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June 13, 2006

Honorable Fabian Nunez  
Speaker  
California Assembly  
State Capitol  
Sacramento, CA 95814

Re: AB 2987 -- Phone Company Entrance Into Video Market Needs Local  
Accountability

Dear Mr. Speaker,

I am writing to voice the opposition of the Foundation for Taxpayer and Consumer Rights (FTCR) to AB 2987, which would give telecommunications companies the right to offer video services without the local accountability of cable providers. FTCR calls upon you to significantly amend the measure, particularly in light of recent passage of federal legislation in the House of Representatives, in order to:

- 1) Establish reasonable requirements for a local franchise for telecommunications companies wishing to provide video services, thereby answering complaints by AT&T about unreasonable hurdles at the local level, but do not eviscerate (as is currently proposed) the local franchise with a meaningless state franchise;
- 2) Require, as a condition of receiving a franchise, that telecommunications companies agree to "net neutrality" on their new video/Internet pipelines for the duration of the franchise;
- 3) Guarantee, as cable companies have recommended, that telephone companies not be allowed to redline and be subject to equal build-out requirements now required of cable companies;
- 4) Not weaken obligations that now exist under local cable franchises in order to win cable companies' support for AB 2987;
- 5) Require telephone companies to offer a basic, low-cost package of video services to low income individuals.

AB 2987 would allow AT&T and other telephone companies to enter the cable TV market without winning local franchise contracts or even offering a promise of equal access for all neighborhoods, poor as well as wealthy. Your legislation would create a state franchise allowing any company to enter the market for cable TV, video on demand and other new services without significant, enforceable consumer protections. Localities that now control video-services expansion would be powerless to regulate digital lines erected in their communities.

As I am sure you are aware, Rep. Joe Barton (R-Texas) proposed similar federal legislation for a national franchise. It passed the House of Representatives last week and appears poised to preempt state legislation. The idea of the FCC enforcing equal local access, much less repairs of streets ripped up to lay new cable, is ludicrous, but only marginally more so than thinking the state could do it.

Mr. Speaker, while you've expressed a commitment to address the issue of the lack of rules requiring equal build-out of new services in AB 2987, you have yet to wrestle with more fundamental enforcement problems. The state is ill equipped to be the regulator, much less the enforcer, of the telecommunications industry as it expands into video services.

No one likes big bad cable companies that gouge consumers or the cable guy that keeps you waiting all day. But freeing telephone companies from the control of local cable franchise rules isn't in consumers' interest either.

Companies left to their own devices will cherry pick the most profitable customers and leave others in the cold, with unequal service. Even if you succeed in plugging this loophole in current legislation, its local enforcement will be all but impossible without a costly new state bureaucracy.

There's also no guarantee in the legislation that customers will see lower rates. In fact, there's not even a likelihood. Industry analysts say prices will stay high in part because telephone companies will have to invest billions in a parallel infrastructure. "None of these players wants to enter into a price war," said Jimmy Schaeffler, an analyst for the Carmel Group, a Carmel-by-the-Sea firm that follows the cable TV industry. AT&T is already raising long distance bills to finance its video rollout according to industry experts (David Lazarus, "AT&T Gets More For Less," San Francisco Chronicle. June 7, 2006).

AT&T promises greater choices under AB 2987, but the only choices AT&T – the chief force behind this legislation -- really wants us to have are those that it sells in so-called "bundles." The media goliath believes the state legislature will allow

it to become an unregulated monopoly – which is what a state franchise without any meaningful requirements at the Department of Consumer Affairs amounts to. This will position AT&T for market dominance in cable, telephone and Internet services. If cities don't have to bless its growth, AT&T can build new cable and Internet pipelines to customers, then force out competitors by its sheer size (after its recent \$16 billion merger with SBC) and its bundling capacity. These "bundles" of services will bind consumers to services that are difficult to withdraw from if they don't prove as useful as promised.

The quality of AT&T video services offered through these bundles has recently been questioned. As James Granelli reports in Saturday's LA Times ("As It Starts TV Service, AT&T Hopes Its Pipes Are Fast Enough"), AT&T's new so-called "light speed" technology --that provides both video and high speed Internet through the same pipeline -- is likely to be obsolete in five years. By capturing more bundled customers sooner, AT&T can hold them in video services that will cost more to purchase separately if consumers unbundle.

If your legislation succeeds, localities will not have leverage to induce competitors to upgrade services. State franchises under your legislation are not dependent on promises of competitive upgrades.

Complicating the hope of providing consumers better choices in high speed video and Internet are the changes AT&T seeks in Congress and won last week in the House of Representatives. AT&T's campaign to do away with "net neutrality" will further limit customers' commercial choices.

As you probably know, AT&T wants the right to charge fees for providing quicker access to certain websites. In other words, AT&T wants to erect toll booths on the information superhighway and charge web sites for express access. Internet activists point out that violating the current "net neutrality," where consumers can access all websites at the same speed, will allow telephone giants like AT&T to steer consumers to their own products (AT&T cable, telephone, long distance, cell service) and those of their "partners" (aka goliath media companies that will pay fees to AT&T ). Small web entrepreneurs that don't pay AT&T's fees will be left in the uncompetitive slow lane. AT&T's campaign slogan "Hands off the Internet" really means "Let us strangle you." Your legislation, by undermining the local franchise, will allow AT&T to do this anywhere in California rather than where localities can first set basic rules.

The Federal government has now planted its flag on this issue and its decisions about deregulation of the video and Internet products of telecommunications companies will greatly impact consumers' choices. The local franchise, should it survive, may be the only negotiation leverage that public officials have to assure

consumers' rights in a given area. Your legislation would remove this vital leverage at precisely the wrong moment for consumers.

In addition, cable companies are no doubt asking for removal of their local franchise obligations to consumers as a condition of their support for your legislation and a "more level playing field." This is the same type of public bailout that the public utilities requested and received during the California electricity deregulation debacle that led to our energy crisis. The cost to the public of this bailout of their "stranded assets" -- \$23.6 billion.

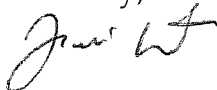
Governor Pete Wilson said at the time, September 1996: "[The energy deregulation legislation] is a major step in our efforts to guarantee lower rates, provide consumer choice and offer reliable service .... We've pulled the plug on another outdated monopoly and replaced it with the promise of a new era of competition."

History will judge this bill against other deregulation debacles. FTCR implores you to amend AB 2987 as described above to preserve accountability.

Already, AT&T and Verizon have used their political clout to thwart the cell phone consumers bill of rights at the Public Utilities Commission. Remarkably, you have not contemplated, to my knowledge, conditioning telephone companies' desire for fewer franchise requirements on a restoration of those rights. Or upon a guarantee of net-neutrality. Equal access to new services for all customers is vital, but so are local control over the physical build-out, more rights for telecommunications consumers, "net neutrality," and continued local accountability for cable companies.

Mr. Speaker, this is a defining moment for you and consumers in California. AT&T has dominated this debate. We hope amendments in the Senate will restore balance to this debate and improve history's recollection of it.

Yours Truly,



Jamie Court  
President