BEFORE THE
UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON ANTITRUST, COMPETITION
AND BUSINESS AND CONSUMER RIGHTS

HEARING ON

"CABLE COMPETITION – INCREASING PRICE; INCREASING VALUE?"

FEBRUARY 11, 2004

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ORAL TESTIMONY (AS DELIVERED) OF

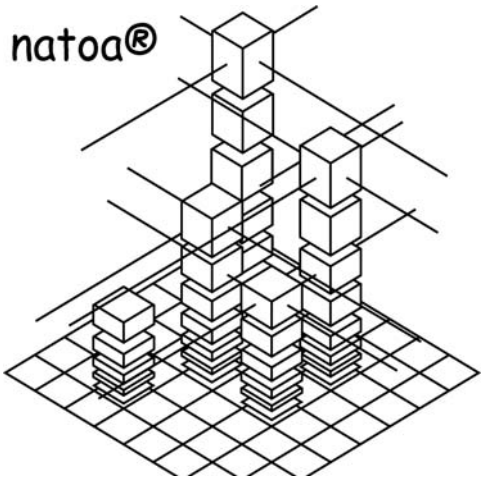
THE
NATIONAL ASSOCIATION OF TELECOMMUNICATIONS
OFFICERS AND ADVISORS

BY

CORALIE WILSON

PRESIDENT, NATOA BOARD OF DIRECTORS

THE NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS



ORALTESTIMONY (AS DELIVERED)

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PRESIDENT, BOARD OF DIRECTORS

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Chairman DeWine and Members of this Committee:

I am Coralie Wilson, President of the Board of Directors of the National Association of Telecommunications Officers and Advisors. NATOA is a national organization that represents the cable and telecommunications interests of local governments across the United States. We are grateful for the opportunity to share our views and suggestions on the important issues before you today.

The FCC has repeatedly found that head-to-head competition between terrestrial facilities-based providers of video programming results in significantly lower rates, more

channels and better service for consumers. The General Accounting Office recently estimated that the rate differential is approximately 15 percent nationwide. Local governments, therefore, have a strong interest in promoting robust cable competition.

In the late 1990s, competition began to emerge in many communities across the United States. Often, however, incumbents sought to thwart local governments from awarding competitive franchises, and we began to see incumbents engaging in a variety of anticompetitive practices.

By 2002, the number of overbuilds declined dramatically. Although the economy was clearly a factor, the feedback that NATOA was receiving from its members suggested that the anticompetitive activities of incumbents were also contributing to this phenomenon. As a result, NATOA commissioned a study of the kinds of anticompetitive practices that were occurring and the steps that may be necessary to deal with this problem.

In March 2003, the Baller Herbst Law Group submitted its extensive report, a copy of which is attached, with privileged attorney-client material removed. As you will see, it contained dozens of examples of anticompetitive behavior. The report cautioned that, given the nature of the data-collection process, some of the information presented might not be completely accurate or current and that it had not been subjected to detailed analysis. In presenting the report to you, we underscore its reservations and add a further qualification that the facts and cases cited are now nearly a year old. The report concluded, however, that the sheer volume of the information available indicated that anticompetitive practices by incumbent cable operators warranted further investigation.

Recent FCC decisions and orders have reflected increasing concern about anticompetitive practices by the major incumbent cable operators, but the agency believes that it lacks statutory

authority to do anything about this problem. To this end we believe that two statutory changes, while not the entire solution, would be very helpful.

First, several major incumbent cable operators are practicing targeted rate discrimination through what they call "win-back" programs. A common and critical feature is that the incumbent does not offer its own subscribers the same special deals that it offers to subscribers who have transferred, or are threatening to transfer, their business to an overbuilder.

It was precisely for this reason that Congress enacted in 1992 a uniform rate requirement in Section 623(d) of the Communications Act. As Congress stated, the purpose of Section 623(d) was in part "to prevent cable operators from dropping the rates in one portion of a franchise area to undercut a competitor temporarily."

In the Telecommunications Act of 1996, believing that true competition in the cable industry was imminent, Congress subjected the uniform rate requirement to an important qualification – it would no longer be applicable if there was "effective competition" in the relevant market. Because meaningful competition has not yet evolved, and this loophole is being used to further frustrate competition, it should be closed. Congress should therefore delete the "effective competition" exception from the uniform rate provision of the Act.

Second, Section 628 of the Communications Act prohibits vertically integrated cable operators and programming vendors from entering into, or renewing, exclusive contracts under most circumstances. Unfortunately, the FCC has repeatedly found that these provisions apply only to video programming delivered by satellites, and not to programming delivered terrestrially through fiber optic cable. As the FCC has itself recognized, this construction of the law adversely affects the ability of overbuilders to obtain programming, especially regional sports programming, and it gives incumbents the incentive to shift programming from satellite to

terrestrial delivery. NATOA recommends that Congress eliminate the terrestrial delivery loophole. Furthermore, given the efforts of major cable incumbents to tie up content of all kinds in exclusive contracts, Congress may also want to extend the ban on exclusive contracts to include all content.

We appreciate this opportunity to testify and would be glad to answer any questions or provide any further information that the Committee or its staff may desire.

Thank you.