

The Honorable _____ [your U.S. Senator]
_____Senate Office Building
Washington, DC 20510
Via Facsimile: 202- _____

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Washington, DC 20510
Via Facsimile: 202- _____

Via US Mail and Facsimile:

Re: S. 1504 - Broadband Investment and Consumer Choice Act

Dear Senator _____ and _____:

I write to respectfully request that you oppose the pending Broadband Investment and Consumer Choice Act as introduced by Senators Ensign and McCain. This bill will be harmful to your constituents in my community, and it will deprive us of badly-needed funds that are currently part of our municipal budget. It is imperative that you not accept the assertions of industry stakeholders that the bill does not cause such harms. Although Senator Ensign indicated in his introductory remarks and in his summary of the proposed legislation that he believes his bill will encourage investment and competition and promote “widely affordable and high quality service, video and data services to all Americans,” I do not believe that will be the outcome if this bill were to become law.

While I fully support the introduction of competitive choice, and welcome innovation, the language of the Senator’s bill would not provide for such competitive choice or innovation to the citizens served by our communities. It would instead give windfall benefits to entrenched incumbent telephone and cable companies, deprive local governments and their residents of competitive alternatives, deny consumers effective means of redress, and suck millions of dollars of revenue per year out of local government budgets.

I would be pleased to review with you in detail the vast array of problems this proposed rewrite of our national communications law presents. To provide but a few examples, allow me to point out that on its face, S. 1504 does the following:

- The bill would preempt all local authority over the provision of cable and video services within the community, including the ability of local governments to provide appropriate oversight of entities conducting business within their jurisdiction and in their streets.
- Privately, previously negotiated contracts between local governments and cable operators would be abrogated under the terms of the bill, creating a huge and

unnecessary subsidy to private industry, a subsidy paid for out of local governments' budgets.

- The bill would eliminate the 5% cable franchise fee and replace it with a new compensation methodology on video providers' use of local streets that would deprive local governments of an agreed-upon bargain and substitute the federal government's judgment for that of the contracting parties, further interfering with the contract rights, obligations and benefits established under existing federal law. These new requirements and restrictions would result in the creation of a huge subsidy to the cable and telecommunications industries – again, a subsidy paid for by local governments and their taxpaying residents.
- The bill would further substantially reduce the revenues that are encompassed within the contractual and statutory definition of “Gross Revenues” in the current Cable Act, meaning that the bill would guarantee that local governments' revenues from franchise fees would be significantly less due to the smaller revenue base.
- The bill would substantially reduce the amount of capacity which may be required by local governments to meet their communities' needs in the form of public, educational and government (“PEG”) access, while stripping local government of the ability to obtain support for the use of the capacity – part of the bargain contained within currently negotiated franchise agreements. The result is that local government will be unable to ensure that the community's needs and interests are addressed.
- The bill would deprive consumers of the ability to address local issues locally, by removing to the state all customer service issues, and further by denying consumers any form of recourse for any actions of a communications provider.
- The bill would eliminate any build-out requirements for any video service provider and thus permit video providers to discriminate in favor of upper income neighborhoods in making their services available.
- The bill would preempt the applicability of any state or local law to the communications industry that is not generally applicable to all businesses, therefore potentially preempting any state or local law applicable only to certain classes of businesses such as utilities or rights-of-way users (such as requiring utilities to underground their facilities or ensuring electric code compliance).
- The bill would prohibit local governments from imposing any fee for issuance of rights-of-way construction permits, yet would require local governments to act on requests for permits in a federally-prescribed “timely manner,” thereby insinuating inappropriate federal government involvement in the basic management of local rights-of-way.
- The bill would prohibit municipalities and their utilities from providing communications services without giving a right of first refusal to private industry,

and then would grant private industry unfettered access to all municipal facilities and financing arrangements in the event private industry chooses to provide services.

- The bill would deprive local government of the ability to establish and maintain government owned and operated networks, known as institutional networks, that may be utilized by first responders and other government officials in the day-to-day management of the local government's business.
- The bill would eliminate current federal law protections against preemption of local zoning decisions relating to the placement of cell towers, depriving local government of the ability to ensure that such towers are safely and appropriately located in areas to provide the greatest degree of services without unnecessarily posing a hazard to the public health, safety and welfare.
- The bill would expose local governments to scores of new types of legal claims and lawsuits by the communications industry, while eliminating the damages immunity that local governments are granted under current federal law.

While some degree of reform to our existing telecommunications laws may be in order to better address the changes and convergence of technology, such modifications should not be made in the absence of reasoned and considered thought, which includes the consultation with state and local elected officials who also represent the concerns of the citizens of this great nation. To craft laws only for the protection and benefit of private industry, to the exclusion of the public interest, would be a disservice to both our constituents and our county. I trust that I may rely upon your good judgment to ensure that your local and state partners are fully consulted, and the needs of their constituents fully considered, before you take action on any pending rewrite of the telecommunications laws.

Local governments support competition and are excited to see the introduction of new services within our communities. We have a long and very successful history of supporting the introduction of such services, and are proud of the extensive successful deployment of broadband infrastructure by the cable industry, a successful deployment made possible in large part by the current system of local cable franchising. Unfortunately, S. 1504 fails to learn the lessons of that successful deployment, and we believe the bill would result in less competition and less choice overall for consumers. For these reasons, I ask that you oppose this legislation.

Thank you for your time and attention.

Sincerely,