, classifications, and regulations that are 'just and reasonable.' 47 U.S.C. Sec. 201(b). Common carriers are also prohibited from making 'any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or service' or from providing 'any undue or unreasonable preference or advantage or any particular person.' 47 U.S.C. 202(a).

In determining the appropriate regulatory framework for cable modem service, the Commission determined that:

we believe 'broadband services should exist in a minimal regulatory environment that promotes investment and innovation in a competitive market.' In this regard, we seek to remove regulatory uncertainty that in itself may discourage investment and innovation. And we consider how best to limit unnecessary and unduly burdensome regulatory costs.

In re Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, GN Docket No. 00-185, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, 5 (2002). It is critical that broadband services 'exist in a minimal regulatory environment that promotes investment and innovation in a competitive market.' *Id* It is also critical that broadband providers not be subject to common carriage and non-discrimination regulations such as those incorporated in Title II of the Communications Act.

Concepts such as 'just and reasonable' charges and practices and non-discriminatory treatment may be necessary where competition does not exist. But where competition does exist, such as the broadband service market, principles such as common carriage and non-discrimination are not appropriate because the competitive market will ensure that providers of such service will act in the best interest of consumers. In addition, prescriptive, anticipatory FCC rules imposing common carriage and non-discrimination requirements on a nascent market such as Internet access would chill investment and innovation in this sector and deprive consumers of the benefits of innovation in the network management necessary to transmit voice, video, and data over broadband networks.

The broadband market is competitive, and competition and consumer choice are only going to increase as long as new technologies can develop in a minimal regulatory environment that does not involve common carriage or non-discrimination requirements. Both the FCC and the courts have found the broadband market to be competitive. See *United States Telecom Ass'n v. FCC*, 359 F.3d 554, 585 (D.C. Cir. 2004) (upholding Commission's decision not to require the unbundling of hybrid loops, fiber-to-the-home facilities, and line sharing because of 'the persistence of substantial competition in broadband'); *United States Telecom Ass'n v. FCC*, 290 F.3d 415, 428 (D.C. Cir. 2002) (noting Commission findings of 'robust competition * * * in the broadband market'); See In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, MB Docket No. 05-255, Twelfth Annual Report, 21 FCC Rcd 2503, 237 (2006) (noting that '[t]he advent of IPTV is a response by both incumbent operators and new entrants to the growth of competition in the provision of broadband services'). Today, cable operators and telephone companies compete head-to-head in many markets for broadband subscribers. As of June of 2005, 76% of households served by incumbent telephone companies had broadband connectivity available. 91% of households served by cable-television services had broadband connectivity.

According to the FCC, 74.6% of zip codes had three or more broadband providers. 88.7% of zip codes had two or more broadband providers. While the FCC's zip code-based data may not be an exact demonstration that every household within that zip code has broadband connectivity, such data is representative of the fact that broadband service, as well as broadband competition, is increasingly available throughout the United States. Even where there are only two providers, broadband prices have been decreasing and broadband speeds have been increasing. Competition in the broadband market is confirmed by the fact that providers are increasing capacity and lowering prices. For example, AT&T recently announced that it would offer broadband service at a download speed of up to 6 megabits per second for as low as \$27.99 per month during the first year and \$39.99 after that. Such a service is 100 times faster than the 56 kilobit-per-second speed of dial-up Internet service, which retailed until recently at approximately \$25 per month.

In addition, dozens of municipalities are providing, building, or considering contracts to provide broadband services through wireless and fiber networks. Cities that are constructing or evaluating contracts to construct municipal broadband networks include Los Angeles, Chicago, Houston, Philadelphia, San Francisco, and Seattle. Suffolk County, New York is planning to provide free wireless access to the Internet to its 1.5 million residents. The COPE Act will speed the development of municipal broadband networks by prohibiting state laws that ban such networks. This will increase the

competitive pressures on existing broadband providers to manage their networks in a manner that continues consumers' unfettered access to lawful content, applications, and services available over the public Internet.

Commercial mobile service providers are also ramping up the speeds of their broadband networks, especially Sprint/Nextel, which plans to offer speeds of 2-3 megabits per second for its wireless broadband service by 2008. In addition, the auction of 90 MHz of spectrum this year as a result of the Commercial Spectrum Enhancement Act of 2004 and of 60 MHz of spectrum from the 700 MHz television band in 2008 will greatly increase the number of wireless broadband providers. The 700 MHz band is ideally suited for broadband wireless applications.

Faced with this competitive market, the Committee does not expect broadband providers to manage their networks in a manner detrimental to consumers. There is no reason to believe that consumers will be deprived of unfettered access to lawful Internet content, applications, and service, or be unable to attach devices of their choosing to their Internet connections in order to access such content, applications and services. The Committee is only aware of one instance in which a broadband provider, Madison River Communications, has acted in a manner harmful to consumers by blocking the communications ports of Vonage, a provider of VOIP services.

The Commission and Madison River entered into a consent decree that terminated the blocking of Vonage's ports, which was premised upon the FCC's authority under section 201(b). See *In re Madison River Communications, LLC*, File No. EB-05-IH-0110, Order, 20 FCC Rcd 4295 (Chief, Enf. Bur. 2005). While the FCC, in the wake of the Brand X case, classified wireline Internet access services as information services not subject to Section 201(b) of the Communications Act, Title II of the COPE Act will now give the FCC explicit authority to ensure that the FCC can remedy situations in which conduct such as port blocking occurs.