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A PROFESSIONAL CORPORATION

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JIM BALLER'S KEYNOTE ADDRESS

FREEDOM TO CONNECT CONFERENCE

SILVER SPRING, MARYLAND

March 30, 2005

“O brave new world, that hast people like these in’t!”

Shakespeare, *The Tempest*,
Miranda, Act V, Scene One

Dave Isenberg, thanks very much for that kind introduction. I am truly one of the most fortunate lawyers in America, to be able to fight for freedom to connect every day, and to be invited every once in a while to speak to audiences as knowledgeable and experienced as this one.

As I look out at you this morning, I am reminded of the story of the night that President John F. Kennedy hosted a dinner at White House for a large number of Nobel Laureates. He gazed around the room and remarked, “This is the greatest collection of brain power that has ever been assembled in this room – except when Thomas Jefferson dined alone.”

President Kennedy. Now there was a man who would have appreciated this conference.

As a fierce competitor who refused to let America fall to second in any important endeavor, he would surely have been appalled by America’s descent to thirteenth place in the world in per capita broadband deployment.

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As a pragmatist who understood that his vast space program would result in countless collateral benefits for the American economy, he would surely have acted with *vigah* to ensure that all Americans would have prompt and affordable access to advanced communications services and capabilities.

As a tough Irishman who faced down the Soviets in Cuba and took on organized crime in America, he would surely have acted boldly to stop incumbent telephone and cable companies from doing their utmost to prevent communities across America from helping themselves to a more prosperous, more secure, and more fulfilling future.

The late Adlai Stevenson, a former governor of Illinois, two-time candidate for President, and Ambassador to the United Nations, once observed that “Man is a curious animal. He can’t read the writing on the wall until his backs is up against it.”¹

Like all aphorisms, this one is only partially true, at least as applied to the world of communications.

One part that’s wrong is that it doesn’t apply to the many municipal visionaries who have developed public communications systems over the last few years. I have had the privilege of working with most of these extraordinary individuals, and I can tell you that they did not wait for the writing to be on the wall. They took the initiative in identifying what their communities needed to be successful and did what they had to do bring that about. Of these pioneers I say, as

¹ <http://resourcescommittee.house.gov/archives/108/testimony/eileenhillson.htm>

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Miranda said in *The Tempest*, “O Brave New World, that hast people such as these in’t.”² My colleague, Terry Huval, has all these qualities, as you’ll see for yourselves in a few minutes.

Thanks largely to the efforts of these champions, municipalities have played a leading role in the rapid deployment of both wireline and wireless communications systems.

On the wireline side, there are now more than 125 municipal systems providing some combination of cable, broadband, telephone, and other communications services. Hundreds more lease facilities or work with the private sector in various ways. In particular, municipalities are at the forefront of deploying the most advanced wireline telecommunications systems in America. According to Render Vanderslice & Associates, as of October 2004, municipalities accounted for over 32 percent of all homes passed by fiber-to-the-home systems and over 47 percent of homes passed in the big projects of at least 2000 homes.

The communities that have, or are developing, fiber-to-the-home systems will have huge advantages over other cities in the US and most of the rest of the world in terms of economic development; educational and occupational opportunity; urban core revitalization; digital equity; access to affordable modern health care; reduced burdens on the environment; improved homeland security and public safety; cheaper and better government services; cultural enrichment; and the many other benefits that contribute to a high quality of life. As a nation, we should be encouraging as many municipalities as possible to build such systems.

In the wireless area, a whole new breed of municipal leadership is emerging, in cities large and small, urban and rural. These leaders are striving to achieve the same goals as their

² Shakespeare, *The Tempest*, Act V, Scene 1.

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peers on the wireline side, but they are pursuing these goals in a different way. They are willing to forego some bandwidth capacity in the short term in return for lower cost and faster speed to market. As a Nation, we should also be encouraging many more municipalities to do these things.

Eventually, the wireline and wireless paths will converge and complement each other. If we are aggressive and wise in encouraging this convergence, America will surely be back among the leading nations worldwide, with an integrated national wireline and wireless network that provides all Americans affordable access to as much bandwidth as each of us needs, whenever and wherever we need it.

Now let's go back to the part of Adlai Stevenson's aphorism that may have been right. That is, most Americans are probably comfortable with our current state of broadband deployment and don't see any writing on the wall, at least not yet. It's hard to blame them, particularly when the incumbents and the Federal Communications Commission keep on telling us that we're doing just fine. Also, as Hamlet put it to Ophelia, "we know what we are, but know not what we may be."³

Still, however annoying Michael Powell may think it is to hear how much we trail Korea and Japan, the fact remains that we're now well behind the leading nations in per capita broadband deployment, access to high-bandwidth capabilities, and price per unit of bandwidth. In fact, matters are going to get a lot more dicey for America as China surges into the lead in many

³ Shakespeare, *Hamlet*, Act IV, Scene 4.

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industries that depend on access to high capacity broadband. If you have any doubt about this, I urge you to read a book called *China, Inc.* by Ted Fishman.

A good many of us here believe that America has indeed reached the point at which our back is against the wall, and if we don't reverse this situation in short order, we could be in serious trouble for decades to come. That realization is also coming home to a growing cross-section of Americans outside this room.

Ironically, we can thank Verizon for unintentionally pushing us along the path to greater wisdom. Last November, with the mainstream media reporting developments daily in utter amazement, Verizon pushed one of the most offensive anti-municipal bills ever devised through the Pennsylvania legislature. In essence, the new Pennsylvania law granted a giant, self-serving private business corporation the right to veto local government broadband decisions that would enable affected communities to achieve the economic, educational and other important goals that we talked about a few minutes ago.

The day that the governor signed the law, I turned to my partners and predicted that the passage of this infernal statute could turn out to be the tipping point for municipal broadband, as the sinking of the Lusitania was the tipping point for America's entry into World War One. If I'd thought of it at the time, I might also have quoted *Cymbeline*, "Be cheerful; wipe thine eyes. Some falls are means the happier to arise."⁴

⁴ Shakespeare, *Cymbeline*, Act IV, Scene 3.

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Sure enough, almost immediately after the Pennsylvania law passed, a strong sense of revulsion began to spread across America, like a wave circulating around a stadium. Before long, the cry of “No more Pennsylvanias” was echoing from every corner of the country.

Numerous national associations that had previously been mildly supportive of municipal broadband now saw the need to push it up on their list of priorities. The broad coalition of public interest groups that had risen up to force Congress to overrule the FCC’s media ownership rules now joined us in the battle for municipal broadband, believing that it had become as important for freedom of choice and localism as the battle over media ownership had been. Similarly, new grass roots organizations cropped up in several states to resist incumbent efforts to obtain new barriers to entry.

Most important, at least from standpoint of state politics, a number of private-sector companies, including giants such as Intel, and several important business groups, including the Fiber to the Home Council, the American Electronics Association, the High Tech Broadband Coalition, TechNet, and others, finally said “enough is enough” and publicly announced their support for municipal broadband and local choice. These companies and groups realized that municipalities are a huge strategic asset for America in the global economy, that municipalities have a critical role to play in helping our country to recover its competitive edge, and that state barriers to public involvement are not only bad for the communities involved, but they also bad the private sector and bad for the Nation as a whole.

As a result, when incumbents proposed barriers to municipal entry in eleven states this year – Colorado, Florida, Illinois, Indiana, Iowa, Ohio, Oregon, Nebraska, Tennessee, Texas, and Virginia – we were able to mount far more intensive and effective campaigns in opposition than

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even we could have imagined before Pennsylvania. In these states, I am growing cautiously optimistic about our chances of success. A new barrier was just introduced in West Virginia, and I am concerned about whether there will be enough time to derail it in the short time left in this legislative session.

Regretably, state houses are not the only venues in which we are being forced to fight for freedom to connect and local choice. The incumbents are also waging war against municipalities in the courts and before public service commissions, city councils, and special entities such as California's Local Agency Formation Commissions. Before long, the incumbents may try to get Congress to enact anti-municipal measures as part of the rewrite the federal telecommunications laws.

Furthermore, several incumbents are engaging in predatory pricing and targeted rate discrimination. They are denying access to critical content, blocking access to customers, particularly in multiple dwelling units, refusing to carry advertising, and doing many other anticompetitive things. If municipal broadband is to survive and thrive, we will need simple, clear and powerful new laws that the FCC can readily enforce. If you'd like to learn more about these practices, I invite you to read an extensive report on this that we submitted to the Senate Judiciary Committee, which you can find in the library of our website at www.baller.com.

In closing, let me assure you that we will soldier on in all of these venues. We have no choice. With so many core freedoms at stake, we simply can't give up. Besides, a good fight on

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an important issue is good for the soul. As Hotspur said, in Henry IV, Part I, “O, the blood more stirs to rouse a lion than to start a hare.”⁵

I ask every one of you to join and support us in this worthy cause. Thank you all.

⁵ Shakespeare, *Henry IV, Part One*, Act I, Scene 3.