



Cutting the Cord: Streamlining the Video Franchising Process

by Sonia Arrison and Vince Vasquez

April 2006

Cutting the Cord: Streamlining the Video Franchising Process

by Sonia Arrison and Vince Vasquez

April 2006

Table of Contents

Introduction.....	1
The Basics: Cable Franchise Agreements	3
Cable Franchise Laws: A Look Back	5
Cable Franchise Laws & Competition Today	7
Moving Forward: Creating a Better Future	9
What to Do? Policy Reform Recommendations	13
Conclusion: True Reform and Competition Will Bring America Up to Speed and Benefit Consumers	17
Endnotes	19
About the Authors.....	21
About the Pacific Research Institute	23

Introduction

New technologies that allow for high-speed data transfer over the Internet have revolutionized the way consumers and businesses communicate. One huge success story plays out every day as millions of people around the globe use the Internet to make low-cost or free telephone calls using a technology called Voice over Internet Protocol (VoIP). The switch from old copper wires to the Internet for phone service not only made things cheaper, but also left telephone companies scrambling to upgrade their systems and provide customers with the most up-to-date communications technology. It also meant that telephone companies now compete with any other business that can provide a high-speed connection to the Internet such as cable, satellite, and wireless firms.

Convergence is the ongoing theme in the nation's communications marketplace, and for the most part it is happening at a decent pace. One area, however, where positive change is not happening fast enough is video service. This lag can be traced to the cable franchise regulatory system whereby local governments set the terms and conditions for businesses to enter the video market.

Local governments that hold a vested interest in maintaining the current system have stymied attempts to foster competition and provide consumer protection in the video programming market. All too often, alternative cable franchise bids are ignored, costly entry barriers are raised, and lawsuits are filed to block service choice for consumers. As a result, less than five percent of incumbent cable providers face effective competition.¹ With basic and premium cable rates soaring to all-time highs, and municipalities working to shut out new, affordable video technologies, government's failure to protect the public interest is more clear than ever.

The legal regime of cable franchise agreements is broken. It harms consumers and must come to an end. This paper provides an overview of the cable franchise debate and suggests solutions that will benefit all Americans.

The Basics: Cable Franchise Agreements

The cable franchise system is a series of federal laws and regulations that operate on the local level.² These laws provide a legal framework for government officials when they sign franchise agreements with cable providers, and for states when they draft regulatory standards.

Under its jurisdiction to regulate cable television, the federal government sets limits on franchise fee rates and basic service price caps, provides minimum standards for customer service, and prohibits local franchise authorities (LFAs) from creating “unreasonable” barriers to competitive franchises. State and local lawmakers, in turn, address and manage consumer complaints, set service standards, outline business procedures, and can generally demand anything from cable companies not prohibited by federal law. In addition, cities hold authority to maintain their public rights-of-way, facilitate the process of acquiring and renewing a cable franchise agreement with cable companies, and manage most consumer issues with their incumbent cable provider.

Typically, multi-channel video programming distributors (MVPDs), or cable service providers, must enter a lengthy approval process to be granted a franchise agreement. Because MVPDs are virtually guaranteed to evade any market competition after receiving a franchise, many municipalities require them to provide a Christmas list of fringe benefits in order to receive a franchise. These usually include programming grants, channels for public access, educational and government use, and free cable installation for public schools and city buildings.

All franchisees are required to pay “franchise fees” to their local franchise authority, which is typically a municipality, but can also be a state or a region. Through these fees, the authorities grant the right to “rent” the public right-of-way to video service providers, which must access streets and public spaces to install and maintain programming equipment.³ Federal law currently caps municipal franchise fees at five percent of gross annual revenues from the MVPD.⁴

It can take anywhere from six to 18 months to be awarded a franchise, a cumbersome process that usually requires expensive lobbying campaigns and multiple rounds of private and public negotiation.⁵ Franchise agreements are typically limited for 10-15 years, and are subject to a lengthy renewal process.⁶

The unspoken premise behind the cable franchise system is that cities are regulating a monopoly service for local residents. In exchange for high franchise fees and significant financial and service concessions from cable companies, cities tacitly agree to insulate franchisees from market competition. This practice still thrives today, despite a series of federal laws designed to curb the market distortion and political favoritism caused by municipalities.

Cable Franchise Laws: A Look Back

The Cable Communications and Policy Act of 1984 codified many of the typical franchise rules set by cities in the 1960s and 70s, and authorized municipalities to set their own customer service standards. On balance, the Cable Act eased some of the local schemes cable companies complained were choking industry growth, such as crooked franchise auctions, and it helped clarify a hitherto endless maze of municipal rate control restrictions and franchise renewal provisions.⁷ Most notably, the Act pre-empted basic cable rate regulation from LFAs, incurring the wrath of power-deprived municipalities.

Responding to criticism over rate pre-emption in the 1984 Cable Act and the clamor for competitive choice in video programming, Congress passed the Cable Television Consumer Protection and Competition Act of 1992. This new law claimed to foster competitive choice in multi-channel video services, and re-imposed rate regulations on incumbent cable providers unless: 1) fewer than 30 percent of households in a franchise area subscribe to their incumbent cable provider; 2) two or more alternative cable providers offer service to at least 50 percent of area households, and at least 15 percent of them choose to subscribe to their service; or 3) city-owned cable companies offer service to at least half of the local households.⁸

When none of these conditions are met, federal regulations empower local franchise authorities to place limited price caps on cable service and equipment costs in the absence of even the most minimal competition.⁹ Additionally, the 1992 Act required the FCC to establish minimum national standards for customer service in the cable market, such as appointment scheduling, billing issues, and telephone answering.¹⁰ Next came the Telecommunications Act of 1996, which moved the cable sector in a more deregulatory direction.

For example, the Act created new restrictions on local franchise authorities, including a ban on government meddling in the way cable providers use subscriber equipment and transmission technology, as well as prohibiting franchise authorities from requiring any additional telecom service or facilities other than institution networks (public schools, libraries, and buildings). Federal lawmakers also deregulated cable rates by eliminating price caps on every service tier but basic, and expanded the competitive exemptions to price caps to include the entry of telephone companies that provide cable service “comparable” to the local incumbent. The Telco Act also fostered new market entrants by ending the cable-telco cross-ownership ban that prevented telephone companies from providing video programming in their service area.

Despite these federal checks on local franchise power, municipalities still wield broad authority to establish their own provisions, fees, and franchise requirements. Though federal law explicitly prohibits monopolistic cable franchises,¹¹ municipalities and cable operators have found alternate ways to maintain their lucrative non-competitive franchise agreements.

Some municipalities have perversely used the franchise bidding process to strong-arm unfair agreements from cable providers, such as requiring corporate funds to help cover local budget shortfalls,

or the procurement of unrelated goods and services for public use by cable operators. In order to gain a franchise, one MVPD in Sacramento, California, had to agree to plant 20,000 trees.¹² Likewise, an MVPD in Miami was required to contribute \$200,000 each year to the local police department for an anti-drug abuse program.¹³ Although federal laws have since tightened what can be demanded, city officials still find creative ways to push the legal envelope.¹⁴

The city of Palo Alto, California, required its cable franchisee to provide free Internet access to its public schools and libraries, as well as provide free ad time for its media administrators.¹⁵ In 1999, the city of San Francisco required its franchise grantee to provide every current cable subscriber with four coupons for free Pay-Per-View, purchase a mobile video production van for municipal use, as well as wire and serve over 160 public buildings with free cable.¹⁶ Additionally, millions of dollars are usually necessary to fund advertising, lobbying costs, political access, and other forms of “franchise campaigning” that greases municipal wheels towards obtaining an agreement.

In an effort to “equalize” incumbent and rival franchisees, some state legislatures have passed “level playing field” (LPF) laws for video programming providers. Most of these laws require that new video programming franchisees must carry a regulatory burden at least equal to the incumbent’s, saddling would-be cable competitors with the same inane and peripheral rules. In effect, these “fairness” measures have served as barriers to market entry for rival MVPDs, which would not be likely to match the financial strength and resources of incumbents. At least 11 states have LPF laws on the books, and an increasing number are stipulated in the franchise agreements themselves. LPF legislation adds to the array of large, mandatory initial costs to place a franchise bid, thwarting competition in local markets.

Some local officials have also experimented with public-run video programming services, leveraging local bonds and the public trust in hopes to make quick cash or score points with voters before Election Day.¹⁸ By absorbing costs through cross-subsidy schemes, and exempting themselves from paying taxes and franchise fees, municipal cable systems distort local competition and create artificially low prices to lure subscribers. But lacking private-sector resources, proper planning and real-world flexibility, many of these endeavors have foundered at taxpayer expense, burdening local residents with millions in debt and mothballing cable facilities.¹⁹

For example, the town of Acworth, Georgia ran local taxpayers \$10 million into debt to build their municipal video service, only to be forced to sell it to a private company once projected costs skyrocketed.²⁰ City officials in Scottsboro, Alabama, created their own municipal cable system to provide lower rates to residents – but when the incumbent cable provider unexpectedly cut their own rates, the city went to court to prevent them from doing so.²¹

Cable Franchise Laws & Competition Today

There are tens of thousands of local cable franchise authorities in the United States.²² With a market controlled by numerous municipal, state and federal standards, new video programming entrants must endure a hornet's nest of red tape to even begin providing service to customers. This daunting task is almost impossible for smaller cable companies and industry entrepreneurs, who struggle to match the market power and fiscal strength of incumbent cable providers that make billions each year keeping competitive alternatives away from their consumers.

Currently, provisions under the 1992 Cable Act impose rate regulations in lieu of competitive forces within a local market. However, this price-control mechanism fails to deliver the superior consumer benefits of true competition.²³ FCC data shows that when cable service providers are allowed to compete in a city, consumers are offered lower cable rates, more channels, and enjoy a better price-per-channel ratio than consumers in non-competitive municipalities.²⁴

	Without Competition	With Wireline Competition
Monthly Cable Rate	\$45.56	\$38.80
Channel Selections	70.1	74.9
Price-Per Channel	\$0.665	\$0.523

Source: Federal Communications Commission

Underscoring this phenomenon, federal investigators found that cable franchise operators “generally lower rates and/or improve customer service where a wire-based competitor is present.”²⁵

Consumers deserve better, and marketplace competition must truly be embraced as a public priority.

Many supporters of the current cable regulatory regime point to a 2006 FCC survey which shows that cable companies control 72 percent of the video programming market, with digital broadcast satellite (DBS) companies taking a 28-percent market share.²⁶ They allege that these figures, combined with the fact that DBS providers could reach nearly 100% of American households, don't show the rock-ribbed monopoly critics claim the cable industry to be for local video programming. However, the fact that there is some competition doesn't mean that consumers wouldn't benefit from more. Then there's also the consideration that the numbers don't reveal the complete picture.

For instance, less than five percent of municipalities are found to have what the government calls “effective competition” – either having a second hard-wire competitor, or a DBS provider that serves more than 15 percent of the local market. Although the market share of broadcast satellite providers is noteworthy, DBS companies often serve non-franchise rural areas where cable companies aren't present, skewing figures to appear as though they run strong head-to-head competition against the franchised cable providers. Anyone who lives in a big city knows that line-of-sight and so-called “beautification” mandates sometimes stand in the way of DBS adoption.

Absent vigorous competition to promote good service in the video market, government has attempted to step in and regulate behavior. Unsurprisingly, this command-and-control approach hasn't worked. At best, customer-service regulations at every level of government have been useless. Such regulations have been more effective at smothering competitive bids than protecting Americans from anti-consumer behavior from government-sheltered cable providers. According to the latest American Customer Satisfaction Index (ACSI), cable television operators rank dead last for consumer satisfaction among all measured industries.²⁷ As the Index notes that some scores for the graded companies were "falling to their lowest [levels] ever," the cable community as a whole was bested by the notorious corner-cutting airline industry, and even the bureaucratic U.S. Postal Service. It's clear the monopoly franchise system is broken, and that citizens need a healthier, competitive marketplace.

Federal laws have done little to rein in the power of franchising cities, and the competitive benefits of a healthier market are still absent from most municipalities. With local governments continuing to squander their responsibility to serve the greater public interest, and consumers stuck with rising cable rates, urgent action is needed from the federal level to reform the local franchise regime.

Moving Forward: Creating a Better Future

As workers in Silicon Valley are well aware, anyone with skills and a broadband connection can compete globally for programming, accounting and other types of well-paid jobs. In that kind of atmosphere, it's important that Americans don't let their high-speed connections fall behind. Unfortunately, that is exactly what has happened, and government barriers to new services that increase demand for broadband further exacerbate the problem. At last count, America ranked a dismal 16th in broadband deployment. However, new video providers using cutting-edge technologies to reach customers may provide a solution to boosting deployment, by creating more demand and supply for high speed Internet access.

Verizon Communications has invested billions of dollars into FiOS, a fiber-optic national network that uses light pulses to connect consumers with high-grade voice, video and data services. FiOS takes a fiber-to-the-premises (FTTP) strategy that directly plugs homes with the full benefits of cutting-edge fiber optic cable, which is more capable than the outdated networks built with coaxial cable or copper wires, and even hybrid fiber/coaxial networks used by many of the large cable companies. Absent the daunting challenge of obtaining tens of thousands of franchise agreements, FTTP holds great promise for expanding consumer choice with the latest innovations in video programming.

Another new technology is Internet Protocol Television (IPTV), which delivers video to homes using Internet Protocol over broadband connections. By competing with regular cable by delivering video over the Internet, IPTV is set to grow tenfold by 2010.²⁸ AT&T is shaping up to become a leader in IPTV, as its own video service, known as Project Light Speed, will use high speed Internet to bring video-on-demand and crystal clear programming to consumers. This should be good news for the economy, but according to industry reports, the leader won't be the United States. Instead, countries such as China, France, and Italy are forecast to lead.

If America can clean up its franchising system to allow for the quick growth of FTTP and IPTV, it would not only foster better, faster, and cheaper video services, it would also stimulate economic growth as hardware and software companies will need to provide products and the content industry will have more outlets. Indeed, according to a recent report by the market research firm In-Stat, worldwide revenues due to new "premium services" such as video on demand, digital video recording, and interactive TV will surpass \$600 million in 2009.²⁹ Of course, the report also says that the U.S. will not get the biggest part of that pie.

In an interview with *InternetNews.com*, In-Stat analyst Michelle Abraham blamed franchise laws for slowing down the American market. "The current franchise regulations – needing a franchise license to serve a community – really does require a lot of negotiation with each community," she said.³⁰ It's also worth noting that IPTV is also something that cable companies see as their next generation service.

Indeed, in mid-2005, at least one cable company made it clear to consumers in San Diego that watching television over an Internet connection is no longer a futuristic idea. The testing of a new

service called “Broadband TV” by Time Warner Cable demonstrated the power of communications convergence and why legacy regulations governing the sector need to be shelved.

There’s been plenty of discussion about the plans of telco companies such as AT&T and Verizon to roll out advanced technologies to compete with cable. But the test in the San Diego area was cable-driven. Competitive forces are pushing cable companies to attempt to innovate before key competitors can break free of red tape. Those same companies are working the political process in an effort to slow down the entry of competitors. This should tip off legislators that convergence in the communications space requires a revamp of the nation’s policies.

In fall of 2005, California’s cable lobby was blatant about its objectives when it circulated a letter to Sacramento lawmakers in an attempt to scare them into protecting cable’s dominant position in the video market. The California Cable and Telecommunications Association’s (CCTA) November 9 letter started by stating, “The Bell telephone companies are beginning to aggressively offer local video services in California and around the nation.”

That was true, and consumers stand to benefit. According to the CCTA, however, there “could be serious negative impacts” to new competition and CCTA president Dennis Mangers asked letter recipients “to oppose such efforts before it is too late.” The impending crisis is clearly that the cable sector fears strong competition. Of course, they don’t advertise it that way.

Instead, the CCTA tendered a weak double-speak argument that the telephone companies should not be allowed to compete because they might not do it right. That is, the cable industry is worried that the telcos might not compete in every single jurisdiction, and if they don’t do that, their argument is that the sky is going to fall.

What they’re seeking to protect are LFA “build out” provisions, which require franchisees to universally install cable hardware throughout a city. This capital-intensive demand serves to seal monopolistic conditions, as only a single provider market would likely facilitate cost recovery for artificially accelerated investments by MVPDs. Though city officials and cable companies argue that build out laws are about “fairness,” the reality is that millions of American households don’t actually need or desire government-driven expansion of video programming, just as there are millions who turn down broadband service despite heavy promotional discounts from competitive broadband providers. Accusations that new video competitors will “cherry pick” consumers and “redline” neighborhoods are uninformed and misplaced.

This plea for government help in staving off competitors should be rejected as quickly as a Nigerian spam scam. Competition is always good for consumers, and in some of the few areas where the Bells have managed to overcome outdated cable franchise laws, the results are astounding.

Keller, Texas is one example. In the summer of 2005, Verizon introduced its FiOS TV service in Keller, offering 180 video and music channels for US\$43.95 a month, or a 35-channel plan for \$12.95 a month. It also offered three tiers of fast Internet access over fiber for \$34.95 to \$199.95.³¹ In response, the local cable company, Charter Communications, dropped its prices, offering a package of 240 channels and fast Internet service for \$50 a month. That amounts to big savings for the people of Keller, compared to the hefty \$68.99 Charter once charged for a TV package alone.

Market forces should be working like this all over the country to benefit consumers. Unfortunately, vested interests like cable companies and local governments, who have controlled and taxed the market for years, are doing everything they can to stand in the way. Legislators should not make Americans wait much longer for government to come through with help in reforming the system. Taking away power and money from local bureaucrats and their paymasters can be a tough slog, but it must be done – and the faster, the better. As economic studies have found, a one-year government-created delay for video service providers like AT&T and Verizon could cost subscribers anywhere from \$6 to \$8 billion in unrecoverable consumer welfare losses.³²

What to do? Policy Reform Recommendations

There are at least three ways that the current system could be reformed – through state reform, federal legislation, or FCC action. On the state level, things are already moving.

In the summer of 2005, Texas governor Rick Perry signed legislation to make it easier for telephone companies to provide IPTV to Texas consumers. Texas took a bold first step as the first state in the nation to allow new video entrants to obtain a state-issued, statewide cable and video franchise instead of requiring franchises from individual municipalities. Under the Texas law, cities still receive franchise fees and retain authority to manage rights-of-way, and there are no mandatory build-out provisions.

“This legislation will ensure that Texas is at the forefront of the telecommunications industry, bringing thousands of new jobs and billions of economic investment to our state,” said Rep. Phil King, House sponsor of the Texas legislation.³³ He’s right, and other states, such as Indiana, have followed suit.³⁴ But not all states have gone about reform in the best possible way.

Virginia’s legislation, for instance, is problematic. Because of a provision in the Virginia state constitution, the legislature could not transfer power to authorize use of municipal public areas to the states. That left cities still in primary control and the franchise process still broken. As a way to deal with the long delays that franchisees often face, the Virginia law specifies that new entrants can opt out of raw negotiations and instead seek an ordinance that specifies among other things that new entrants must comply with build out requirements of an initial service area in a 3 year period, build out to 65% in 7 years, and 80% in ten years.³⁵ For an industry that is now operating on Internet time, these requirements are backward, useless, and serve to pile more red tape on an area that works best when left free from government interference. Fortunately, state governments are not the only way to fix the country’s broken cable franchise system.

The federal government could also pass legislation to address the issue. Indeed, communications is a national, if not international, medium. Therefore, a federal regulatory structure would be preferable to a state structure. Consumers would be better off if Congress were to preempt local franchising authority and create a light-touch regulatory structure. That would avoid a costly patchwork of laws and better fit the natural range of the technology. Some elected officials are working on this issue.

In one of the first moves to modernize America’s outdated communications laws in the summer of 2005, Senator John Ensign, a Nevada Republican, introduced the Broadband Investment and Consumer Choice Act. In its original version, Ensign’s bill would have almost completely wiped out federal and state price controls and protected fiber owners from forced-access rules. Other important parts of the Ensign bill included the elimination of state and local video franchises for all players in the market, as well as preference for privately run communications services over those operated by the government. That’s the right road for American competitiveness, but the FCC could also have an impact.

Indeed, the FCC could act in the same way it did when VoIP hit the scene. When it became obvious that VoIP was set to practically obliterate traditional phone service, state governments attempted to regulate it. The FCC wisely saw that it didn't make sense to have a patchwork of laws for a national, and indeed international, service, so the agency pre-empted state meddling.³⁶ The same could happen for the video market and current FCC Chairman Kevin Martin seems amenable to the idea.

In mid-2005, Martin was quoted saying that “we need to place all broadband providers on equal footing so that they can fairly compete in the marketplace. This means that we must treat all such providers in the same manner – free of undue regulation that can stifle infrastructure investment.”³⁷

He's right, and one way to solve the problem of different rules for cable and phone services is for the FCC to stipulate one policy for IPTV and, as with VoIP, pre-empt the states from touching it. That way, when both cable and telco companies move their services to the Internet, as they are obviously attempting to do, the providers will be on a more equal footing and real competition can thrive.

There have been other positive statements from Chairman Martin as well. In an August 2005 statement to *USA Today*, Mr. Martin said, “I asked the staff to explore what the Commission can do to ensure that local authorities are not unreasonably refusing to award additional competitive licenses” for video. That's a not-so-subtle message that if the problem isn't solved soon, the FCC may act in the interests of broadband deployment and consumer well being. Shortly following Martin's remarks, the FCC requested public comments on how to ensure that LFAs do not unreasonably refuse a franchise to competitive entrants³⁸

Although it remains unclear which governmental body will wind up reforming the rules, there are some key ideas that should guide the reform process. These include:

- **Regulations should be reduced for all video providers.** Companies can provide better packages and rates when industry rules foster capital expenditures and new market investment. Cable, telephone, satellite, wireless, and other providers should be regulated lightly and be allowed to strongly compete for consumer loyalties. Current cable franchisees should also be freed from many of the overly burdensome provisions that distort business practices and policy making.
- **Local and state “level playing field” (LPF) laws are destructive.** LPF laws serve to establish another costly hurdle for competitive MVPDs to clear, squeezing many companies out of the market. A true level playing field law would eliminate burdensome requirements, not extend them.
- **The pork politics of cable franchise negotiations must end.** Federal lawmakers should prohibit the “goodie bag” compensation franchisees routinely fork out for the use of public right of way. Adding costs and responsibilities to a franchise agreement raises cable rates for local residents, many of who will never benefit from the superficial agreements.

- **“Build out” requirements under many franchise agreements should be discarded.** Forcing video providers to pay for more equipment than is necessary to serve consumers is a wasteful and naïve policy. Facilitating new market entrants is a more sustainable way to achieve local service ubiquity than are heavy-handed mandates that needlessly overrun business costs.
- **Municipal cable service is costly and unnecessary.** Rather than eliminate local barriers to entry, some municipalities have chosen to muscle into the cable business themselves. That is a venture that real competition could provide more efficiently, with much less risk to taxpayers. Removing profit and loss from the equation, government cost projections run the risk of appearing rosy and optimistic, and may not receive the same scrutiny as a competitive MVPD would. Satellite video providers already have the ability to reach nearly 100% of all American households. A national ban on municipal video programming service would prudently compel city politicians to find more responsible alternatives to lowering service costs and facilitating new investment by video providers.

Conclusion: True Reform and Competition Will Bring America Up to Speed and Benefit Consumers

The cable franchise system was originally put in place to protect consumers from monopoly powers of cable providers, but now that the threat of monopoly has been extinguished, so too should the rules.

Innovations in technology are improving the communications landscape, and policy makers must ensure that all consumers realize the full benefits. There is a long history of legislation and regulation in this area that includes unfortunate times when local governments used their franchise authority for unrelated purposes.

Competition in the cable market is now potentially as wide as the market for broadband itself. Cable competes with DSL, satellite, and wireless for market share, and as new broadband technologies become available, competition will get ever more intense. But that will only happen if the laws are mended such that everyone can compete without government regulations picking winners and losers.

The regulatory fix could come from state governments, Congress, or even the FCC. Since broadband and the video service that travels over it is a national, if not international, medium, it makes more sense to have national rules rather than a patchwork of state requirements.

A healthy communications sector affects how well America can compete with the rest of the world, yet the United States is falling behind. It's time for true reform – for governments to cease the pork politics of cable franchise, for build-out requirements to disappear, for governments to stop competing with the private sector, and for a stable, light-touch regulatory framework for video.

Notes

- ¹ United States. Federal Communications Commission. Annual Assessment Of The Status Of Competition In The Market For The Delivery Of Video Programming. 11th Edition. Washington: FCC, 2005.
- ² The Communications Act of 1934, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996.
- ³ It should be noted that municipalities charge additional fees to actually dig up streets, which can run up to thousands of dollars per construction day.
- ⁴ 47 U.S.C. § 542.
- ⁵ For an example see: Edwards, Greg. "Verizon Wants Into Cable TV Business." Richmond Times 3 February 2005.
- ⁶ Gardner F. Gillespie, *Rights-of-Way Redux: Municipal Fees on Telecommunications Companies and Cable Operators*, 107 Dick. L. Rev. 209 (2002).
- ⁷ For more on the 1984 Cable Act, see "Should Telephone Companies Provide Cable TV?" by Thomas W. Hazlett, *Regulation*, Vol. 13 No. 1 (1990).
- ⁸ 47 U.S.C. § 543.
- ⁹ 47 C.F.R. § 76.922.
- ¹⁰ For more on the 1992 Cable Act, see *Longer Than The Old Testament, More Confusing Than The Tax Code: An Analysis of the 1992 Cable Act* by Rafael G. Prohias, 2 CommLaw Conspectus 81 (1994).
- ¹¹ 47 U.S.C. § 541(a)(1).
- ¹² Hazlett, Thomas W. "Wiring the Constitution for Cable." *Regulation*, Vol. 12, No. 1 (1988).
- ¹³ Alexander, Donald L. "Laying Cable and Competition." Michigan Privatization Report Summer 1999.
- ¹⁴ Due to regulatory changes under the 1996 Telecom Act, cable operators cannot be required by municipalities to provide voice or Internet services to obtain a franchise, other than for connectivity for local government buildings.
- ¹⁵ "City of Palo Alto Administrative Services Cable Franchise Agreement," 2005. City of Palo Alto, California. December 14, 2005. <<http://www.city.palo-alto.ca.us/cable/franchise-agreement.html>>.
- ¹⁶ "Telecommunications Commission: AT&T Cable Franchise December 1999." 2005. City and County of San Francisco, California. December 14, 2005.
- ¹⁷ States with LPF laws include Alabama, California, Connecticut, Florida, Illinois, Kentucky, Minnesota, New Hampshire, Oklahoma, Tennessee, Virginia. Source: Thomas W. Hazlett and George S. Ford, "The Fallacy of Regulatory Symmetry: An Economic Analysis of the 'Level Playing Field' in Cable TV Franchising Statutes," *Business and Politics* Vol. 3, No.1 (2001): 21-46.
- ¹⁸ According to the American Public Power Association, 102 cities across the U.S. operated cable television systems by the end of 2004. American Public Power Association. 2005-06 Annual Directory & Statistical Report. Washington, D.C.: American Public Power Association, 2005, p. 230. <http://www.appanet.org/files/PDFs/APPD0005_C.pdf>.
- ¹⁹ Kathryn A. Tongue, *Municipal Entry Into the Broadband Cable Market: Recognizing the Inequities Inherent in Allowing Publicly Owned Cable Systems to Compete Directly Against Private Providers*, 95 Nw. U.L. Rev. 1099 (2001).
- ²⁰ Sager, Brenden. "Acworth Bears Brunt of More Cable Woes," Atlanta Journal and Constitution 7 Jul. 2005.
- ²¹ Angelini, James P., John S. Barrett, Jonathan Haughton, and David G. Tuerck. "Cashing In On Cable: Warning Flags for Local Government," Beach Hill Institute, October 2001.
- ²² Before Texas, Indiana, and Virginia passed state franchise legislation, the number of local franchises in the U.S. was around 30,000. Now, the number is somewhat lower. Source: Federal Communications Commission.
- ²³ Kurth, Joel. "Customers With Options Are Happier; Cable Competition in Metro Detroit; Rates and Service Rank As Top Gripest of Cable Viewers," Detroit News 28 June 2002: Pg. 06A; United States Government Accountability Office, Telecommunications: Subscriber Rates and Competition in the Cable Television Industry. Statement of Mark L. Goldstein. Washington: GAO, 2004.
- ²⁴ United States Federal Communications Commission. Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992/Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment. Washington: FCC, 2005.
- ²⁵ Government Accountability Office, Telecommunications: Subscriber Rates and Competition in the Cable Television Industry. Statement of Mark L. Goldstein. Washington: GAO, 2004.
- ²⁶ United States. Federal Communications Commission, Annual Assessment Of The Status Of Competition In The Market For The Delivery Of Video Programming, 12th Edition. Washington: FCC, 2006.
- ²⁷ American Customer Satisfaction Index, Annual Report. Ann Arbor: American Customer Satisfaction Index, 2005.
- ²⁸ "IPTV to challenge existing pay TV platforms," by Adam Thomas , Informa Telecoms & Media, August 12, 2005.
- ²⁹ "Telco TV in Mass Deployment Phase," by Michelle Abraham, In-Stat, August 2005.
- ³⁰ "Telco TV Expected to Surge," by Jim Wagner, *Internet News.com*, September 6, 2005.
- ³¹ See: <http://www22.verizon.com/FiOSforhome/channels/FiOS/root/package.aspx>
- ³² George S. Ford and Thomas M. Koutsky, " 'In Delay There is No Plenty': The Consumer Welfare Cost of Franchise Reform Delay," *Phoenix Center Policy Bulletin*, No. 13 p. 1. Washington, D.C.: January 2006.
"Public Interest Comment on Video Franchising." Mercatus Center. Washington, D.C.: February 13, 2006.

Robert W. Crandall, J. Gregory Sidak and Hal J. Singer. "The Competitive Effects of Telephone Entry into Video Markets," Criterion Economics. Washington, D.C.: November 9, 2005.

³³ "Perry Signs Telecommunications Reform Bill," Office of the Texas Governor press release, September 7, 2005.

³⁴ On February 28, 2006 the Indiana legislature passed a telecommunications reform package. For more, see "House approves telecom reform bill," by J.K. Wall, The Indianapolis Star. <http://www.indystar.com/apps/pbcs.dll/article?AID=/20060301/NEWS02/603010428/1006/NEWS01>

³⁵ "Governor Signs Bills to Modify Cable Franchising in Virginia," March 10, 2006, National Cable and Telecommunications Association.

³⁶ "FCC Finds That Vonage Not Subject To Patchwork Of State Regulations Governing Telephone Companies," November 9, 2004. Federal Communications Commission. December 14, 2005. <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-254112A1.doc>. <http://66.102.7.104/search?q=cache:BU6u2I4W3I4J:hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-254112A1.pdf+fcc+preempt+voip&hl=en>.

³⁷ Kevin Martin, "United States of Broadband." Wall Street Journal. 7 July 2005.

³⁸ "FCC Initiates Rulemaking to Ensure Reasonable Franchising Process for New Video Market Entrants," November 3, 2004. Federal Communications Commission. Last accessed on February 10, 2006. <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-262015A1.doc>.

PRI submitted public comments to the FCC on this proceeding: Sonia Arrison and Vince Vasquez, *Reforming the Cable Franchise System: Response to the Request for Comments on the Notice of Proposed Rulemaking FCC 05-189*. Submitted February 10, 2006. <http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518324932>.

About the Authors

Sonia Arrison

Sonia Arrison is director of Technology Studies at the California-based Pacific Research Institute (PRI) where she researches and writes on the intersection of new technologies and public policy. Specific areas of interest include privacy policy, e-government, intellectual property, nanotechnology, longevity issues, and telecommunications.

She is a weekly columnist for *Tech News World* and her work has appeared in many publications including CBS MarketWatch, CNN, *Los Angeles Times*, *Sacramento Bee*, *San Francisco Chronicle*, *San Jose Mercury News*, *The National Post*, *Washington Times*, and *USA Today*. A frequent media guest and National Press Club First Amendment Scholar, Ms. Arrison has appeared on National Public Radio's Forum, Tech TV, CBC's *The National*, and CNN's *Headline News*. She was also the host of a radio show called "digital dialogue" on the Voice America network.

Arrison is author of several major PRI studies including *Canning Spam: An Economic Solution to Unwanted Email*, *Being Served: Broadband Competition in the Small and Medium Sized Business Market*, and *Consumer Privacy: A Free Choice Approach*. She is co-author of *Upgrading America's Ballot Box: The Rise of E-voting*, *Crossed Lines: Regulatory Missteps in California Telecom Policy*, *Punishing Innovation: A Report on California Legislators' Anti-Tech Voting*, *Internet Taxes: What California Legislators Should Know*, and editor of *Telecrisis: How Regulation Stifles High Speed Internet Access*.

Often asked for advice on technology issues, Arrison has given testimony and served as an expert witness for various government committees such as the Congressional Advisory Commission on Electronic Commerce and the California Commission on Internet Political Practices. She is an instructor for California's Command College and serves on the advisory boards for the Acceleration Studies Foundation, the California Women's Leadership Association, and Lead21.

Prior to joining PRI, Arrison focused on Canadian-U.S. regulatory and political issues at the Donner Canadian Foundation. She also worked at the Fraser Institute in Vancouver, B.C., where she specialized in regulatory policy and privatization. She received her BA from the University of Calgary and an MA from the University of British Columbia.

Vince Vasquez

Vince Vasquez is a public policy fellow in technology studies at the Pacific Research Institute (PRI). He works on a wide variety of current high-tech policy issues, including universal service, telecommunications, municipal broadband, the digital divide, biotechnology, e-government, and privacy.

Mr. Vasquez's opinion pieces have been published in the *Wall Street Journal*, *San Jose Mercury News*, *San Francisco Examiner*, *San Francisco Business Times*, *the Houston Chronicle* and *Red Herring*. He is the author of *Digital Welfare: the Failure of the Universal Service System*, and the co-author of other PRI publications, including *Upgrading America's Ballot Box: the Rise of E-Voting*, and *Crossed Lines: Regulatory Missteps in California Telecom Policy*. Mr. Vasquez is also the author of *Financing Freedom*, a fundraising manual for grassroots politics which he wrote before joining PRI.

Also prior to coming to PRI, Mr. Vasquez worked at the Leadership Institute, a non-profit educational foundation in Arlington, Virginia. Mr. Vasquez earned a B.A. in political science at the University of California - San Diego, where he was also editor-in-chief of the *California Review*, a conservative journal.

About the Pacific Research Institute

The Pacific Research Institute champions freedom, opportunity, and personal responsibility by advancing free-market policy solutions. It provides practical solutions for the policy issues that impact the daily lives of all Americans. And it demonstrates why the free market is more effective than the government at providing the important results we all seek – good schools, quality health care, a clean environment, and economic growth.

Founded in 1979 and based in San Francisco, PRI is a non-profit, non-partisan organization supported by private contributions. Its activities include publications, public events, media commentary, community leadership, legislative testimony, and academic outreach.

Education Studies

PRI works to restore to all parents the basic right to choose the best educational opportunities for their children. Through research and grassroots outreach, PRI promotes parental choice in education, high academic standards, teacher quality, charter school, and school finance reform.

Business and Economic Studies

PRI shows how the entrepreneurial spirit – the engine of economic growth and opportunity – is stifled by onerous taxes and regulations. It advances policy reforms that promote a robust economy, consumer choice, and innovation.

Health Care Studies

PRI demonstrates why a single-payer, Canadian model would be detrimental to the health care of all Americans. It proposes market-based reforms that would improve affordability, access, quality, and consumer choice.

Technology Studies

PRI advances policies to defend individual liberty, foster high-tech growth and innovation, and limit regulation.

Environmental Studies

PRI reveals the dramatic and long-term trend towards a cleaner, healthier environment. It also examines and promotes the essential ingredients for abundant resources and environmental quality property rights, markets, local actions, and private initiative.

Join Pacific Research Institute in "Putting Ideas Into Action."

"This Institute has done so much to further the idea of a law-governed liberty."

- **Margaret Thatcher**
Former British Prime Minister

"PRI is one of the more innovative and effective think tanks in the world."

- **Milton Friedman**
Nobel Laureate

Pacific Research Institute promotes the principles of individual freedom and personal responsibility. The Institute believes these principles are best encouraged through policies that emphasize a free economy, private initiative, and limited government. By focusing on public policy issues such as education, economics, health care, technology, and the environment, the Institute strives to foster a better understanding of the principles of a free society among leaders in government, academia, the media, and the business community.

NAME _____

TITLE _____

AFFILIATION _____

PHONE (DAY) _____

ADDRESS _____

PHONE (EVENING) _____

CITY/STATE/ZIP _____

E-MAIL _____

Your Contribution

- | | |
|--|---|
| <input type="checkbox"/> PRI Donor (\$25) | <input type="checkbox"/> James North Society (\$10,000) |
| <input type="checkbox"/> PRI Donor (\$100) | <input type="checkbox"/> Adam Smith Society (\$25,000) |
| <input type="checkbox"/> PRI Donor (\$250) | <input type="checkbox"/> Friedrich A. Hayek Society (\$50,000) |
| <input type="checkbox"/> PRI Policy Sponsor (\$1,000) | <input type="checkbox"/> Milton and Rose Friedman Founders Circle (\$100,000) |
| <input type="checkbox"/> PRI Policy Leader (\$2,000) | <input type="checkbox"/> Sir Antony Fisher Foundation Circle (\$250,000) |
| <input type="checkbox"/> PRI Policy Benefactor (\$5,000) | <input type="checkbox"/> Other \$ _____ |

Or **Recurring Donation** (credit card only):

Monthly Quarterly Amount \$ _____

Please charge my tax-deductible donation to my: Visa MasterCard American Express

Card #: _____ Expiration Date: _____

Cardholders Name: _____

Signature: _____

I would like a make a contribution of stocks/securities.

(For details you may call 415-955-6112.)

Please send me updates on PRI's programs

Please send payment and form to:

Pacific Research Institute
Development Department
755 Sansome Street, Suite 450
San Francisco, CA 94111

A 501 (c)(3) charitable organization. Federal ID #94-2528433