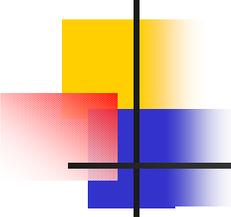


Municipal Broadband in Virginia: The Struggle for Local Choice

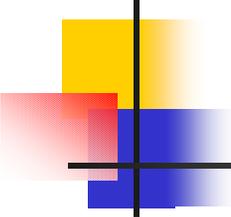
Virginia Association of
Telecommunications Officers and Advisors
Telecommunications Conference
Williamsburg, Virginia
April 8, 2003

Jim Baller
The Baller Herbst Law Group, PC
Washington, DC
(202) 833-5300
Jim@Baller.com



Overview

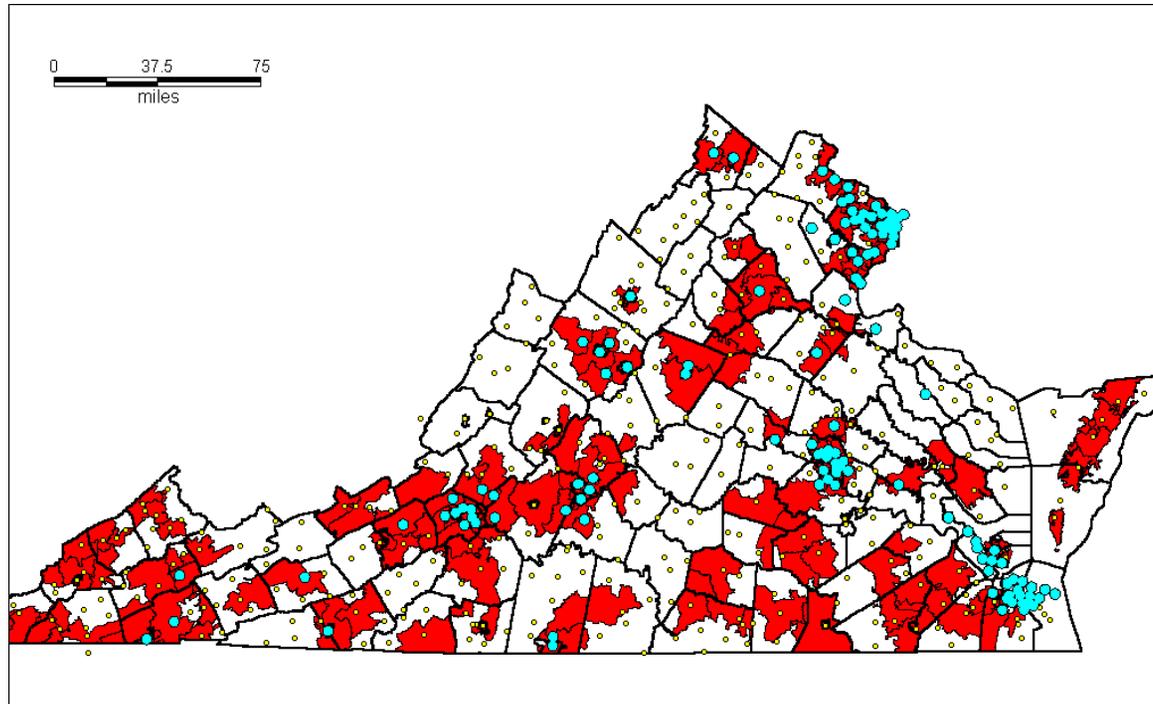
- ✍ The Stakes
- ✍ Background
- ✍ Virginia's Barriers to Public Entry
 - ✍ Legislation
 - ✍ Litigation
 - ✍ SB 875 and HB 2397
- ✍ The Adelphia Bankruptcy

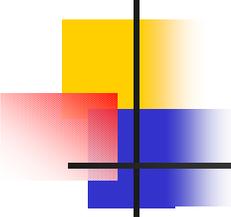


The Stakes

- ✍ Affordable Access to Advanced Communications Services and Capabilities
 - ✓ Economic development
 - ✓ Educational and occupational opportunity
 - ✓ Regional and global competitiveness
 - ✓ Reduced congestion and adverse environmental impacts
 - ✓ Urban core revitalization
 - ✓ Affordable up-to-date health care
 - ✓ Quality of life

"High Speed" Internet Access in Virginia



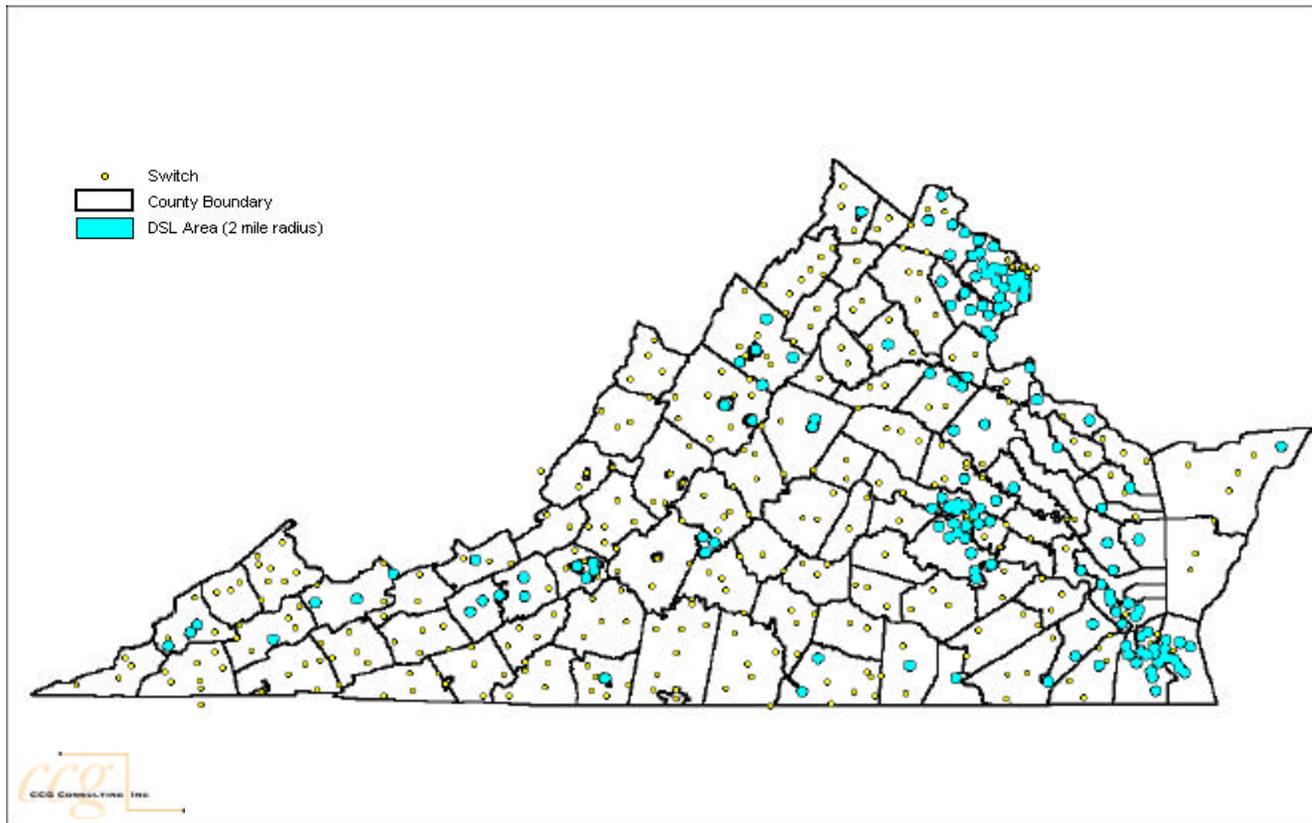


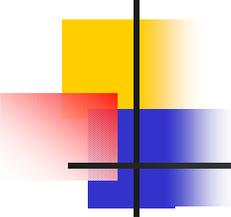
Cable Modem Service

“Most cable systems have determined, based upon their analysis of usage requirements and bandwidth availability, that **128 kbps is adequate to accommodate the current needs of broadband users under most circumstances.** ... By setting the peak upstream rate at 128 kbps, the network is optimized to provide the very fast downstream rates that consumers expect from their broadband cable networks.”

Comments of the NCTA, *In the Matter of: Deployment of Broadband Networks and Advanced Telecommunications*, Docket No. 011109273-1273-01 (Dec. 2001).

"Advanced Telecom Services" in Virginia

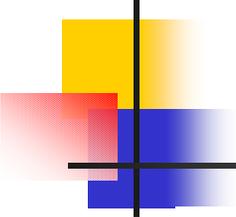




Digital Subscriber Line

“The goal is for all of Verizon's residential phone customers to have access to the Internet at **speeds of 5 to 10 megabits a second**, 10 to 20 times faster than typical digital subscriber lines. ... [Bruce] Gordon, who oversees 50,000 Verizon workers, predicts it will happen ‘sooner than you think,’ although he wouldn't say how long the project would take or how much it would cost. But **the effort likely will take at least 10 years** and cost billions of dollars.”

“Verizon’s Bold Broadband Upgrade,” BusinessWeekOnline, interview of the president of Verizon’s Retail Markets Division http://www.businessweek.com:/print/technology/content/mar2003/tc20030319_4016_tc024.htm?tc



Cable Modems and DSL – Big Deal!

“It is important to note here that the current generation of broadband technologies (cable and DSL) may prove woefully insufficient to carry many of the advanced applications driving future demand. **Today's broadband will be tomorrow's traffic jam, and the need for speed will persist as new applications and services gobble up existing bandwidth.**”

Office of Technology Policy, U.S. Department of Commerce,
Understanding Broadband Demand: A Review of Critical Issues,
at 6 (Sept. 2002)

Bandwidth Comparisons

64Kbps Phone Line



128Kbps ISDN



600Kbps DSL



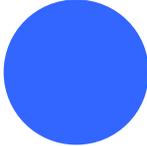
3Mbps DSL



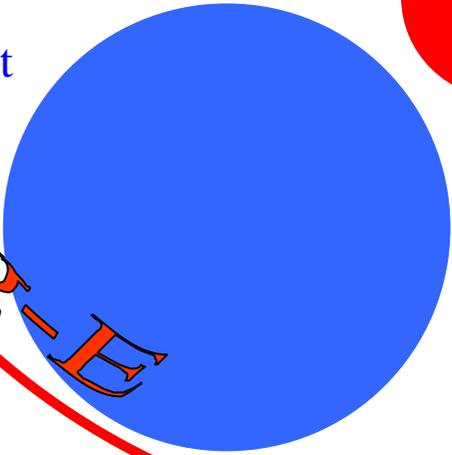
1.544Mbps T1



10Mbps Ethernet



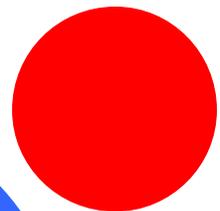
100Mbps Ethernet



3.7Mbps MPEG-2
CBR VHS Quality
Video Stream



20Mbps MPEG-2 CBR
HDTV Quality Video
Stream



Work at home

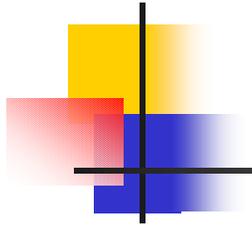
Educational &
Medical
Applications

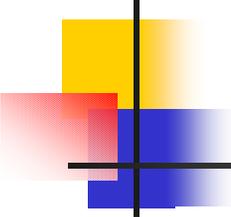
Gig-E

Gig-E

Gig-E

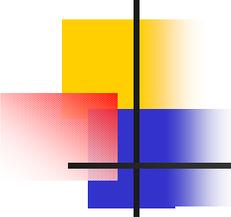
Gig-E





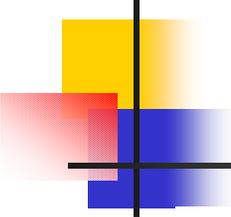
Virginia Barriers to Public Entry

- ✍ 1998 Complete ban on public telecom (except Abingdon) – to sunset July 1, 1999
- ✍ 1999 Dark fiber “exception” – Sunset repealed
- ✍ 2001 *Bristol v. Earley* (telecom)
- ✍ 2002 MLEC and “Significant Gap” options
- ✍ 2002-03 SCC developing MLEC rules
- ✍ 2002-03 *Marcus Cable v. Bristol* (cable)
- ✍ 2003 SB 875 and HB 2397



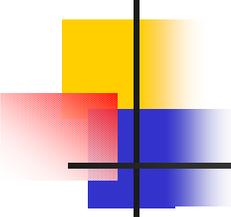
2002 SB 245/HB 1021 – MLEC Option

- ✍ Localities that operate electric utilities can become LECs
- ✍ Must comply with all CLEC requirements
- ✍ Must make estimates, keep records and impute costs that private parties would incur
- ✍ Non-discriminatory access to poles, conduits, etc.
- ✍ No cross subsidies, with some exceptions
- ✍ No eminent domain of cable properties
- ✍ No anticompetitive practices
- ✍ No risk of forced sale



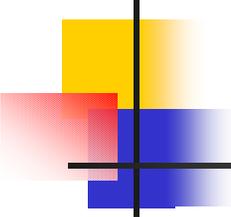
SB 245 – Significant Gap Option

- ✍ **Any** locality can petition to provide a “qualifying communications service”; SCC **must** approve unless opponents meet burden of proving that
 - ✍ The service is generally and readily available from at least 3 unaffiliated entities that provide it in manner that is **functionally and economically equivalent** for consumers
 - ✍ The petition is not in compliance with the Act
 - ✍ Granting petition will not benefit consumers
- ✍ Risk of forced sale after 5 years



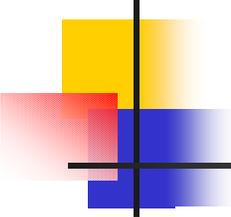
SB 875 (“Wampler Bill”)

- ✍ Applies only to retail cable TV service
- ✍ Locality must hold preliminary public hearing
- ✍ Consultant must conduct feasibility study
- ✍ Public hearing on feasibility study
- ✍ Referendum → majority vote → General Assembly
- ✍ Bristol exempt from feasibility and referendum rules
- ✍ Must create enterprise fund for cable service
- ✍ Only revenue bonds, unless establish telephone utility
- ✍ No cross subsidies or preferences



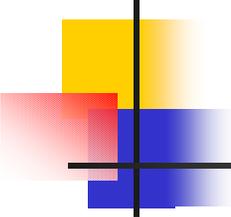
SB 875 (continued)

- ✍ Locality must comply with all local requirements that apply to incumbent
- ✍ Must impute private sector taxes, fees, etc.
- ✍ Submit annual reports and audits
- ✍ No eminent domain for cable
- ✍ No antitrust immunity
- ✍ MLECs can provide Internet, data and all other services except cable TV (unless meet new rules)
- ✍ No change in SCC jurisdiction



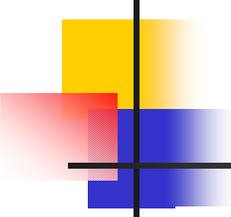
HB 2397 (“May Bill”)

- ✍ Paves way for incumbent “winback” programs
- ✍ MLECs must file annual reports to show absence of cross subsidies and prove imputation of costs
- ✍ SCC can allow cross subsidies if they are in the public interest **and rates are not below the incumbent’s**
- ✍ Non-discriminatory access to poles, conduits, etc.
- ✍ Bars MLECs with population of more than 30,000 from “Service Gap” option



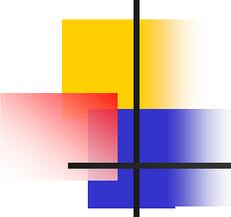
Adelphia Bankruptcy

- ✍ Filed in June 2002 in NYC
- ✍ Affects 60+ Virginia localities and electric utilities
- ✍ Steering Committee: VML, VACO, VMDA and VATOA
- ✍ Adelphia paying both pre-petition and post-petition fees – slow on other obligations
- ✍ Local franchising authorities retain broad Cable Act and police powers
- ✍ Two courts: Routine cable franchise and administration issues to be litigated in local courts



Adelphia (continued)

- ✍ Adelphia just hired new CEO and CFO; is restating finances, developing plan, moving HQ to Denver
- ✍ Adelphia must eventually adopt or reject executory contracts and unexpired leases – if adopts, must pay **all** outstanding obligations
- ✍ Some cable systems and facilities may be sold
- ✍ Key questions:
 - ✍ What role for localities if buyers emerge?
 - ✍ Can/should localities obtain franchises/facilities themselves?



Questions & Discussion

