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**JIM BALLER'S**

**KEYNOTE ADDRESS**

**FIBER TO THE HOME CONFERENCE**

**LAS VEGAS, NEVADA**

**OCTOBER 6, 2005**

Diane Kruse, thank you very much for that generous introduction. I am thrilled that the Board of Directors of the Fiber to the Home Council has elected you its president for the year ahead. The Council has made an excellent choice.

The great Dr. Jonas Salk once said that "our greatest responsibility is to be good ancestors." Under your leadership, I am confident that the Council will continue to grow and mature as a national and international presence.

The fact that nearly 2000 people from around the world have come to this conference is a testament to all the good work that the Council has done in the last few years, and it underscores how important next generation fiber networks are becoming.

If the United States is to remain a leader in the emerging global economy, we must rapidly accelerate the deployment of such networks. I look forward to doing what I can in the year ahead to help you and the Council advance that goal.

My colleagues, clients, and friends –

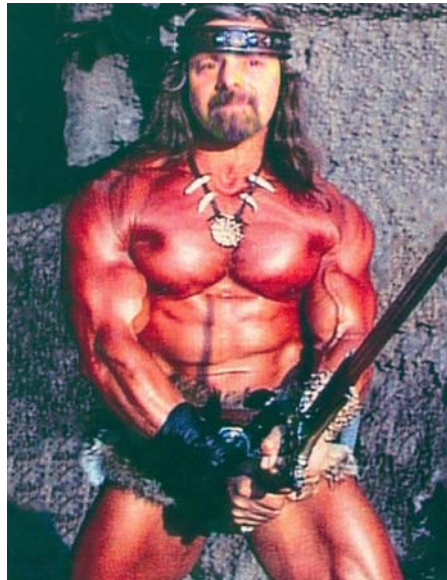
I am deeply honored that the Council has invited me to make a keynote address for the second year in a row. I'm not sure why the Council asked me back so soon. Maybe it just wanted me to revive Baller the Barbarian, who became something of a cult hero on the web after last year's conference. If that's the reason, let's deal with it right up front:

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Baller the Barbarian

Actually, I suspect that the Council invited me back so soon primarily because the last twelve months have been momentous for public broadband, and, in turn, fiber to the home, and I have had the privilege of being in the ring or at ringside at most of the key events.

I'll start by going back to where we were a year ago. Next, I'll review the major developments of the last twelve months. Then, I'll conclude with some predictions for the year ahead.

In my keynote last year, I spoke at length about the precipitous decline in America's international standing in broadband deployment and about the major problems that this could create for the United States in the years ahead.

I quoted President Bush's and then-presidential candidate John Kerry's nearly identical expressions of concern about America's plunge to tenth place – which is where we were at the time – and about our need to strive for rapid improvement.

I did not pretend to have all the answers, but I said that I was certain about one thing – that the United States would be foolish to ignore, let alone undermine, one of our national treasures – thousands of municipalities that are ready, willing, and able to do their part to help America remain the great nation that it is today.

A century ago, when electrifying America was the major challenge and the private sector could not do the job alone, more than 3000 communities across the United States stepped forward to build and operate their own electric utilities. Those that did survived and thrived, while many that waited for the private sector to get around to them languished or even became ghost towns.

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Now, localities can make as big a contribution in the broadband area as they made in the field of electric power a century ago. Localities that operate their own electric utilities are especially well positioned to contribute to the development of next generation fiber networks.

Last year, I also applauded Verizon for its fiber-to-the-home initiative and wished it success beyond its wildest dreams. I also expressed the hope that Verizon's success would pave the way for other telephone and cable companies to follow Verizon's lead.

I noted, however, that even if the private telephone and cable companies in America significantly ramped up their fiber deployments, they would still leave behind thousands of communities, large and small, thus repeating the history of the electric power industry.

So, I challenged the public and private sectors to lay aside ideological differences and work together in harmony, in a spirit of mutual respect, to move America quickly back up the ladder of global broadband standing.

How did things turn out during the last year? Not even close to what I had expected. Instead of trying to work cooperatively with municipalities, incumbent providers did everything they could to thwart local governments from playing any meaningful role in accelerating the deployment of broadband.

Much to everyone's surprise, however, things turned out much better for public broadband than anyone could have predicted, including the incumbents.

First, let's go back to November 2004 and review what happened in Pennsylvania. There, Verizon mounted a massive campaign to push a comprehensive telecom reform bill known as HB 30 through the Pennsylvania legislature. One section of that bill gave Verizon the right to stop community broadband projects in their tracks.

Under HB 30, if a community wanted to develop a broadband network – for reasons of economic development, educational opportunity, public safety, homeland security, quality of life, or anything else – it first had to beg Verizon for permission.

If Verizon offered to provide the data speed that the municipality wanted, and followed through within 14 months, the municipality could not go forward. The bill focused only on data speed and did not allow consideration of any other potentially critical factor, including price, quality, mobility, symmetry, efficiency – an important factor for broadband over powerlines – or anything else.

HB 30 was primarily intended to prevent Pennsylvania's localities from following the Borough of Kutztown's lead in developing fiber-to-the-home systems. As it happens, however, HB 30 also threatened the City of Philadelphia's proposed city-wide wireless initiative.

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That made things very interesting, because the governor of Pennsylvania, Edward Rendell, was a former mayor of Philadelphia, and he could not have gotten into the governor's mansion without strong political support in and around the City. A veto suddenly became a real possibility.

To appreciate why Pennsylvania became so important, one must also understand its timing. In most states, the legislature convenes in January and closes its doors for the year in May or June. In Pennsylvania, the legislative session generally ends in November. As a result, in November of last year, journalists that report on state barriers to public broadband had only the Pennsylvania story left to cover.

Furthermore, with hundreds of cities around the world exploring wireless initiatives, and with incumbents becoming increasingly alarmed and aggressive in opposing them, the Philadelphia story also caught the attention of the mainstream media worldwide. As a result, instead of just getting daily calls from the American trade press, I was now also getting calls from the Wall Street Journal, the Los Angeles Times, the Christian Science Monitor, USA TODAY, the London Times, and the like.

Then came the grand dénouement – that's a fancy way of saying “the outcome” – of the Pennsylvania drama. Just before the deadline for Governor Rendell to sign or veto the bill, Verizon gave the City of Philadelphia written assurance that it would not exercise its right of first refusal under HB 30 to block the Philadelphia wireless initiative. That satisfied Governor Rendell, and he signed the bill. In doing so, however, he left all other localities in Pennsylvania at the mercy of incumbent telephone companies.

The day that Governor Rendell signed the Pennsylvania law into effect, I turned to my partners and predicted that the passage of this infernal law would turn out to be the tipping point for public broadband, just as the sinking of the Lusitania was the tipping point for America's entry into World War I. If I had thought of it at the time, I might also have shared a quote from Shakespeare's *Cymbeline*, “Be cheerful; wipe thine eyes. Some falls are means the happier to arise.”<sup>1</sup>

Sure enough, a surge of fear and revulsion immediately spread across America, like a wave circulating around a stadium. Before long, the cry “No more Pennsylvanias” was echoing from every corner of the country. We acted immediately to take advantage of this chorus of opposition.

Before Pennsylvania, we could count on only three major national trade associations to act vigorously in opposition to state barriers to public entry – the American Public Power Association, the Fiber to the Home Council, and the National Association of Telecommunications Officers and Advisors. Now, many more national associations drove their stakes into the ground, including the National League of Cities, the United States Conference of Mayors, the National Association of Counties, the International Municipal Lawyers Association, Educause, Public Technology Institute, and many others.

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Similarly, the major consumer groups came aboard, including the broad coalition of groups that had amazingly forced Congress to overrule the FCC's media ownership rules a couple of years ago. These organizations – Free Press, Media Access Project, Consumers Federation of America, Consumers Union, Common Cause, Electronic Freedom Foundation, and many others – now saw public broadband as just as important for freedom of choice and localism as the battle over media ownership.

Perhaps most important from standpoint of state politics, the private sector, including high-tech giants such as Intel and Dell, and several important high-tech business groups, including the American Electronics Association, the High Tech Broadband Coalition, TechNet, and others, finally said “Enough is enough” and publicly announced their support for public broadband and local choice.

These companies and groups recognized that municipalities are an important strategic asset for America, that municipalities have a critical role to play in helping our country to recover its competitive edge, and that state barriers to public broadband initiatives are not only bad for the communities involved, but also for the private sector and America as a whole.

As a result, when the incumbents proposed new barriers to public broadband in fourteen states – Colorado, Florida, Illinois, Indiana, Iowa, Louisiana, Michigan, Nebraska, Ohio, Oregon, Nebraska, Tennessee, Texas, Virginia, and West Virginia – we were able to mount a far more intensive and effective response than anyone could have imagined before Pennsylvania.

In fact, of the twelve states that have now completed their sessions for 2005, only Nebraska enacted a substantial new barrier to public entry, and it already had a significant barrier on its books. So, we started the year with barriers in fourteen states, of which about a half dozen applied to broadband, and that is pretty much where we still are today.

Let me elaborate a bit on how this happened. Always attentive to the wishes of the leadership of the key local officials in the affected states, the national organizations, consumer groups, the high tech industry, and others, did whatever needed to be done in the particular state in question.

In some states, we worked behind the scenes to persuade proponents of anti-municipal bills to let them die quietly in committee. In other states, we waged no-holds-barred wars for the hearts and minds of governors, state legislators, the public, and the media.

We tracked developments across the country in near real time on the Baller Herbst website and through our daily email list. The coalition created, shared, and used countless handouts, white papers, economic studies, testimony, news articles, rebuttals to industry-sponsored attacks, and point-by-point answers to industry misrepresentations about supposed municipal failures.

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We also traced back to the incumbents the funding they surreptitiously provided to “Astroturf” (artificial grass roots) organizations and supposedly unbiased “experts” who slammed public broadband. The prominent journalist Glenn Fleishman referred to these experts as “sock puppets,” and that moniker has stuck ever since.

Several other factors contributed to our successes in the states this year. First, I’m deeply saddened to say that America continued to fall behind the leading nations in the world. That was not just true of per capita broadband deployment, where we’re now 16<sup>th</sup> and still heading down. It was also true of access to high-bandwidth broadband, cost per unit of bandwidth capacity, and growth of broadband subscribership.

Some members of the Administration periodically tried to discount the importance of these statistics, but such efforts generally backfired. The fact is, Americans everywhere increasingly came to view our plunging international ranking in broadband as a national embarrassment and a serious threat to our future.

Second, once drawn into the battle of Pennsylvania battle, the mainstream media couldn’t get enough of the public broadband phenomenon, and they were generally sympathetic to our side. It took a tremendous amount of time and effort to gain the confidence of the leading journalists, but they eventually came to trust us a lot more than they trusted the incumbents or their “sock puppets.”

In January 2005, USA TODAY kicked things off with a big feature on the public fiber-to-the-home initiative in Lafayette, Louisiana. It followed up a few days later with the first mainstream editorial that unequivocally came down in favor of public broadband.

Since then, the Wall Street Journal, the Washington Post, the New York Times, the San Jose Mercury, Foreign Affairs, the Philadelphia Inquirer, the National Journal, and many, many other major media organs have published strong pro-municipal articles and opinions.

If you would like copies of the materials that I’ve been discussing, and much additional relevant information, please visit the community broadband page of our website, [www.baller.com](http://www.baller.com).

Third, a number of books for the mass market brought America’s deteriorating position in the emerging global economy to life for average citizens. Let me quote some passages from two of the most important of these books.

First, in *China, Inc.: How the Rise of the Next Superpower Challenges America and the World*, Ted Fishman incisively documented China’s growing economic threat to America’s global leadership and way of life. As Fishman noted, China expects some three hundred million people to move from the countryside to major cities over the next 15 years. Think of it – that’s more than the entire population of the United States today.

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To accommodate this massive population shift, China will have to build the equivalent of Houston, Texas, *every month*, and its government will have to accelerate greatly its already aggressive twenty-year-old program of importing as many businesses and jobs from around the world as possible.

The following passage from *China, Inc.* captures well the high stakes involved for America and the rest of the world:

The most daunting thing about China is not that it is doing so well at the low-end manufacturing industries. Americans will be okay losing the furniture business to China. In the grand scheme of things, tables and chairs are small potatoes in the U.S. economy. The Japanese, for their part, have lost the television business. The Italians are losing the fine-silk business. Germans cannot compete in Christmas ornaments. Everyone but the Chinese will lose their textile and clothing factories. More worrisome for America and other countries is the contour of the future, where manufacturing shifts overwhelmingly to China from all directions, including the United States. Consumer goods trade on the surface of the world's economy and their movement is easy for consumers to see. The far bigger shift, just now picking up steam, is occurring among the products that manufacturers and marketers trade with each other: the infinite number and variety of components that make up everything else that is made, whether it is the hundreds of parts in a washing machine or computer or the hundreds of thousands of parts in an airplane. And then there are the big products themselves: cars, trucks, planes, ships, switching networks for national phone systems, factories, submarines, satellites, and rockets. China is taking on those industries *too*.<sup>2</sup>

Thomas Friedman's book, *The World is Flat*, which is currently near the top of many best seller lists, focused on the explosion of new broadband-based industries in India and shed further light on what America must do to remain a force in the emerging global economy.

In particular, Friedman explored in depth the trend of companies worldwide to break down manufacturing, production, service, and other processes and to distribute the work to the places in the world in which particular tasks can be performed most cost-effectively. Here are a couple of highlights from Friedman's book:

The dynamic force in [the current stage of globalization] – the thing that gives it its unique character – is the newfound power for individuals to collaborate and compete globally. And the lever that is enabling individuals and groups to go global so easily and so seamlessly is not horsepower, and not hardware, but software – and all sorts of new applications – in conjunction with the creation of a global fiber-optic network that has made us all next-door neighbors. Individuals must, and can now ask, "Where do I fit into the global competition and

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opportunities of the day, and how can I, on my own, collaborate with others globally." ...

...

[W]e are entering into a phase where we are going to see the digitization, virtualization, and automation of almost everything. The gains in productivity will be staggering for those countries, companies, and individuals who can absorb the new technological tools. And we are entering a phase where more people than ever before in the history of the world are going to have access to these tools – as innovators, as collaborators, and, alas, even as terrorists. You say you want a revolution? Well, the real information revolution is about to begin.<sup>3</sup>

Fourth, public support for community broadband initiatives grew rapidly over the last year. A good example was the dazzling 62% - 38% vote by which the citizens of Lafayette, Louisiana, supported the City's fiber-to-the-home initiative. In his keynote address yesterday, Mayor Joey Durel shared many of the reasons for this outcome.

I would just add that, throughout the referendum campaign, communities across the United States and around the world sent their best wishes and rooted for Lafayette's success. Editorials from as far away as Johannesburg, South Africa, called for their own local governments to do what Lafayette was trying to do.

Let's hope that many other can-do municipalities across America follow Lafayette's lead and become the 21<sup>st</sup> Century cities of the kind that America needs to compete successfully with the leading countries in the world.

I wish I could talk a lot more about Lafayette today, as it has been one of the most interesting projects in which I've ever been involved. But it's time to move on to developments at the federal level.

In late May 2005, shortly after SBC failed to get its home legislature in Texas to pass the restrictions on community broadband that SBC was seeking, Representative Pete Sessions (R-TX) introduced in the U.S. House of Representatives a bill that would severely restrict all forms of public broadband.

The press quickly picked up that Sessions had worked for SBC for sixteen years, that his wife is currently an executive of SBC, and that the Sessions family has substantial stock options in SBC. As a result, the Sessions bill quickly became associated with SBC, and few, if any other members of Congress rushed forward to embrace it – at least publicly.

Still, the introduction of the Sessions bill opened up a new front, and the coalition of groups that had worked together so well in the states immediately shifted focus to the federal level. Now calling ourselves the Community Broadband Coalition, we turned first to working closely with Senators Frank Lautenberg (D-NJ) and John McCain (R-AZ) to develop a bill that would protect

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public entities from state barriers to entry, while at the same time providing appropriate safeguards to protect the private sector. Senators Lautenberg and McCain introduced their bill, S.1294, in the Senate in mid-June.

A few weeks later, Senator John Ensign (R-NV) included an anti-municipal measure as part of a wide-ranging telecom deregulation bill, S.1504. Senator McCain became a co-sponsor of this bill, explaining that he endorsed the overall deregulatory purposes of the Ensign bill but still strongly preferred his own bill on the public broadband issue. That may be confusing to some, but Senator McCain is apparently not alone in viewing public broadband as an important element of an overall policy of deregulation.

In the House of Representatives, staffers for Representatives Joe Barton (R-TX), John Dingell (D-MI), Fred Upton (R-MI), Ed Markey (D-MA), and Chip Pickering (R-FL) have recently circulated a draft telecom reform bill that contains a very favorable public broadband provision, Section 409.

Section 409 is not perfect, but with one exception, we can live with it. The exception is a placeholder for a provision on cross subsidization.

We oppose a provision on cross subsidization, not because we believe that municipalities engage in this practice nearly as much as the private sector does, but because no matter what such a provision may say, it can only lead to endless time-consuming and costly disputes that could derail public broadband.

For example, the City of Bristol, Virginia, recently had to spend well over \$1 million on economists and lawyers to respond to incumbent claims that Bristol was unlawfully cross-subsidizing its local telephone services. The City ultimately prevailed, but during the process, wasted an enormous amount of time and money that could have benefited the community.

We're therefore working to get Section 409 included, as is, in the bill that emerges from the House Commerce Committee, without a cross-subsidization provision.

So, that's where we are today. Now let's look into our crystal balls for the year ahead.

In the House of Representatives, we're expecting the staff draft to be superseded by a Commerce Committee bill in the next few weeks. We hope that it will have a provision that looks a lot like Section 409 of the draft bill, as is.

In the Senate, we expect several senators to step forward to co-sponsor Lautenberg-McCain, while others may endorse the Ensign bill. Some may do both. Then, in a few months, Senator Ted Stevens (R-AK), the chairman of the Senate Commerce Committee, will introduce his own comprehensive telecom reform bill. That bill will probably include a public broadband

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provision, and we're doing what we can to get that provision as close as possible to Lautenberg-McCain.

Given the complexity of telecom reform, we expect long deliberations in both houses of Congress. These debates are likely to last at least a year or two, and maybe longer.

In the meanwhile, we're still fighting proposed barriers in two states – with Michigan the hottest battleground right now. When the new state legislative season opens in early 2006, we may see another wave of proposed state barriers.

I confess that the Baller-the-Barbarian in me would love another multi-state rumble with the incumbents. But the more rational part of me yearns for real progress in getting our country moving again. That will require more cooperation and less conflict. Whatever happens, we'll be ready, and we'll need your active support.

Outside the legislative arena, I predict that sentiment in favor of public broadband will continue to grow at an explosive rate across America, particularly in the wireless area. This will lead hundreds of municipalities to enter or explore entry into the broadband field. As a result, I believe that the incumbents will eventually reach a critical decision point.

On the one hand, they will have the option of continuing to drag their heels and oppose us in every way that they can. For example, during the last year, incumbents tried to use the courts to stop or delay public broadband initiatives in Truckee, CA; Lafayette, LA; Portland, OR; North Kansas City, MO; and Salt Lake City, UT (UTOPIA). Sad, frustrating, and stupid as it may be, litigation has become a fact of life for most public broadband projects.

On the other hand, the incumbents can choose to work with us at last, in the spirit of mutual respect that I called for last year. In the year ahead, I predict that the incumbents will break rank, and that at least some will move in our direction. It makes so much more sense than endless conflict.

In closing, I'd like to raise an issue that has grown increasingly important in my mind. The Gartner Group has for years claimed that every important new technology goes through what it calls the "Hype Cycle." Imagine a graph that looks like a typical roller coaster. In the first stage, the curve rises quickly, as the advocates of the new technology rush in, full of enthusiasm and unrealistically high expectations.

Then, in the second phase, the learning process begins in earnest, and reality kicks in. As a result, the curve plunges downward, into what Gartner calls the "Trough of Disillusionment." As the curve drops, those who had looked for an easy or quick buck bail out.

Finally, for the technologies that are fundamentally sound, the curve rises again, less steeply but inexorably upward. That's when the real winners emerge.

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In the year ahead, we're going to continue to learn important lessons about public broadband projects. Some of the news will be good, perhaps spectacularly good; other news will be disappointing. You can count on the incumbents to ignore the good news and use every bit of negative news against us.

My advice is not to lose heart. We're on to something important here. While we may experience some setbacks, I am confident that the path ahead for public broadband is clearly upward.

The late Adlai Stevenson, a two-time candidate for President and a former ambassador to the United Nations, once observed that "Man is a curious animal. He can't read the writing on the wall until his back is up against it."<sup>4</sup>

I believe that America is up against the wall right now in the emerging global economy, and more and more of us are reading the writing on that wall. The time has come for our public and private sectors to pull together and do what needs to be done. This has to happen eventually, so why not make it sooner rather than later? We do not have the luxury of time to wait.

Thanks for the opportunity to speak to you again, and have a safe trip home.

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<sup>1</sup> Shakespeare, *Cymbeline*, Act IV, Scene 3.

<sup>2</sup> T. Fishman, *China, Inc.: How the Rise of the Next Superpower Challenges America and the World* at 14-15 (Scribner – New York et al. – 2005).

<sup>3</sup> T. Friedman, *The World is Flat: A Brief History of the Twenty-first Century* at 10-11, 45-46 (Farrar, Strauss and Giroux – New York – 2005)

<sup>4</sup> <http://resourcescommittee.house.gov/archives/108/testimony/eileenhillson.htm>