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## **JIM BALLER'S KEYNOTE ADDRESS TO FIBER TO THE HOME CONFERENCE OCTOBER 5, 2004**

Len Ray, thanks for that generous introduction. It has been a true joy to work shoulder-to-shoulder with you, Mike DiMauro, Wes Rosenbalm, Dana Bisaro and the other members of the FTTH Council to bring fiber to American homes as rapidly as possible.

Ladies and gentlemen, I am deeply honored and humbled to be here this morning. I have made dozens of arguments, speeches and presentations over the years, but this keynote address will be a completely new experience for me.

I have never before had the opportunity to address an audience of this size, particularly one that includes so many experts whose work I have greatly admired. There may also be more folks in this room who disagree with some of my views than I have ever faced before at one time.

To prepare for this address, I have watched and read lots of speeches, especially the keynote addresses at the recent Democratic and Republican conventions. As I did this, I said to myself, how would these speakers give this address? What would they say to stir and challenge and unite this audience?

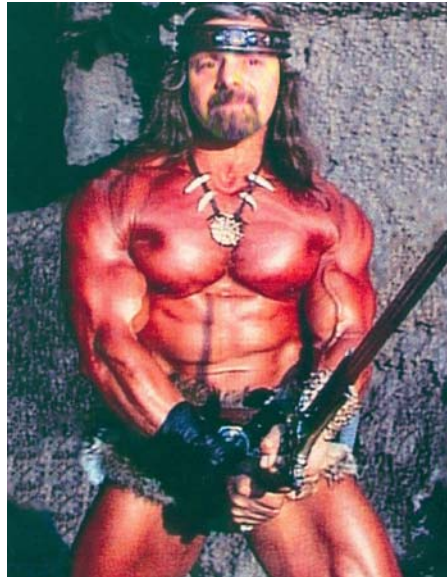
Gradually, a picture began to emerge in my mind, like a Polaroid developing before my very eyes. At last I had it –

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Baller the Barbarian

That's right, folks. I decided to draw inspiration from Arnold Schwarzenegger's keynote address at the Republican convention.<sup>1</sup> How many of you saw that address? How many of you found it moving, even if you did not agree with everything that Governor Schwarzenegger said?

Actually, in addition to a strong physical resemblance, Arnold Schwarzenegger and I have some very important things in common.

We were both born in Europe in 1947 – he in Austria, and I in Germany.

We share the view that “there is no place, no country, more compassionate, more generous, more accepting, and more welcoming than the United States of America.”

As a child of Holocaust survivors who came to America in search of security and opportunity, I strongly identify with Governor Schwarzenegger's statement that, “Everything I have -- my career, my success, my family – I owe to America.”

Like Governor Schwarzenegger, I am also confident in America and optimistic about its economic future. We do, however, differ on some important points.

According to Governor Schwarzenegger, it was “ridiculous” for critics twenty years ago to be concerned about Japan and Germany overtaking America, and it is just as ridiculous for critics

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<sup>1</sup> <http://www.gopconvention.com/cgi-data/speeches/files/2jl158h8hr9cm5t7e4d379jp6o186680.shtml>.

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now to fear that China, India, and other nations will seriously challenge America's economic leadership in the future. "We may hit a few bumps," he says, "but America always moves ahead! That's what Americans do!"

I don't think it's as simple as that. I'm sure that at least some Babylonians, Greeks, Romans, Spanish, Ottomans, British, and others must have thought the way that Governor Schwarzenegger does when their countries were at the peak of their power. But history teaches that no nation can just sit back and still maintain its position of global leadership.

I believe that we're going to have to work hard to stay at the head of the pack, and we're going to have to be smart. We're also going to have to work together, with the public and private sectors pulling in the same direction, in a spirit of mutual respect and cooperation.

In no area is this more essential than in the deployment of advanced communications networks. As FCC Chairman Michael Powell said in a speech at a press conference on October 23, 2001, back when America was ranked third or fourth in the world in broadband deployment,

The widespread deployment of broadband infrastructure has become the central communications policy objective today. It is widely believed that ubiquitous broadband deployment will bring valuable new services to consumers, stimulate economic activity, improve national productivity, and advance many other worthy objectives – such as improving education, and advancing economic opportunity for more Americans. We share much of this view and intend to do our part in advancing reasonable and timely deployment. We will set out a comprehensive framework to give targeted attention to issues that affect broadband deployment.<sup>2</sup>

Unfortunately, as we all know, America has sunk to 10<sup>th</sup> or 11<sup>th</sup> place worldwide in broadband penetration, depending on which study one consults, and we are rapidly losing ground to Korea, Japan, Canada and other advanced nations in making ultra-high-bandwidth broadband available to American homes and businesses. The FCC itself acknowledged this in its most recent advanced services report, which it released on September 9, 2004.<sup>3</sup>

Furthermore, as Commissioner Michael Copps noted in his dissenting statement in that report, "consumers in other countries" also get "so much more bang for their broadband buck than we do."<sup>4</sup> He cited two examples – in Japan, for as little as \$10, consumers can get speeds of 8 Mbps, and Koreans can get 10 Mbps for the same amount that we pay for 1.5 Mbps.

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<sup>2</sup> <http://www.fcc.gov/speeches/powell/2001/spmcp109.html>.

<sup>3</sup> [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-04-208A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-208A1.pdf)

<sup>4</sup> *Id.* at 5.

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In short, when it comes to deploying advanced communications networks, which we all agree are vital to America's future, we have not "moved ahead" because "That's what Americans do." To the contrary, compared to our leading competitors, we have moved backward.

This has got to stop, before it's too late. On this point, if on little else, President Bush and Senator Kerry are of one mind. As President Bush stated on June 24, 2004:

America ranks 10<sup>th</sup> amongst the industrialized world. That's not good enough. We don't like to be ranked 10<sup>th</sup> in anything. The goal is to be ranked 1<sup>st</sup> when it comes to per capita use of broadband technology. It's in our nation's interest. It's good for our economy.<sup>5</sup>

The next day, Senator Kerry said much the same thing:

We need to make sure we don't settle for slipping to 10th place in the world when it comes to adopting broadband. This means connecting every corner of our country to a network that's up to 100 times faster than today's. Installing this network can grow our economy by \$500 billion and bring us 1.2 million new, high-wage jobs.<sup>6</sup>

So where do we go from here? How do we build on this national consensus? There are many pieces to this puzzle. I wish I had all the answers, but I don't. I do know one thing, though – for America to catch up and forge ahead in deploying advanced communications networks, municipalities will have to play a critical role.

As you know, municipalities have been in the forefront of deploying fiber to the home in the United States. Incredibly, you won't find a word about this in the FCC's latest advanced services report. All you'll see is Commissioner Copps's suggestion that "We should study why numerous municipalities across America are floating bonds to develop their own broadband networks." Let me try my hand at explaining this phenomenon.

The story begins in the 1880s and 1890s, when electricity was the must-have new technology of the Age. Driven by the profit-maximizing demands of their investors, private power companies focused on electrifying the most lucrative population centers, and they largely ignored most of America, particularly rural America.

In response, thousands of communities stepped forward and formed electric utilities of their own. These communities recognized that electricity was critical to their economic development, educational opportunity, and quality of life, and they refused to allow the private sector to

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<sup>5</sup> <http://www.whitehouse.gov/news/releases/2004/06/20040624-7.html>.

<sup>6</sup> <http://bbedge.mblast.com/presentation/page807-949363.asp>.

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control their destiny. Communities that took matters into their own hands generally survived and thrived. Many that waited for private power companies to get around to them shriveled up and became “ghost towns.”

By the 1920s, more than 3,200 community-owned electric utilities had come into being. Over the next decade, about a quarter of these communities sold their systems to investor-owned electric utilities. Having met their goal of ensuring that they would not be left behind in obtaining the benefits of electrification, they had no further desire to be service providers themselves.

Currently, about 2,000 community-owned electric utilities remain. Of these, about 75 percent serve populations of 10,000 or less. At the same time, several of America’s major cities are also public power communities. These include Austin, TX; Cleveland, OH; Jacksonville, FL; Kansas City, KS; Los Angeles, CA; Memphis and Nashville, TN; Phoenix, AZ; San Antonio, TX; and Seattle, WA. These cities had no problem attracting private electric companies, but they became providers of electric power because they could do the job just as well, actually better than the private sector, at half the cost.

Now, many public power communities across America think that history is repeating itself in the communications area. They believe that the private sector has different priorities and timetables than they do. This time around, however, public power communities are well situated to meet their own needs for advanced communications capabilities, particularly through fiber to the home systems.

Public power communities require massive amounts of advanced communications services to run their utilities, government facilities and schools. Thus, they start with anchor tenants that help cut the risks of fiber projects. Public power communities also have ready access to poles, ducts, conduits, towers and other essential infrastructure. They have decades of experience in providing high technology products and services. They have ongoing relationships with industrial, commercial, institutional and residential customers of all kinds. They have long experience with billing, customer service and technical support. They have a century-old ethic of universal service. They also have excellent consumer-satisfaction ratings.

Furthermore, because fiber systems can be viewed as essential infrastructure facilities that bring multiple long-term benefits to communities, they can be financed as public works projects. They don’t have to show short-term profits, as investors demand of private corporations. They only need to cover their costs over the long term. Thus, community-owned fiber projects can often succeed in locations that private entities can’t or won’t touch – at least until their more lucrative markets are saturated.

While this helps to explain why fiber projects have been so successful in communities such as Bristol, Virginia, Dalton, Georgia, and Kutztown, Pennsylvania, it does not fully explain why so

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many municipalities want to take fiber all the way to the home now rather than just to the curb or the node. As I share with you the following quotation, see if you can guess who the speaker is:

We do not believe that [ADSL2+] technology and the speed of that technology are enough. We need more speed for voice, we need more speed for data, we need to be able to integrate video onto our own network, and we think we have to do it on a fiber network.

We know that there are some people in the industry who believe that their more conservative approach is a better one. But we don't think that saving a few dollars, and deploying a little less fiber, is a good tradeoff when you consider the fact that these [other] technologies will deliver a lot less speed into the marketplace. We feel differently. We are not content to essentially stand still at the DSL speeds we have today.

...

[With widespread deployment of FTTH technology], we would create an audience for the next generation of broadband services. Education, entertainment, conferencing, gaming would all improve. We'd get a faster migration to the next generation of technology. Look at the market that would be created for new hardware, new software, new applications, all of which have been waiting in the wings for a much more robust exposure directly to the premises.

We think that the widespread deployment of these services will lead to improved educational opportunities. Look at the improvements you can make in the medical industry. [It would lead to] more efficiency in the government. The average business could become more effective.

...

It will also help rural areas. Rural areas in many cases are losing – losing population, losing businesses because they feel they need to move to communications opportunities at centers where they can get access to certain facilities they need. We believe that having access to these capacities locally will be a good substitute for folks leaving rural areas. [Instead, they'll be able to stay and get] access to high speed connections.

So, putting our industry on a healthy, rational economic footing will stimulate a new wave of productivity. We're optimistic about the future. We're positive. We're trying to play a constructive role. We're deploying a new wave of technology.

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OK. Did you figure out who the speaker was? Was it Len Ray or Mike DiMauro or James Salter? How about Wes Rosenbalm or Don Cope or Jim Farmer? How about me? It could have been any of us, as we've been saying these things for years.

In fact, the speaker was Lawrence Babbio, the president of Verizon, who said these things at a recent conference sponsored by the Progress & Freedom Foundation. You'll probably hear much the same thing tomorrow, when Verizon's Paul Lacouture steps up here.

Now, saying the right things is one thing. Actually doing them, as many municipalities have done for the last few years, is something else. Given Verizon's history of failing to fulfill promises to build fiber networks, I'm often asked whether I think that Verizon is serious this time. Of course, I can't be sure, but I certainly hope that it is.

In fact, I hope that Verizon succeeds beyond its wildest dreams. I hope that its success prompts it to accelerate its buildout schedule. I hope that Verizon's success will give SBC, BellSouth, Qwest and the cable industry the courage to follow suit.

But even if everything that I hope for comes true, it won't touch most of America any time soon. There are over 40,000 cities, towns and other localities in the United States, and neither Verizon nor the private sector as a whole is going to provide fiber to the home in more than a small fraction of these communities in the foreseeable future.

In short, when it comes to deploying fiber to the home, it's the history of electrification all over again. Will it turn out as well? Let's act together now to ensure that future generations will be able to say that public fiber projects made as big a contribution to the economic development, educational opportunity, global competitiveness, and quality of life of America in the 21<sup>st</sup> Century as municipal electric utilities did in the 20<sup>th</sup> Century.

What specifically should we do?

First, we need to stop patting ourselves on the back for what we've done so far and develop a national broadband policy that is worthy of this great country. The plan should have specific, ambitious goals. I personally like the goals that Rick White developed at TechNet: 100 Mbps to 100 million addresses by 2010.

Second, we must persuade states that have existing barriers to public entry to remove them and to say "no" to any new barriers that incumbent cable and telephone companies may promote. That is particularly true of so-called "level playing field" or "fair competition" measures that authorize entry under terms and conditions that no new entrant, public or private, can meet and that the incumbents themselves do not live by.

We thought that Congress had taken care of this problem in Section 253 of the Telecommunications Act of 1996, which prohibits states from enacting measures that preclude

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“any entity” from providing any telecommunications service. Unfortunately, as many of you know, the Supreme Court found in *Nixon v. Missouri Municipal League* that Congress did not express its intent clearly enough in Section 253 to meet the Court’s high standards for finding federal preemption of traditional state powers.<sup>7</sup>

Significantly, however, the Court also expressly stated that its decision should not be interpreted as an adverse ruling on the merits of public entry. To the contrary, the Court said that municipalities had “at the very least, a respectable position” that denying them entry “flouts the public interest.” The Court also emphasized that the FCC, while ruling against us on statutory construction, had “denounced” the policies underlying the Missouri law at issue and that three of the five FCC commissioners had filed separate statements in which they “minced no words” in stressing that the Missouri law was contrary to the pro-competitive purposes of the Telecom Act.

The bottom line, though, was that the Court took out of our hands the simple and straightforward trump card over state barriers that we thought the Telecom Act had given us. Instead, the Court left us in the unfortunate position of having to continue to fight state barriers one a time.

We didn’t have long to wait. Hardly before the ink on the Missouri decision had dried, BellSouth proposed a new barrier to entry in Louisiana, to stop Lafayette Utilities System from exploring the possibility of building a \$100 million fiber-to-the-home system.

Then something remarkable happened – Governor Kathleen Babineaux Blanco stepped in and literally locked representatives of BellSouth, Cox Communications, Lafayette Utilities System and other industry and municipal organizations in her conference room and essentially told us not to come out until we had negotiated compromise legislation that she could sign. It took us the better part of a month, but much to everyone’s surprise, we did it. We did it by getting past the rhetoric and sound-bite arguments that incumbents usually use with state legislatures. Instead, got deeply into the details, and we ended up with a law that should work for all concerned.

Now don’t get me wrong – I’m not endorsing the Louisiana compromise. Given the huge challenge that we face to deploy advanced communications networks in as many communities as possible as rapidly as possible, I don’t believe that any law that restricts public entities in any way is a good law. To the contrary, I believe that we should be going the other way and giving public entities every possible incentive to get involved. That’s what other advanced countries are doing, as should America. If we don’t, we and our children will surely pay the price in the decades ahead.

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<sup>7</sup> *Nixon v. Missouri Municipal League*, 124 S.Ct. 1555, 2004 U.S. LEXIS 2377 (2004).

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No. I believe that the Louisiana law should only be viewed as establishing the point beyond which no state should ever go in limiting the ability of public entities to establish and operate a fiber-to-the-home system.

Third, we have got to cut the crap at the local level and talk straight with the American public about where fiber-to-the-home technology is today and about what municipalities can do to accelerate its deployment. Let me give you an example of what we should NOT be doing.

On June 22, 2004, SBC issued a press release announcing that it was going to invest \$4-6 billion in fiber-to-the-node technology over the next five years. In the press release, SBC's chairman and CEO was quoted as saying:

Fiber technologies and IP-based services will enable a communications revolution, allowing consumers and businesses to experience integrated video, data and voice services beyond what can be provided over any network today. ...

...

SBC companies also are pursuing development of new services that can take advantage of the network's bandwidth. ...<sup>8</sup>

Two weeks later, when faced with a citizens' initiative to encourage the local governments of Batavia, Geneva and St. Charles, Illinois, to develop a public fiber-to-the-home system, SBC told the City Council of Batavia:

Ninety percent of the users can live with the speeds we offer [DSL at 1.5 Mbps downstream]. We are today trialing "fiber-to-the-prem" in Oconomowoc, Wisconsin, at a location called Pabst Farms. And I will tell you that the technology's not proven. We aren't going to go in on a ubiquitous basis. We cannot prove it in economically. And my point is, what are you going to do with 20 Megabits? I mean it's like having an Indy race car, and you don't have a track to run it on. The product we're offering today meets the needs of our users. ... The technology that's being touted, it's not there yet.<sup>9</sup>

Now I ask you, how can an average American make any sense of this? When was SBC telling the truth, in its national press release, or in its statement to the Batavia City Council? I suggest that statements like SBC's to the Batavia City Council are not just a disservice to the communities that want fiber to the home now, but they also undermine what all of us in this room are trying to achieve – the rapid deployment of fiber and all the new jobs, all the new

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<sup>8</sup> <http://www.informohio.org/press/releases/062204.htm>

<sup>9</sup> <http://66.17.198.223/videos/SBC%20visits%20Batavia's%20City%20Council.wmv>

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educational opportunities, all the new hardware, all the new software, all the new applications, and all the enhancements to the quality of life that such deployments will lead to.

SBC got it backwards – fiber systems are not the Indy racers, they’re the tracks. The faster we build these tracks, the more Indy racers will emerge to use them. That’s essentially what SBC was saying in its press release of June 22, and it was right about that.

In the 1950s, Democratic presidential candidate Adlai Stevenson offered the Republicans a deal. He said, “If you stop lying about us, we’ll stop telling the truth about you.” I can’t offer that deal to opponents of public fiber systems, and I wouldn’t do it even if I could. Rather, I challenge everyone – including everyone in this room – to help us raise the level of dialogue on this issue. Let’s tell the truth all the time. We owe it to each other and to America.

Fourth, we must ensure that new entrants, both public and private, are not driven out of business by anticompetitive practices of incumbents. These practices include predatory pricing, targeted rate discrimination, withholding programming and other critical content, denial of access to multiple dwelling units, threatening not to do business with suppliers and contractors, and a host of other unfair business practices. We need legal tools that are clear and understandable as well as easy to administer in a timely manner. Let’s ensure that Congress gives us these tools it takes a fresh look at our communications laws next session.

Fifth, like many of you, I believe that our regulatory infrastructure is archaic and needs to be updated for the 21<sup>st</sup> Century. It just doesn’t make sense to treat similar services in significantly different ways or to have more regulation than is absolutely necessary. As we reexamine our regulatory infrastructure, however, we must ensure that we are meeting our basic social responsibilities.

Yesterday, Congressman Rick Boucher listed four of these responsibilities – supporting universal service; supporting public safety, including E911; supporting law enforcement; and supporting access to service by disabled persons. I would add preserving the ability of our local governments to manage and obtain fair compensation for the use of public rights of way and facilities and ensuring that service providers meet appropriate service standards.

Sixth, as I said earlier, America can meet the daunting challenges that we face today only if our public and private sectors work together in a spirit of mutual respect and cooperation.

So I say to the private sector, take the lead in deploying fiber-to-the-home systems. We are rooting for your success. Get ahead of municipalities on this, and we’ll support you.

If you don’t want to take the lead, get beside us, and we’ll work together as partners. I’m glad to hear that some of this is beginning to happen.

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If you don't want to get ahead of us or get beside us, then get behind us, and we'll pull you along as you push us forward.

Last, if you don't want to get ahead of us, and you don't want to get beside us, and you don't want to get behind us, then just get out of our way and let us do the job. If you won't give us what we need and want, you have no moral right to prevent us from helping ourselves. That is what Americans do.

In closing, I want to leave you with one more thought. It's OK for us to talk like techies at conferences like this, but when we communicate with the public, legislators and others outside our circle, we need to simplify our message. We need to use language that even young kids can understand. Here's a good example of this, courtesy of the municipal cable system of Spanish Fork, Utah.

[SHOW SFCN video]

Thank you all.