Policy Brief

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Assessing the Case for Cable Franchise Reform

by Diane S. Katz

Executive Summary

Advances in technology now make it possible for both cable firms and telecommunications companies to provide voice, data and video services to most homes and businesses. This constitutes a dramatic change from the days of cable dominance in the video market, and that of the "Baby Bells"[1] in telephone service. What hasn't changed, however, is the franchise* regime that has long limited access to the local market and thus inhibited competition. In this paper, we examine the effects of this obsolete regulation on consumers and the economy, as well as the myriad benefits of reform.

Until recently, it was widely assumed that cable service constituted a "natural monopoly." Since the 1940s, many municipalities have required cable service providers to obtain a franchise in order to operate. These regulatory instruments typically delineate the rates, terms and conditions of service, including the use of public rights-of-way in the deployment and maintenance of network infrastructure.

Local officials imposed franchise obligations on cable firms to protect consumer welfare. In so doing, however, they fostered the very market power that franchising was intended to tame. Unfortunately, municipal franchising has evolved from a means to protect consumers to a regulatory advantage that protects the incumbent cable operator from competition. Indeed, our survey of cable rates in many Southeast Michigan communities shows that those rates have, on average, experienced an annualized rate of increase that is nearly 38 percent above the annual inflation rate from 1991 to 2006.

Much of the local franchise regulation in force today was fashioned in the 1960s and 1970s — the Cyberspace equivalent of the Stone Age. But the emergence of alternative video technologies has prompted franchise reforms in California, Texas, Virginia, Indiana, Kansas, South Carolina and North Carolina in recent months. Legislation now pending in the Michigan House would replace municipal franchising with a statewide uniform franchise. If enacted, the reform promises to ease market entry for newcomers and, therefore, promote competition in video services.

In the following pages, we briefly examine the history of cable TV and the regulatory whipsawing that has plagued the industry since its very early years. This section is followed by an overview of market conditions for video services. We then turn to the particulars of municipal franchising, including its underlying assumptions, market effects and economic pitfalls. We conclude with an analysis of pending legislation and recommendations for reform.

Given the time we spend viewing television — more than eight hours per day per household, on average — franchise reform would have a significant impact on millions of Michigan residents. If successful, consumers stand to gain far greater power over the cost and quality of video service. Otherwise, we will continue to experience ever-higher cable rates and miss out on remarkable new video functionality made possible by technological progress.

* A regulatory instrument established by a local unit of government to delineate the terms and conditions under which a cable television company is authorized to provide service.

About the Author

Diane S. Katz is director of science, environment and technology policy with the Mackinac Center for Public Policy. Prior to joining the Center, Katz served for nine years as a member of The Detroit News editorial board, specializing in science and the environment, telecommunications and technology, and the auto industry. Her work has won numerous awards, including top honors from the Michigan Press Association in 1994, 1996, 1997 and 1998.

The Early Years

The history of cable television is a chronicle of ingenuity. Among its pioneers was John Walson, who took up selling television sets in 1947 from his appliance store in Pennsylvania's southern coal country. Sales were slow, however, in no small part because of lousy reception in the valley town situated some 90 mountainous miles from station transmitters in Philadelphia. Not to be bested by the terrain, Walson attached an antenna to a utility pole atop a nearby peak, and ran cable and signal boosters to his store and to the homes of customers located along the way. Thus was born the first community access TV system.

Antennas soon sprouted from ridges and rooftops in other rural settings, which inspired Milton Jerrold Shapp to develop a master antenna from which coaxial cable and amplifiers would deliver multiple signals simultaneously to multiple dwellings. After reading about Shapp's innovation, fellow appliance salesman Robert Tarlton organized television dealers in Lansford, Pa., to wire their town with cable. Operating under the name Panther Valley Television, Tarlton's group obtained a franchise from local authorities on the condition that the company pay a tax on the service — likely the nation's first cable franchise fee.[2] Much publicity ensued, and Panther Valley became the catalyst for community cable systems across the country.

Early cable systems simply improved the reception in rural areas of local channels. Cable firms soon began experimenting with microwave technology to import additional programming from distant cities. Community access TV systems that once transmitted only three local network channels soon offered programming from independent stations elsewhere. Not surprisingly, consumers responded favorably to this expansion of choice, and the service moved beyond rural communities to cities.

Local station owners and executives of ABC, NBC and CBS did not take kindly to the new competition, and demanded regulatory protections from the Federal Communications Commission. They worried that cable TV would divert viewers to stations elsewhere and thus undermine ad revenue, as rates are determined on audience size. Meanwhile, stations whose signals were imported protested that cable was profiting from their programming without compensation to them. The resulting service restrictions imposed on cable virtually paralyzed the nascent industry for two decades, and set an unfortunate precedent of government interference in cable TV service.

Consequently, in 1959 the FCC prohibited a cable company from importing a broadcast signal. Within five years, cable operators in the 100 largest television markets were required to obtain permission before importing a distant signal — permission that was rarely granted. The commission went on to limit the number of station signals a cable system could carry and to restrict the broadcast of movies, sports and syndicated programming.[3] Thereafter, access to capital for cable expansion became difficult to obtain.

Cable TV was rescued from its regulatory doldrums by the inventiveness of Charles Frances Dolan. Faced with the challenge of wiring lower Manhattan in 1965, Dolan laid cable beneath the city streets to avoid the signal interference of New York skyscrapers.[4] Five years later, he conceived of an independent channel for which subscribers would pay a premium to receive commercial-free movies and sports. Dolan's channel subsequently became Home Box Office (HBO), which debuted on November 8, 1972 with coverage of the New York Rangers vs. the Vancouver Canucks. Only a few hundred viewers in Wilkes Barre, Pa., had access to HBO that first night. Subsequent use of satellite technology ultimately made HBO the world's largest subscription cable service, with more than 11.5 million viewers.[5] In demonstrating that consumers would actually pay for programming, Dolan revolutionized the television industry.

Video Market Dynamics

From meager beginnings, the market for cable TV and other video services (collectively called Multichannel Video Program Distribution) has undergone tremendous growth. Indeed, the average household watches more television today than at any time in history — some eight hours and 11 minutes per day.[6] Of the 110 million households with a television, nearly 86 percent subscribe to cable, satellite or other video service.[7] There are nearly 15.4 million households with television that do not subscribe to a video service, and thus rely solely on over-the-air broadcast television for their programming.[8]

Cable firms serve the largest percentage of the video market, with a share of 69.4 percent.[9] Home satellite services such as DIRECTV and the DISH Network rank a distant second, with a market share of 27.7 percent.[10]

Consumer groups have complained for years that cable's dominance, fostered by monopolistic franchise regulations and federal law, has kept rates artificially high and service quality abysmally low. Indeed, the Cable Communications Policy Act of 1984 explicitly prohibited the Baby Bells, the most likely competitor to cable, from providing video service.

"With this near impenetrable protection from competition … Congress enabled cable operators to exploit their monopoly power," notes Jonathan Samon, of the Georgia Institute of Technology.[11]

The cable industry disputes such claims, citing satellite as a competitive check on its market power. This might be more accurate were satellite services to be a true substitute for cable. But researchers have determined that satellite competition has not exerted meaningful pressure on cable rates.[12] Technological constraints diminish the competitive force of satellite service. For example, the quality of satellite service varies considerably depending on a subscriber's location; clear reception often requires a home with a southern view. Buildings, inclement weather and even trees may cause signal interference. Moreover, some satellite services do not carry local TV channels, which cable systems are required to broadcast. Satellite also suffers from high installation costs relative to cable.

"We find that if you raise the price of cable, not that many people switch to satellite," said Austan Goolsbee, the University of Chicago's Robert P. Gwinn Professor of Economics.[13] "This suggests that cable is not very price sensitive and, therefore, has a fair degree of market power. Satellite, on the other hand, is extremely price sensitive."

Government researchers likewise have found that competition from satellite service has little affect on cable rates.[14] However, satellite competition does tend to induce cable operators to add new program choices to their line-up.[15]

What does constrain high cable TV rates is competition between cable providers or from wire line firms, such as a telephone company. A 2003 study by the U.S. General Accounting Office found that competition from a wire line provider resulted in cable rates that were "substantially lower" (by 15 percent) than in markets without such competition.[16] The GAO also assessed the impact on cable rates where a broadband service provider offers competing video service. In markets with competition from broadband, the study found cable rates ran 23 percent less, on average, and service quality improved.[17]

Many consumers have access to both cable TV and satellite service. But only about 1.5 percent of households with video service nationwide enjoy effective competition based on the presence of a wire line competitor, according to the FCC.[18] While federal law prohibits municipalities from granting exclusive franchises, cable firms have long exercised a de facto monopoly.[19]

Government interference in the video market, notably the monopolistic nature of the cable franchise regime, is a significant factor in this lack of competition.

The Municipal Franchise Regime

Municipalities instituted cable franchising under the assumption that cable service was a "natural monopoly." The theory of natural monopoly, now widely questioned, presumes that more than one cable network in any given community would be economically inefficient. That is, the high costs of constructing a cable network are affordable only if a service provider can garner a large share of the market in order to lower average costs over the long-run.

The regulation of rates and terms of service were intended to subdue the market power of cable's supposed natural monopoly, as well as to regulate the use of public property in the deployment and maintenance of network infrastructure. Meanwhile, municipal budgets have long benefited from the $3 billion in franchise "fees" collected annually nationwide — not to mention a variety of in-kind services such as free TV time for local office holders. Former New York Mayor John Lindsay characterized cable franchises as "urban oil wells beneath our city streets."[20]

In reality, the cable "fees" that flow to municipalities come from consumers' pockets. Cable operators are free to pass the cost of franchise "fees" directly to their customers. Therefore, franchise fees are simply a hidden tax. According to researcher Jonathan Samon, of the Georgia Institute of Technology: "This system is unjustified because the costs passed on to consumers from the cable companies constitute an essentially needless wealth transfer from consumers to their municipality."[21]

Residents of 12 Michigan cities became fed up two years ago and filed lawsuits alleging that franchise fees collected from some 700,000 subscribers exceeded the amount needed for cable TV services. Indeed, substantial fee revenue flows into cities' general funds.

Many analysts attribute the market dominance of cable to the absence of competitive technologies. In hindsight, competition could have restrained monopolies by generating new technologies and applications that instead took decades to achieve. The eventual emergence of broadband and the Internet offer customers real choice among video service providers — as long as newcomers are allowed market entry. As further noted by Jonathan Samon:

> "A large factor in the monopoly status of cable television operators is that no viable technology provided true competition to the array of services available through cable during the 1970s and 1980s. The further

development of competing technologies and services over the next two decades, however, created viable alternatives that weakened cable's de facto monopoly status.

"As competition continues to embed itself in the industry, the future for the video marketplace looks bright for customers and providers alike. Officially breaking the monopolistic stranglehold that cable companies enjoy over consumers by eliminating exclusive cable franchises would significantly brighten that picture." [22]

Why Municipal Franchising Is Obsolete

The Telecommunications Act of 1996 was intended to reduce regulatory inconsistencies resulting from dramatic changes in telecommunications technologies. A key element of the act was the phase-out of price controls on cable TV, which had inhibited competition and network investment. The statute also allowed cable firms to provide telephone service and for the telephone companies, in turn, to enter the video market.

Whereas past regulation was structured to control cable monopolies, the development of competing video technologies — fiber optics and Internet transmissions, in particular — rendered such regulation obsolete. A variety of new services and service providers made competing network infrastructure far more affordable, particularly when bundling voice, video and data services as a single package. Thus, the municipal franchise system imposed decades ago has been overtaken by the abundant, affordable video options available today. Differences among the various alternatives are outlined below.

- With traditional cable TV service, all available programming is transmitted to a pipeline into the premises. A set-top box, TV tuner or VCR unscrambles the signals based on a customer's service tier. Many cable systems have upgraded their networks in recent years with fiber-optic lines, which increase transmission capacity, speed and signal clarity.[23]
- The Internet-based networks developed by telecommunications firms only transmit to the premises the content a customer selects. The signals are transmitted via a Digital Subscriber Line (DSL).[24] This frees up bandwidth to be used for customized applications.

  Under current federal law, Internet-based video services are exempt from local franchise requirements. This was reinforced recently by opinions from the Oklahoma attorney general as well as Connecticut's Department of Public Utility Control.
- Satellites operate as celestial antennas, relaying signals to and from computers and to a subscriber's satellite dish. The transmissions are weather sensitive and more prone to landscape interference than other technologies. Satellite service cannot offer the "triple play bundles" of voice, video and data service.
- Several cellular telephone companies offer wireless video services through handheld devices. In general, users may select segments of news, sports, weather and music videos, although full-length video is available on a limited basis.

The Impact of Municipal Franchising

Municipal franchising of cable TV is supposed to serve consumers' interests, but consumers hardly feel well-served: Cable garnered lower customer satisfaction scores than the Internal Revenue Service in a recent survey.[25] Consumers complain most often about cost and service quality.

This dissatisfaction is understandable. Although the Consumer Price Index increased by 2.52 percent annually between 1991 and 2006, the price of cable increased by an annual average of 3.47 percent in that period. Not surprisingly, rates were measurably less in communities with competition in cable services. According to government figures, the monthly cable rate was 15.7 percent lower in competitive markets compared to those without competition.[26]

Cable industry executives insist that rates are rising because customers are getting more for their money. Therefore, in our survey of 15 communities in Southeast Michigan, the state's most populous region, we calculated changes in cable rates on a per-channel basis. The average of the increases over 15 years was nearly 67 percent. In fact, cable rates in these communities have on average experienced an annualized rate of increase that is nearly 38 percent above the annual inflation rate from 1991 to 2006.

Consumers are indeed getting more channels in their cable packages. But it is important to note that customers have little choice when a cable operator decides unilaterally to add channels and charge more for them.

Cable TV Rate Changes in 15 Michigan Communities

City	Monthly Rate 1991	Rate Per Channel 1991	Monthly Rate 2006	Rate Per Channel 2006	Nominal Increase	Real Increase
Royal Oak	$20.25	$0.30	$43.49	$0.65	114.8 %	47.8 %
Detroit	$17.00	$0.31	$48.99	$0.65	111.3 %	45.4 %
Troy	$20.25	$0.29	$43.49	$0.61	108.7 %	43.6 %
Berkley	$20.25	$0.30	$43.49	$0.61	103.3 %	39.9 %
Southfield	$18.50	$0.40	$48.99	$0.71	76.5 %	21.5 %
Taylor	$16.50	$0.38	$43.49	$0.63	68.1 %	15.7 %
Pontiac	$19.95	$0.45	$48.99	$0.74	63.7 %	12.7 %
Bloomfield Hills	$19.68	$0.44	$48.99	$0.70	60.0 %	10.1 %
Livonia	$16.95	$0.35	$43.95	$0.55	55.6 %	7.1 %
Birmingham	$19.68	$0.44	$48.25	$0.67	53.2 %	5.4 %
Dearborn	$18.90	$0.40	$43.49	$0.61	52.3 %	4.8 %
Farmington Hills	$16.95	$0.39	$43.95	$0.55	39.4 %	- 4.1 %
Warren	$21.75	$0.49	$43.49	$0.66	33.3 %	- 8.3 %
Plymouth	$19.95	$0.49	$43.49	$0.64	31.4 %	- 9.6 %
Inkster	$16.95	$0.51	$48.99	$0.67	30.7 %	- 10.1 %
AVERAGE	$18.97	$0.41	$45.70	$0.64	66.8 %	14.8 %

Sources: 1991 Data from Tim Kiska and The Detroit News; 2006 data from Comcast and Bright House.

As noted earlier, the technology to deliver competing video services does exist, but few consumers actually have access to the range of service options. The principle culprit is local franchising, which, according to numerous studies, restricts competitors' entry into the local market.

The number of municipal franchising authorities nationwide exceeds 33,000, and there are some 1,200 in Michigan alone.[27] Internet-based video services are not explicitly compelled by law to obtain a local franchise from a municipality, as is cable. Nonetheless, under the guise of "a level playing field," most municipalities as well as cable industry executives demand that newcomers obtain a franchise with provisions identical to that of the incumbent before launching service. But having to secure agreements from every community in which it hopes to operate presents to newcomers an insurmountable barrier to market entry.

Municipal officials promise to negotiate in good faith with prospective competitors, and no doubt many would. But even if a municipal franchise were to be issued quickly, the regulatory requirements therein would be economically unsustainable — and nonsensical. As economist Thomas Hazlett points out, the argument for a so-called level-playing field "serves to justify franchise obligations for entrants even as the original rationales — natural monopoly and rate regulation — have disappeared. The premise of regulation has flipped from consumer protection to incumbent protection."[28]

It is important to remember that incumbent cable firms were granted a monopoly in exchange for conceding to rate regulations, service giveaways and "build-out" requirements that mandate service to all residents irrespective of consumer demand or infrastructure costs. New competitors, however, can only expect to garner a slice of a market where a cable service provider is already dominant and where satellite services have likewise existed for years. As Thomas Hazlett explains: "(I)dentical franchise obligations are typically far more economically burdensome for competitive entrants."[29]

Consequently, legacy franchise requirements dissuade investment in competing video services.

Local officials say they must maintain franchise control in order to regulate the use of public property on which network infrastructure is located. However, municipalities would retain this authority even if lawmakers established statewide franchising, as has occurred elsewhere. Moreover, most broadband service providers already pay municipalities for the use of local rights of way.

Build-out requirements are among the most egregious provisions of municipal franchises with respect to stifling competition. Build-out requirements force companies to offer services regardless of population density and the cost to deploy service — all of which runs counter to a rational business plan and which dissuades investors from entering the market. Like other businesses, video firms understandably seek to establish new service where demand is likely to be greatest (cities) and, therefore, where returns will be maximized. Positive returns enable expansion, which would fuel expanded deployment into less populated areas.

"The financial investment undertaken by cable systems embeds a projection of future returns that is fundamentally altered when the pattern of network construction is controlled by external political agents," said Hazlett.[30] "Congress, in the Cable Consumer Protection and Competition Act of 1992, explicitly advised local governments to waive strict build-out requirements that discouraged competitive entry. Unfortunately, there was no enforcement mechanism included."

Far from leveling the playing field between incumbent and competitor, build-out requirements actually undermine the newcomer. The incumbent's build-out occurred in the past, and has long been absorbed by its rate structure. But the cost of build-out to rivals is fully in the present, when the pressure to keep rates low is far greater than when the incumbent entered the market without rivals.[31]

Build-out requirements are simply unnecessary because telecommunications firms have every incentive to increase market share, not rebuff customers. Low-income households, in particular, are heavy consumers of video services, and constitute the fastest growing segment of the broadband market.

Further obstacles to competition are the municipal franchise provisions that require free video services for schools and colleges, all manner of government facilities, as well as for "public access." Aside from the sheer audacity of forcing a business to give government free service, there is the potential conflict of interest in having office holders wielding control of TV content.

As illustration, consider the case of a suburban Detroit mayor who pulled a tape of a forum sponsored by the League of Women Voters because the mayor apparently disagreed with the views expressed on the program. The forum had been organized to discuss whether the charter should be amended to move the city from a strong-mayor form of government to a city manager form. Or consider the member of a city council who stalled a vote on franchise renewal over a cable company's resistance to providing free service to residents.

According to a study by the Phoenix Center for Advanced Legal & Economic Public Policy Studies, a one-year delay in competitive entry due to franchise agreements costs consumers $8.2 billion in benefits.[32] That makes the barriers to competitive entry caused by local franchising far in excess of the revenue generated by the franchise fees paid to the municipalities.

Benefits of Eliminating Franchises

Where franchise reform has been adopted, the benefits have been both immediate and substantial. The recent approval of franchise reform by the California Assembly prompted AT&T to announce its intention to invest more than $1 billion in network upgrades in the state. The recent passage of statewide franchising in Indiana will produce an expansion of high-speed DSL service to 33 rural communities. Franchise reform in Texas resulted in new broadband service to 71 communities, and an analysis by the Perryman Group projects more than $3.3 billion in new telecom investment and thousands of new jobs for the state.[33] It took Verizon a mere 17 days to obtain the first statewide franchise awarded.

In 2004, the GAO examined six market pairs to analyze the impact of competition between a cable company and a broadband service provider.[34] According to the study, the communities with broadband competition experienced lower rates (23 percent lower for basic cable, on average) and higher service quality.[35]

The GAO has also concluded that satellite competition lowers cable rates only slightly, but does induce the cable incumbent to add more independent networks to its channel line-ups.[36]

Several studies have shown myriad spin-off benefits to lower cable rates. To the extent that rates drop, current customers are likely to upgrade their service while households that currently don't subscribe will do so. This increase in demand, in turn, spurs high-tech capital investment and job creation, which benefits all Americans.

Researchers Robert W. Crandall and Robert Litan analyzed 2006 survey data and concluded that the introduction of competition from wire line companies will increase the number of video service subscribers between 29.7 percent and 39.1 percent.[37] This expansion of the customer base ultimately exceeds the drop in rates, causing franchise fee revenue to grow — which makes municipalities' opposition to reform all the more puzzling.

"We find that local franchise fee receipts in areas currently without a wireline competitor will increase by between $249 million and $413 million per year," the study states. "We also find that local employment will improve as a result of (wire line) entry into the (video) market, since capital investment, such as the deployment of fiber for video services, has historically resulted in job creation. For example, we estimate that the $2 billion that Verizon invested last year in its new broadband product created between 3,300 and 7,400 additional jobs.

Finally, the one incalculable benefit to franchise reform is perhaps the most valuable. Reducing government interference in the video market — any market —bolsters free enterprise, which is a necessary condition for liberty to thrive.

Opportunities for Reform: House Bill 6456

As a matter of policy, there is little rationale for maintaining a franchise regime of any sort. The development of competitive video alternatives to cable undercuts the primary justification for municipal franchising. Moreover, state law would still empower communities to manage public rights-of-way in the absence of municipal franchising. Unfortunately, resistance to reform runs strong among those with a vested interest in the status quo — that is, municipalities and the cable industry. But enhancing consumer benefits and technological innovation matters far more than preserving regulators' powers or special-interest advantages.

Franchise reform has been the subject of five hearings before the House Committee on Energy and Technology this session. On Sept. 12, Chairman Mike Nofs, R-Battle Creek, introduced legislation to replace municipal franchising with a uniform statewide franchise. Coming in at 22 pages, House Bill 6456 is hardly a model of deregulation. Excessive franchise fees, service giveaways and build-out requirements would persist, including:

- Payment of a "video service fee" to each municipality in which video service is provided. The annual payment must equal either the lowest percentage of gross revenue currently paid by the incumbent cable operator or up to 5 percent of gross revenue, whichever is less. The line items that constitute "gross revenue" are extensive.

- Providing free network capacity for the same number of public, educational and governmental access channels as are provided by the incumbent cable operator. Service providers will be assessed a fee to support these channels that is equal to either one percent of gross revenues, the percentage of gross revenues required of an incumbent cable operator, or the amount paid on a cash basis per subscriber, whichever is less.

- Build-out requirements that mandate (a) service to at least 25 percent of low-income households within three years of launching service; (b) service to at least 30 percent of low-income households within five years of launching service; (c) service access to at least 35 percent of all households in the provider's service area within three years of launching service; (d) service access to not less than 50 percent of households in the provider's service area within five years of launching service.

However, the bill would, if enacted, end the power of municipalities to dictate the rates, terms and conditions of video services. Instead, the Michigan Public Service Commission would establish uniform franchise provisions for use statewide. This is well and good for newcomers, who would avoid time-consuming and costly negotiations with dozens of local franchise authorities. But an incumbent firm would have to wait for an existing municipal franchise to expire before becoming eligible to operate under a state franchise in that community. As consolation to incumbents, the bill would penalize municipalities that refuse to abrogate the local franchise by diverting fees to the state.

Those aspects of the bill are troublesome. Some legislators are apparently under the impression that franchise "agreements" constitute contracts deserving of all legal protections. But franchise agreements, unlike contracts, do not involve a willing buyer and a willing seller. In reality, they are instruments of regulation. Therefore, it would be perfectly appropriate for the Legislature — indeed incumbent upon lawmakers — to free the market from them.

Supporters of reform evidently are willing to settle for incremental progress, and thus are pressing for passage of HB 6456. In principle, the bill does not go nearly far enough in easing barriers to competition. But the reality is that most lawmakers probably do not have the political will to enact broader reforms in the face of fierce opposition from municipalities and the cable industry.

Recommendations

Model legislation for franchise reform would contain the following elements:

- Elimination of barriers to competition, such as a franchise bureaucracy, in order to provide consumers greater choice of video technology and service provider.

- Elimination of build-out requirements and other service mandates that dissuade investment in video services and job creation.
- Elimination of rate regulation and franchise fees that artificially inflate consumers' costs.
- Elimination of performance standards which tend to neutralize the competitive discipline imposed by market forces.
- Ensure that no segment of the market enjoys a regulatory advantage.

Endnotes

1 The term "Baby Bells" refers to the seven regional telephone companies created when AT&T agreed to divest itself of local calling services following allegations of antitrust by the U.S. Department of Justice.

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5 HBO program signals are beamed to a satellite in stationary orbit more than 22,000 miles above the Equator. The satellite bounces the signals back to terrestrial receivers throughout North America.

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11 Jonathan E. Samon, "When 'Yes' Means No: The Subjugation of Competition and Consumer Choice by Exclusive Municipal Cable Franchises," Seton Hall Law Review 747.

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22 Ibid.

23 Fiber optics refers to the transmission of information as light pulses along a glass or plastic wire. Transmitters convert electrical impulses from a computer into light streams. The use of optical fiber eliminates the electromagnetic interference commonly experienced with copper cables.

24 DSL technology enables data to be transmitted at high speeds through the copper-wire telephone network. A "transceiver" linked to a personal computer connects to the network of an Internet Service Provider through the local telephone network. Data is compressed into digital packets and routed by the Internet Service Provider to the World Wide Web.

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26 Federal Communications Commission, "Report on Cable Industry Prices," Feb. 4, 2005, http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-12A1.pdf.

27 Thomas W. Hazlett, "Cable TV Franchises as Barriers to Video Competition," George Mason University School of Law, p. 3, n. 15.

28 Ibid., p. 38.

29 Ibid.

30 Ibid, p. 24.

31 T.W. Hazlett and G.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.

32 G.S. Ford and T.M. Koutsky, "'In Delay There is no Plenty': The Consumer Welfare Costs of Franchise Reform Delay," Phoenix Center, Washington, D.C., January 2006

33 The Perryman Group, "An Assessment of the Impact of Competition in the Delivery of Wireline Video Services on Business Activity in Texas," July 2005.

34 Each market pair contained a community with a broadband service provider and one without. The market pairs were chosen based on their similarities in terms of size and demographics.

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Writer and Independent Scholar

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Central Michigan University

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Cato Institute

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Foundation of Economic Education

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www.mackinac.org • info@mackinac.org

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