Richmond Journal of Law and Technology

Volume 4 | Issue 1 Article 6

1997

Local Franchising: What Role Will Localities Play in the Regulations of the Telecommunications Industry? Will They Become Providers of Telecommunications Service to the Public?

Anthony Gambardella

Dana G. Coltrin

Timothy M. Kaine

David W. Ogburn Jr.

Richmond Journal of Law &Technology

Local Franchising:

What Role Will Localities Play in the Regulation of the Telecommunications Industry? Will They Become Providers of Telecommunications Service to the Public?

Cite as: Anthony Gambardella, Timothy M. Kaine, David W. Ogburn, Jr. & Dana Coltrin, *Local Franchising: What Role Will Localities Play in the Regulation of the Telecommunications Industry? Will They Become Providers of Telecommunications Service to the Public?*, 4 RICH. J. L. & TECH. 4 (Fall 1997), <http://www.richmond.edu/~jolt/v4si/speech4.html>.[**]

Table of Contents:

I. *Moderator:* Anthony Gambardella[*]

{1} Good morning, everybody. I am Tony Gambardella with the firm of Woods, Rogers & Hazelgrove in Richmond--formerly with the State Corporation Commission.

{2} We started yesterday's discussion with the promise of the Telecommunications Act of 1996. The main promise was, as of February 8, 1996, Congress had deregulated the telecommunications industry.[1] The problem with the promise is that Congress retained some regulation within the industry. We have regulation at the federal level. We have a huge state role and this morning we are going to add another level--local

government. Local governments have a role under the Act. There is some dispute now about what the role is and how big it is or how small it is. We have a panel this morning that will discuss those issues and I hope they will give you a good feel for where that controversy is and how it might be resolved.

{3} You may meet local governments in a couple of ways. The first is fairly obvious: as a regulator of your business in various degrees, ranging from zoning and tower siting to franchising and franchise fees. There is another question listed in the program and I hope the speakers will address it as well. You may run into some local government competitors. Electric companies and gas companies have already experienced this. I do not know if any of the telecommunications systems have. But you might end up with a government that is your competitor. So that is the scope of this panel. We have three gentlemen who will discuss the issues from different points of view and I hope will cover the range of views.

{4} Our first panelist is Mr. Timothy Kaine, a Richmond attorney, who acts as a local government lawyer in part of his practice and is a member of the Richmond City Council. He is a member of the Virginia Municipal League's Task Force on telecommunications and he has recently been appointed to the Federal Communications Commission State and Local Government Advisory Committee. So he is well versed, or becoming well versed, in all of these issues. First he will lay out the issues and then give a municipal's point of view on them.

{5} Our second panelist will be Mr. David Ogburn, who is the Assistant General Council of Bell Atlantic Virginia. David has been involved in some of the initial skirmishes, I will call them, in the General Assembly of Virginia over this issue and has some good, detailed, practical knowledge on that score. So he will be coming at the problem from the incumbent point of view--the I-LEC (Incumbent Local Exchange Carrier) point of view.

{6} Our third panelist is Dana Coltrin, who is with Cox Fibernet. He is vice president of the general manager of that corporation--that is a C-LEC (Competitive Local Exchange Carrier) that is affiliated with Cox Cable. Cable companies face this issue from a couple of different points of view. Not just as a competitor trying to get into the local market, but also to some degree as a cable company, I suppose he will have a little different spin on this. Dana will give you the C-LEC view of the matter and also deal, I hope, with some of the cable issues.

II. Timothy M. Kaine[*]

{7} Thank you, Tony, and good morning everyone. I am a trial lawyer and part of my trial practice involves representing local government. I have done a good bit of work in the area of utility regulation and particularly taxation. In fact, the biggest case I have been involved with in my career was that for seven years I was trying to convince courts that the SCC (State Corporation Commission) was right. In the 1980s, the General Assembly took the taxation power of railroads away from the SCC and handed it to the Department of Taxation and the DOT immediately changed the way they tax railroads. The change caused local tax revenues from those assessments to decrease and so I represented local governments in suits against the Department of Taxation. We argued that the SCC was right, they were doing it right for hundreds of years and we ultimately prevailed in that.

{8} But I have not been asked to talk about my legal work--I have been asked to talk from the perspective of a local official about telecommunications. I want to tell you two things, basically. I want to tell you about the mind set that local officials use in approaching the telecommunication industry and I want to discuss the key principles that are important to local governments.

{9} First, the mind set. I think there are some people in the industry who feel like what we are trying to do with telecommunications is to go into a back room and figure out a way to both kill the goose but then still make it lay golden eggs. There are a few examples where I think local governments around the country have erred in their approach to the telecommunications industry. What I am going to give you is the garden variety view of most local officials as they approach this industry, what excites us about it, and what anxieties we have. I also will give you the principles that we use in approaching our regulation.

{10} First thing. We are very excited about the new technology because, just as the new telecommunications technology creates so many great opportunities for residents and businesses, it makes local governments work more efficiently. We are also generally positive about the relations we have with our providers. The providers in Richmond and elsewhere are generally good corporate citizens and we have had a history of good relations with them in a whole variety of things. But there are anxieties, too.

{11} While there is excitement about the new technology, it is balanced with some anxieties because the technological changes move very quickly and threaten the qualities of some of the services we provide. In Richmond, for example, we have a world class ambulance service and an emergency communication service. We try to save heart attack victims and other emergency patients and our success has depended upon fast response times. The way we get fast response times is through an emergency communication system that relies on phone calls from a fixed phone with an address flashing on the screen of the emergency communication operator. We dispatch based on a fixed address because a number of people who call are not able to describe where they are because they are in such extreme circumstances. As cellular phones proliferate, between 10% and 20% of the calls we now get are not from fixed phones. The address does not flash up on the screen and it complicates our ability to dispatch ambulances. That is just one example about how a technological change threatens a city. It undermines how we are doing things and provides new challenges.

{12} We are excited about competition. Competition generally is good and we think it will be good in this area, too, but competition also causes us some concerns. Again, to use the Richmond ambulance service as an example, we had a heavily competitive ambulance service in Richmond years ago, but what we found was that if you lived in certain neighborhoods in town you were not going to get an ambulance. If you lived in Blackwell or Gilpin Court, because of the demographics of your population or perceptions about safety or perceptions about the collectibility of bills that might be sent to you, you were not going to get ambulance service. And in the telecommunications business, we have the same concern. Telecommunications is like the paved roads of the 20th century and people who do not have access are going to be left behind. We have had the experience in Richmond of not all citizens being served and that is a concern to us.

{13} *USA Today* ran an editorial that was distributed widely among local government officials that talked about the growth in siting of towers and satellite dishes.[2] There were about 18,000 towers in the U.S. in 1995. There is projected growth of about 115,000 towers by the year 2000 and that causes us some concern. We receive a lot of citizen complaints about tower sitings for aesthetic reasons. They do not like the big towers. Some of the towers have lights that flash in people's houses at night. And some people complain that there might be health effects from the radio frequency emissions from some of these facilities. So that is something we are wrestling with.

{14} Finally, what may be one of the most complex issues, is the installation of telecommunications facilities in public right-of-ways. As sitings and expansion of telecommunications increase, we get into all kinds of managerial and coordination problems about things that are happening in public rights-of-way. Congress can make a policy about that or industry can talk about it, but the right-of-way problems are very local when somebody has trouble getting customers to their small business because of a temporary problem with the right-of-way. They are not going to blame Congress or a provider--they are going to say the city should be able to do something that will help or schedule this in a way that is not going to impose on my business.

{15} The Federal Telecommunication Act of 1996 had much in it that was positive and it made us feel more positive about opportunities, but it also had some things that really worried local governments. We are generally in favor of the pro-competition drift of the Telecommunications Act, while also recognizing this is very vague as of yet. The Universal Service provision[3] in the Telecommunications Act responds to the concern we have about people being left behind, but the Act also has some provisions which greatly concern us.

{16} First, the Telecommunications Act has a specific section that says local zoning power is preserved except for certain criteria.[4] Well, of course, it should be preserved. Why should you even have to say that in the Act if we are going to preserve local zoning power? We have to exercise that power in such a way that it does not prohibit service or give a competitive advantage to one provider over another. We are banned from inquiring into the health effects of radio frequency emissions in any of our zoning decisions about these facilities. Finally, we have to comply with certain procedural requirements in dealing with zoning applications of telecommunications providers that we do not have to comply with requirements for businesses in any other industry. So, there is some incursion into our zoning power that causes some concern.

{17} A second concern in the Telecommunications Act is a provision that explicitly prohibits localities from taxation of direct broadcast satellite providers. That in it itself might not be that big a deal-- but the fact that the Act starts down the road of where Congress tells localities "you can not tax this kind of industry" is troublesome. The industry is the growth industry of the 21st century. Who knows what direct broadcast satellite provision may become a few years from now, but we are now barred by the Telecommunications Act from local taxation.

{18} What are we doing about those concerns? Well, most local governments are doing a variety of things. They have set up internal working teams to form or review their own telecommunication policies. They are participating in task forces such as the Virginia Municipal League Task Force or the VACO Task Force (Virginia Association of Counties). Some planning district commissions are creating model ordinances. They plan to propose those ordinances to all jurisdictions in that region. The most recent move was the FCC's decision to appoint a state and local government advisory committee which would be charged with weighing in at the FCC on the cases and issues before the Commission.

{19} Let us go to the principles. What are the principles that are important to local government and how will they affect our dealing with the industry over the next few years? There are six basic principles: zoning, right-of-way control, taxation, universal service, competition and the local government's role as a customer.

{20} The first principle is we want to maintain the traditional respect and deference for local land use and power and zoning control. That is one power we have that is critical to the harmonious inter-relationship of all uses, neighborhoods and businesses. If precedents are set that put limits on that power within the telecommunication industry, then that precedent could be used to extend and put limits on local power with respect to other industries and we are very jealous in guarding that power because it is so important to the health and safety of our citizens.

{21} As I indicated, the Telecommunications Act does state that local zoning power is preserved but it sets up provisos that we have to meet.[5] Nationally, two of the top issues local governments are dealing with concern retaining land use power. A lot of localities have come to the conclusion that their zoning laws are out of date and cannot effectively handle the proliferation of towers. So a number of localities around the country have adopted moratoria on tower sitings for finite periods of time--90 days, six months, a year. The thought is that those moratoria will allow for the careful development of wise land use policy that could be used to dictate future site choices. Some providers have been very concerned about this effort because they are worried that the moratoria were prohibitions of service. So industry representatives have filed challenges with the FCC stating that these moratoria should be struck down and that the FCC should convene a rule-

making proceeding to make sure that the localities can not adopt these moratoria. Currently, the FCC is engaged in correspondence with localities that have these moratoria and are trying to decide what its role should be. Under the Telecommunications Act, a provider who is opposed to a moratorium can go to federal court and complain about it. There is a judicial remedy to the moratorium, but the industry is also asking if the FCC might more generally get involved and give localities some guidance.

{22} A second important area is the question about the health effects of radio frequency emissions. The Telecommunications Act states very directly that localities cannot make zoning decisions based upon those health effects.[6] But even though we can not make a judgment about the health effects on a local level, we are allowed to request the company to demonstrate that its equipment meets the federal mandated levels of what are appropriate emissions. And, as it has turned out, that has not been so straight forward as it may have seemed. So, the FCC is considering doing something to provide guidance for both the local government and the providers as to how you demonstrate that equipment meets the federal standards so as to remove the health issue from the table.

{23} Second, we want to have the right to manage, control and operate our rights-of-way. Again, that is a critical local issue. It is not only important for just the aesthetic value of the city. It has cost implications to cities as rights-of-way are dug into over and over again. We have to repair them more often. It has effects on businesses and residents in the area of the rights-of-way. It has all kinds of effects on municipal operations. The more streets that are torn up, you have to re-route emergency vehicles. And so there are all kinds of things that flow from this right-of-way issue and we want to maintain our ability to both manage and coordinate right-of-way activities. We also want fair compensation for use of the public right-of-way.

{24} There is another case before the SCC that is critical--the Troy, Michigan case.[7] The city of Troy adopted a telecommunication ordinance that had a lot of controls over right-of-way use and charges for right-of-way use. It had provisions, for example, that if the provider that was doing business in Troy, and then the provider worked a better deal with another locality that the Troy deal will be restructured to match the best deal that the provider got anywhere else. And so, Troy put together a massive ordinance dealing with these issues. The provider that was going to make an application to operate in Troy has filed a petition with the FCC to challenge Troy's ordinance and, after the FCC issues its universal service opinion[8] this week, the Troy issue is likely to be the next hot issue. The results in this case will probably be available sometime this summer.

{25} The third principle that is critical to us is the notion that the industry should carry the equitable burden of taxation. There is a fair balance between tax revenues from residences and tax revenues from businesses--and when you get into that fair portion of tax revenues that you should raise from businesses. We just want to make sure that the telecommunication's industry is part of that mix and does not have limits placed on its taxability that are not shared by other businesses. If there are limits placed on what we can do with respect to taxing the telecommunications industry, but there are not limits placed upon our ability to tax other industry sectors, it can lead to some unjust results.

{26} The fourth key principle, obviously, is the importance of universal service and I do not need to say too much about that.

{27} The fifth principle for us is that competition is good. We believe in competition. And it may be the case that you will see some localities competing. There are a number of localities in Virginia that are talking seriously about becoming telecommunication providers. Localities that have fiber net installations want to use and market them. One legal obstacle is that the Telecommunications Act provides that localities act in such a way that they are competitively neutral.[9] It would be very complicated, I think, for a locality to be a provider of telecommunication service and demonstrate it was treating its own service similarly to private service. I think that would be a difficult challenge, though not insurmountable.

{28} The final principle that is important for localities to recognize in our dealings with the industry is that we are great customers. Like every governmental entity, a local government is a very heavy user of telecommunication services. We have numerous facilities in the city of Richmond plus 4,000 municipal employees and another 3,000 employees in our school system. We should be able to go into the market and obtain favorable treatment because of the value of our business.

III. David W. Ogburn, Jr.[*]

{29} Good morning. This issue creates an interesting consensus within the industry. This is unlike yesterday, when we did not see much consensus within the industry on the issues. This is an issue where the industry really is united, so remember that.

{30} The first issue I would like to address, which Tim has raised, is local control of rights-of-way. No one disagrees that localities should be able to manage the use of their rights-of-way on a competitively neutral and non-discriminatory basis. Section 253(c) of the Telecommunications Act clearly preserves local governments' existing rights to manage their rights-of-way.[10] This is traditionally done through the permit process. In Virginia, cities and towns perform this function for their rights-of-way, and VDOT performs these functions for the county rights-of-way with two exceptions: Henrico and Arlington, who manage their own rights-of-way.

{31} In its Second Report and Order on Open Video Systems, the FCC describes valid local government right-of-way management activities as follows:

{32} (1) coordination of construction schedules, (2) establishment of standards and procedures of reconstructing lines across private property, (3) determination of insurance and indemnity requirements, (4) establishment of rules for local building codes . . . scheduling common trenching and street cuts; repairing and resurfacing construction-damaged streets, and keeping track of the various systems using the rights-of-way to prevent interference among the facilities.[11]

{33} Tim said that I would talk about some of the ordinances that have been imposed in Virginia, and I will not disappoint him. There are two ordinances that I am aware of that have been proposed: one was by the City of Roanoke, and the other was by the Hampton Roads Planning District Commission. A copy of the proposal and one of the ordinances is in your materials. We believe that these ordinances go beyond management control of rights-of-way and get into regulatory authority. One example is the proposed requirement to obtain written permission from the City Manager prior to moving, altering, changing, or extending any telecommunications facilities. How can a provider meet its state-mandated obligations to provide new telephone service and to repair existing ones if it can not touch its facilities without the City Manager's written permission?

{34} Another example is the proposed requirement that providers must offer all services on a non-discriminatory basis. Virginia Code § 56-234 already imposes this duty, and appoints the SCC (State Corporations Commission) as the authority for its enforcement.[12] The possibility of regulatory conflicts, here, is fairly obvious. The Telecommunications Act does not grant any such regulatory authority to local governments; it simply preserves state regulatory authority when exercised consistently with the requirements of the Telephone Act.[13]

{35} There are legitimate right-of-way management issues that will need to be resolved, but the real debate so far, at least in Virginia, has been over money. Local governments are being told by consultants from all over the country that the Telecommunications Act is their "pot of gold at the end of the rainbow", and some

of the local governments clearly believe what they hear. Let us use the City of Roanoke again as an example. Their ordinance requires the following compensation from providers doing business in the city: reimbursement to the City for all direct and indirect costs incurred by the City by virtue of the provider being in the right-of-way; 5% of gross revenue; four dark fibers for city use everywhere the provider has facilities; sales to the city at cost of all equipment needed to make the fiber operational; and sales of telephone service to the city at 20 % less than the price of the lowest price offered to any other customer.[14]

{36} Let us focus on the proposed gross receipts fee, and I will, unlike Tim, refer to it as a tax. That is an area of disagreement that we have had. Section 253(c) of the Telecommunications Act states that it does not affect the authority of the local government to require fair and reasonable compensation for use of the public rights-of-way.[15] The Telecommunications Act does not create any new authority to charge fees--it simply preserves the pre-existing authority. Roanoke and the other localities have offered no nexus between the burdens imposed by the gross receipts tax, and the cost they incur for the benefits that the providers receive through the use of the rights-of-way. Without such a nexus, the gross receipts fee, despite its name, is clearly a gross receipts tax for state law purposes. Virginia law expressly precludes local taxes on the gross receipts of telephone companies, except for the license tax specifically authorized by the General Assembly. This license tax on the gross receipts of telephone companies has a cap of 0.5%, except for a few localities, such as Richmond, that were grand-fathered at higher rates. I believe that Richmond is about 3% and there are several others that range between 0.5% and 3%. Virginia's Dillon Rule clearly prohibits new local taxes, except where the tax is specifically authorized by the General Assembly.[16]

{37} These proposed charges are also discriminatory--the communications industry has been singled out among all users of the rights-of-way for these charges. One might ask why other users of the right-of-way, such as electric, gas, water, sewer companies, and users of the roads in the right-of-way, such as trucking, delivery, taxi companies, are not required to bear their share of the cost of maintaining the rights-of-way. The answer, of course, is that all of these companies, including the communications providers, are bearing their fair share of these costs through the state and local taxes that they pay. The problem is that the communications industry is being asked to bear these additional, more significant burdens alone.

{38} It is this issue of right-of-way taxes that led the communications industry to the General Assembly this past session. The original bill,[17] a copy of which is, again, in your materials, was supported by the "alphabet soup" of the industry. The I-LECs, the C-LECs, the IXCs, and the CATV companies were all brought together through the VTIA (Virginia Telecommunications Industry Association). The bill permitted local governments to recover their activity-related costs. For example, permitting, inspection, and coordination costs incurred by the local governments would be paid by the users of the rights-of-way. The industry met with VML (Virginia Municipal League), VACO (Virginia Association of Counties), and VDOT (Virginia Department of Transportation), on a number of occasions, and made a number of changes to the bill to accommodate their concerns. When it became clear that it was going to be very difficult to define and track recoverable costs, the industry proposed a .25% infrastructure maintenance fee.

{39} Unfortunately, with limited time the weekend before crossover in the General Assembly and the reluctance of House members, who were all up for re-election this year, to take a stand on a fairly controversial issue, the parties agreed to a moratorium. This moratorium will last until July 1, 1998. A copy of the final bill is also in your materials.[18]

{40} During this period, no local government or VDOT can increase the fees or in-kind services for assets that it charges in relation to a franchise or right-of-way. During this period, again, as Tim mentioned, there will be a study committee of legislators, industry, local government, and VDOT that will meet to discuss the issues, and to try to reach some resolution. As Tim said, the politicians would very much like for the parties to resolve this issue, short of bringing two competing bills next year. I happened to run into Arlen Bolstead, who is the counsel for the Corporations, Insurance and Banking committee of the House of Delegates, last

week and he told me that they were working with Chuck Colgan to put the study committee together. So, there has not been any activity that we were aware of until a few days ago, there appears to be some movement towards appointing the study committee and let them begin operating.

{41} I am only aware of one state, Colorado, that has actually enacted legislation specifically dealing with local control of rights-of-way and the fees for its use. Within about two months after passage of the Telecommunications Act, Colorado's governor signed legislation permitting all state and federally certificated carriers to use the local rights-of-way without the need to acquire a franchise, or to pay any monetary or in-kind fees or taxes, except for license fees or taxes that were already authorized by state law, and construction permit fees that apply to all persons seeking construction permits.[19] In addition, those permit fees have to be based on the direct cost the locality incurs in granting and administering the permits. I think the language adopted by the Colorado legislature as part of the preamble to the bill is instructive.

{42} To require telecommunications companies to seek authority from every political subdivision within the state to conduct business is unreasonable, impractical, and unduly burdensome. In addition, the General Assembly further finds and declares that since the public rights-of-way are dedicated to and held on non-proprietary basis in trust for the use of the public, their use by telecommunications companies is consistent with such policy and appropriate for the public good.[20]

{43} I will now touch on two issues that are unique to the incumbent carriers. The first is that local governments have for years encouraged utilities to locate in the public rights-of-way. It was in the public interest to encourage this co-location of utility facilities. The low cost to utilities for the right-of-way use greatly facilitated this policy, and Bell Atlantic, like many others, took advantage of the opportunity and put many of its facilities in the public rights-of-way. We believe that to change these rules, once the facilities are in place and can not be economically moved to another place, is unfair and discriminatory.

{44} The second issue unique to incumbents is that incumbents are the providers of last resort. We cannot decide to bypass a locality because it proposes fees or controls with which we do not think that we ought to have to live with. The competitors have publicly stated that their decision to serve an area will be based on a number of factors, including right-of-way cost and issues of control. One possible effect of this will be to deny the benefits of competition, such as lower prices, more services, new services, and increased economic development, to the citizens of localities within reasonable right-of-way fees.

{45} Tim also said that I would touch on local governments as providers of telecommunications services, and I will describe the one instance that I am aware of in Virginia. There is a small town in southwestern Virginia that has built and is operating a local area network that provides high-speed data service and Internet access for sale to the public. The town charges $35 a month for unlimited use of the high-speed data network and 1.5 megabit per second of access to the Internet.

{46} The town requested an Attorney General's opinion stating that this municipal communication system was permitted under the statute that permits municipal water, gas, and electric systems--that is § 15.1-292 of the Virginia Code.[21] In an opinion dated April 12, 1995, the Attorney General said that this section of the Code does not permit the town to operate a communication system. The Attorney General specifically said that the phrase, "other public utilities" in that section of the statute, when considered in light of the Dillon Rule,[22] does not permit a locality to operate the wide range of communications services proposed by the town.

{47} At that point, the town proposed legislation to amend this code section to specifically permit a locality to operate, and to quote from the proposed language: "a communication system network, which may provide cable, telephone, data transmission, or other information, or on-line programming services." This is House Bill 2098 from this past session of the Virginia Assembly, if anybody wants to look it over.[23] An

amendment was offered by the sponsor, at the urging of some members of the industry, which would have limited this new authority to offering data transmission between public buildings. It would not have allowed sale to the public. At the request of the town, once the amendment was made, the sponsor withdrew the bill.

{48} The industry is very concerned about a locality, with its taxing authority and absolute control over the rights-of-way, competing with the existing and new providers in selling communications services to the public. This concern was recently reinforced in a conversation that I had with the Vice Mayor of this particular town. He told me that he was excited about the prospect of being able to charge right-of-way fees to his local provider, which by the way is not Bell Atlantic, so that he could enhance the communications services he is going to offer to the public in competition with that provider. I do not believe that the General Assembly should or will authorize this sort of unfair competition.

{49} In summary, the message from Congress, the FCC, the General Assembly and the SCC is clear. Competition in the communications industry is in the best interest of all of our citizens, and the benefits of competition must be available to as many of our citizens as possible. Given these mandates, the industry and local governments must work together to forge operating agreements, including reasonable cost recovery mechanisms, that will permit the benefits of competition to be enjoyed as widely as possible.

IV. Dana Coltrin[*]

{50} I am going to talk today mainly from a cable perspective, rather than just the C-LEC (Competitive Local Exchange Carrier) perspective. Basically to give you a little bit of insight, as a cable provider we compete differently than an incumbent video provider, now we are beginning to compete as the C-LEC, and we have been competing in the past as a provider of access services under our Federal Certificate.

{51} Today, I am going to try to use generic examples. Somebody asked me a question about Roanoke. We will address this issue during the question and answer period. I have an answer to the question. Because, really, it cannot be presumed that all cities and towns are acting the same way. There is a broad base of what we have encountered so far.

{52} Today, I am going to try and cover a few key items--franchising from the cable/new entrant perspective; commenting on the Telecommunications Act as we see it; focus on the right-of way issue, which is really one of the key items; and discuss the telecommunications requirement of a franchise.

{53} Many of you may not be aware of what requirements are inside a cable franchising document. This document is basically the same throughout the entire industry. Also, I am going to comment a little bit on the same things that David did concerning franchising from a telecommunications new entrant.

{54} The key goal of the 1996 Telecommunications Act from our perspective was to allow competition. Telecommunications competition was supposed to cause improved service to customers, lower prices and create jobs. As we have heard already, those benefits do not seem to have occurred yet. I think that there was some anticipation that on February 9, there would be an automatic provider that would come forth. I think those benefits are coming. There has been an explosive growth in telecommunications, but no, you cannot dial-up and get a competitive local exchange carrier at this point. The offering of competitive video services is somewhat limited, but this is changing. Its growth is tied to several things.

{55} As we have heard, much of the regulation was left to the local, and particularly, state regulators (the State Corporation Commission in Virginia), who had already taken the move almost twelve months earlier than the Federal Government to allow competition in telecommunications. But there was certification work, interconnection work, etc., that had to be done; and this has been a very long process. So, it took almost a

year to complete the work. Cable operators, until they had the authority to do these new services, were very reluctant to invest in their plan, so our investment really has only started in the last twelve to eighteen months, in operating our facilities. Currently, most cable operations are one-way video systems, and we are having to go back and add additional lines, create additional channels on the dial, and also activate a return path from the home back to a centralized point. Another problem was until the cable operators were ready to spend the money, nobody developed the necessary technology. So, we have been dealing with little black boxes up until now.

{56} From our perspective, one of the key concerns is the examples we have seen which impact the cable operator when local government exercises its authority under Title 6 of the Telecommunications Act. Associated with this concern is the franchising of overt cable operators, particularly as we attempt to enter new telecommunications businesses. From that aspect, we have such things as David has already talked about, including excessive right-of-way fees. I have had one city actually propose $2 per foot per year reconsideration --I can go out and buy real estate a lot cheaper than that-- and additional requirements of an enduring cable franchising. I will give some more specific examples, including additional changes to an existing franchise.

{57} There have been a lot of transfers occurring in our industry because we are trying to cluster our cable systems into a large enough entity so that we can afford to buy switches and other fairly expensive telecommunications devices. During these transfers, we have been awarded little things. For example, in the transfer of one franchise, we got this as the proposed amendment to our franchise for transfer. This is prohibited under the old 1992 Telecommunications Act. There are only four prongs for a transfer, but that particular city said that they were doing us a big favor and just wanted to tie their existing franchise to the Telecommunications Act. What they basically wanted to do was take all of the existing franchises, which they only agreed to one year earlier, and make it so that the cable franchise only handled one-way video and nothing else. This is documented. An amendment, would cover providing of telecommunications that has such nifty things in it as 5 % of gross revenues, free services, and some other wonderful things--basically tying your hands on that. We have also seen some limitations during renewal processes-- of trying to limit us to video process.

{58} Okay, moving to the right-of way issue. As I think David has already discussed, the cities do have the right to charge for their true costs in providing that right-of-way. But, though I know the lawyers feel that the 1996 Act is the Lawyer's Employment Act of 1996, unfortunately some local municipalities see it as the Golden Goose Act of 1996. All of a sudden, because of that paragraph, 253-C, there is a new belief at the local municipality level that they have new taxing authority, thanks to the Act. Basically, our position is that it really should not cost any one telecommunications provider any more for the use of the right-of-way than the next one. Just because we started using the same facilities for some other use, does not immediately mean that we should have to pay an additional right-of-way fee to be able to use this.

{59} Many of the proposals that have been on the table at specific city levels have been requesting additional revenues for existing facilities. Whereas, I think the city is well versed in trying to protect the right-of-way. If there are additional street cuts, etc., --whoever is doing that, be it the telecommunications provider or the power company, whatever--this city should be compensated for any cost the city incurs in maintaining the right-of-way because the right-of-way has been disturbed.

{60} Cable already pays a fairly large fee, which was envisioned to provide for administration of the franchise and for use of the right-of-ways, going back all the way to the 1960s when franchising started in the cable industry. Now, this does not mean that we should not pay additional taxes on those additional services, but they should be within the guidelines of the Dillon Provision which currently, in current law, in the Virginia Code § 58.1-2690(A), allows the cities to get a 0.5% tax on local exchange revenues with a couple of exceptions that David cited to.[24] I think David has already gone over some of the management issues

that were in the second report. So I am not going to go over those in any more detail than he has already touched upon.

{61} Now, why are we really concerned about this right-of-way issue? Let us expand upon that a little bit more. We received many telecommunications requests as part of our franchise renewal, as I have already said, and I am going to give you a few examples. We also have some burdens from a traditional franchising that cable industry has always been looked upon in providing part of the franchise. I wanted to expound upon that and let you know that there are some other things there, and then give some generic examples of those without citing specific cities.

{62} As far as telecommunications requesting cable franchising, we have to renew our franchises with the cities, based upon provisions in the 1992 and 1984 Act, along with generally speaking terms, are generally in the 10-20 year age, typically averaging 15, for a term of cable television franchise, which, by the way, is not exclusive. But during that renewal process, the RFP's that we have seen, have included such things as dot-fiber, provision of a free local area network, or wide area network, a requirement that if we get into telecommunications, they will get the preferred discount. In one case, it specified the discount, and also requested a free ban-lift on the existing higher-fiber coax plan. Also, traditionally over the long run, cable operators in part of the renewal process have generally been asked to provide some incidentals during or right after the renewal process, in excess of the 5 % franchise fee. Some of these are considered a community service, and we encourage some of those things that we do, such as equipment grants, free access channels for government, educational, and in some cases, public access, free cable service to schools and city buildings, etc., and interconnection of government facilities so that they can have a programming studio and access that channel or channels that we grant them under the franchise.

{63} In addition, what we also usually have in most cable franchises is greatly changed from such things; and generally, there are universal service and build-out requirements in most of the franchises that we currently maintain. We are building in areas that only have 10 homes to monitor in many cases as part of our franchise requirement. But the key item here is that these, are a burden upon the operator; and in many cases, our current competition, which basically comes from microwave and direct broadcast satellite, do not provide these services. And all of these things have dollar values. Among those things that I am always interested in is that the free provision of cable services is not free to us. Our programers audit us and we pay for those services we give to the city. The value of some of that service in one particular municipality is over $150,000 a year of free cable service.

{64} Currently, COSCS has a provision that we will provide free cable service to every classroom in the community as far as education is concerned, and we paid for that, and actually even paid for programming rights from cable in the classrooms so that the school districts can actually take and archive the things, and we give them grants and special licenses to do that.

{65} Let us go on to the experiences that we have seen, to give you a little bit of detail, and then I think we will try and finish up and go for questions. Basically, we are a C-LEC and we reference the I-LEC that we are trying to compete with. We would like to compete equally with other providers and both the state and federal statutes said there should be a level playing field or competitively neutral environment. In some cases where we do not have a cable franchise, we need to use a right-of-way; and therefore, we wanted to go in and get a telecommunications franchise, which I think the city has every right to request.

{66} Recently we have requested service--in one city--where this is the existing telephone franchise in that particular city, and this is the competitively neutral draft. This is not one of these perpetual franchises that was granted in 1838, when Alexander Graham Bell did it. This agreement was granted in 1987. It was very interesting, the guy who drafts this was just a dumb son-of-a-gun, and when we come for renewal, we are going to get those guys from that telephone company. As part of those requirements, we have already talked

about in-kind services, the higher gross receipts tax, the agreement again has that 5 % fee in it, and we have talked about some of the other things.

{67} Another barrier that we have started to see, whether it is from a C-LEC telecommunications franchise or from our existing franchise, is many cities have gone ahead and drafted changes to their permitting procedures, whereas, they buried in that requirement of free conduit, free fiber, as a provision of getting a construction permit. Now, the bill that was agreed to in order to state the moratorium has blocked that except for ordinances that had been changed prior to February, March, and so that is one thing. We have heard various times that cities are very frustrated with the fact that they can not tax DBS. Actually, we would be in favor of that, but cities really take that as a note from Congress, saying that they are very concerned about their performance in some nature, as it has gone forward, and have attempted to do some of those things. So, the FCC has not stepped in too hard, and as far as I am concerned, they can tax us that way.

{68} We have already talked a little bit, but just to re-emphasize--use of cable franchise provider facilities has been a requirement in many of the new telecommunications franchises and renewals. We really see franchising as a partnership; and we do not have a problem granting certain things when negotiating a franchise, the negotiation is supposed to be give-and-take. But I mean, we try to negotiate a franchise that benefits all of the people, not just from a new revenue or other uses. I think I have really covered the local government issues, but just to review them real quick--a key item that we get fed back a lot is the rights-of-way were purchased with public funds. Amazingly, in three of the nine cities that we currently service, we are the largest revenue source for the city already. And if you computed the franchise duties, utilities taxes, business license taxes, personal property taxes, and real estate taxes we pay, those three cities are getting over 25 % of our gross revenues. I think that is a pretty hefty fee for operating in a city already, which most people do not realize, but in three of our cities, we are the single largest support of revenue to the city. Now they want to tax even higher for additional uses.

{69} As far as the universal service issue is concerned, I think the State Corporation Commission has had a rather good track record on making sure that rural environments were treated as equally as others. And there is a special exemption for rural telephone companies that they cannot be competed with unless they go in and compete with someone. There is a universal service docket that opened at the SCC, which the cable industry has endorsed, and feels that they will pay their fair share once an equitable standard is established. And then, just really to summarize, the state and local governments along with the industry, need to get together and reach some common ground. If we do not, we are going to have a real issue in the Commonwealth. The Commonwealth has seen some phenomenal growth due to telecommunications Because we have moved ahead with efforts from the Center for Innovative Technology and some of the other groups, we have a lot of telecommunications infrastructure here. And we have been attracting a lot of new businesses, but if extensive regulation and expensive fees limit the competition, hamper the economic development, and restrict growth of new jobs and increase the service to customers, we will be the losers because industry will go elsewhere. Right now, we are seeing a lot of high-tech companies come to Virginia because of the infrastructure that we have.

V. Questions and Comments:

{70} **Kaine:** If the cities are really trying to be either too aggressive in this area, and Roanoke was the example that was used. There are cities somewhere in the U.S. that have done things that are too aggressive probably, but I do not think that is really happened in Virginia. Let me just talk about Roanoke. Roanoke developed an ordinance--a telecommunications ordinance--that is aggressive. It is in your packet and you can look at it and decide what you think of it if you have not seen it, but it is aggressive. It is a draft proposal that they gave to the industry for comments, and the industry made a lot of comments, and the city never adopted

the ordinance.

{71} Now, compare that with what happened in the General Assembly this year. The industry came into the General Assembly with a bill putting severe limitations on what localities could do for right-of-way. They did not come up with the draft bill and give it to the localities first and say, "What do you all think about this?" It was put in the General Assembly, and it would have had very dramatic impact on our ability to collect revenues. As Dave was talking about in the original bill, it would have allowed us to collect some costs for permitting, inspection, and coordination-related costs, but how about damage to the right-of-way? How about the fact that we have other people in the city who are paying fees for use of the right-of-way? If somebody builds a canopy over a public street, they pay a fee for that because it is an incursion on to the right-of-way. Why should the telecommunications industry not have to pay for incursions into right-of-ways when we are charging other non-telecommunications for folks that? So the notion that the localities are going wild on this, I just do not think it is true.

{72} Hampton Roads has come up with a proposal which they have given to the industry, and asked for comments. None of the localities have passed it, so there is dialogue that is going on, and yes, we are going to take positions that I think the industry will think are too aggressive. However, we are trying to do it in a way where we say, "Here's what we're thinking about. Give us your comments, and then we'll try to work something out. We very much hope that we can."

{73} **Coltrin:** I would like to comment on the Roanoke ordinance. They took that ordinance and put it into a contract and made us sign it under duress, and we did sign it so we could get a construction permit for downtown.

{74} **Kaine:** So they did do it, even though they did not pass the ordinance.

{75} **Coltrin:** Right, they just threw it into the contract, and we have a joint venture with the RP Telephone in Roanoke, and they would not issue the special permit for that city without a contract.

{76} **Ogburn:** I would like to make two comments in response to Tim. First, actually, we did provide a copy a month before the beginning of the General Assembly to the Virginia Municipal League and asked for comments. We did have some limited dialog, and I will admit it was limited, but the door was open. It really was. On the canopy example, I think the difference in the communications industry has been the right-of-way because it was felt that it was in the public interest. It was beneficial to the citizens to lower the cost to the providers to keep the rates and to help in providing universal service. I think telephone service with low rates and universal services are in the public interest. I do not think the Telecom Act changed that.

{77} **Ogburn:** I think that there is a huge difference between the communications industry, using the rights-of-way to provide the telephone service, and the canopy space example.

{78} **Audience Question:** I guess this is for Mr. Kaine. What do you think about what David mentioned? What do you think about that idea from a way to stimulate competition throughout the Commonwealth and municipalities? What about that? What happens to reasonable compensation in their state law?

{79} **Kaine:** I think the reasonable compensation question is the key in that. Any business that deals in multiple jurisdictions is going to face the problem of dealing with different localities' regulatory regimes. That is a problem that is not unique to the telecommunications industry, although it may have an effect on the industry in a way that is more potent than some others. I think the Colorado statute is terrible in terms of the compensation department. I think that it is an atrocity. But the principles that Dave read--the principles--I would not disagree with the principles statement, that it is important to have telecommunications facilities in

public rights-of-way. Of course, it is. But you have to come up with a way to manage that task so that it is (a) fair in its compensation for the use of the right-of-way, and (b) that it provides localities with what needs to happen to manage the incursions of the right-of-way.

{80} I mean, just look at the way people look at it differently. One of David's major concerns about the Roanoke ordinance was the notion that to get in and to repair these telecommunications facilities and right-of-way, you need to get written permission from the City Manager. Looking at it from the city's side, I mean, is that all that unreasonable?

{81} In some cases it would be unreasonable. If you have an emergency and need to go in to repair something, I mean, are you going to be able to get a letter from the City Manager overnight to do emergency needs? Maybe not. So that would need to be scaled back, and you would not want to have a City Manager that would arbitrarily withhold giving permission, but you are talking about rights-of-way that affect how people get to their homes and their jobs and everything, and so some notion of local control of that, I think, is great. So, the principles are fine--it is the control of the rights-of-way and then the compensation issues that are the touchy ones.

{82} **Ogburn:** And I do not think there is real disagreement over the fact that localities do need to exercise some control over rights-of-way Again, it has been traditionally done through the permitting process, and during none of the negotiations and discussions that we have had, have we said we are going to refuse to get permits. This day is over. We intend to follow through and continue to do that. Again, what I think made the Roanoke example so egregious for the city manager commission was that it was not keyed to opening public rights-of-way; it was keyed to working on any of the facilities we had installed through the entire city, whether on public or private rights-of-way, whether you are digging or working on aerial cable.

{83} **Audience Question:** The disruption was caused on the right-of-way in front of my street and my yard, and when the city-owned gas company put its line down. And I think I recall when there was some discussion about the cap on the local utility tax, I put the first bill in. Years ago, to put a cap on it, because that thing was going up like a rocket, and if we had not done it, I think that would be 5 %, and probably more, on everybody's gas bill or utility bill.

{84} Dana, I really think that it is a political problem. I think local government listens to the people, or politicians do, I used to do so. But if you could translate to the public the cost to them this is not a free lunch. It is not only going to absorb some of these costs which seem to me to be excessive. I am going to mention a city. Years ago, I was in Newport News, and renegotiated the franchise, and some of the things that were put on the board, and it cost, it was interpreted to be, and I think no one disputed that, $1 more per month on everybody's bill. That was in addition to the local tax law, and when you start translating these things into dollars and cents per month per customer, I think then the folks will get a little interested in this thing. Probably, contact members of local governing bodies, why would you try to do that?

{85} **Coltrin:** We have been doing that over the last couple of years through mailers. Unfortunately, what happens is that we get very aggressive in that area. It comes back to roost during our franchising process. I mean, even as simple as itemizing a franchise deal on a bill, is usually a major issue, even though permitted under federal law, with that itemizing of the utility tax. They do not, the cities do not want to let them know how much they are taxing cable.

{86} **Audience Question (cont'd)**I just think, my comment is, I believed long ago that when more people understand what they are paying in taxes, what they are paying indirectly, the bills they pay to pay their taxes.

{87}Audience Question: Do you think that the franchise requirements in the municipalities should be equal or seem like a I-LEC, and where they are not, and they are often not, how should we approach municipalities

to gain an equal playing field?

{88} **Kaine:** I think that is going to be one of the hot issues because you know, some of the cities have agreements with I-LEC that are extremely favorable to the I-LEC that are very old and that if they were done today, or even if they were done fifteen years ago, it would have been very different. But they are old agreements, and how do we treat new entrants? If we are required to treat new entrants in a non-discriminatory fashion under these old contracts that are really way out of date with today's reality, it is going to put real hurdles on us. If you are asking how to approach the municipality, and I will take my municipality hat off and be a lawyer for a second, I think what you do is, you get as much information as you can about the existing arrangements, and armed with the notion that the access, the service has to be, you know, we have to act in a non-discriminatory fashion, you come in, you know, and start talking at that level. But it does put terrible burdens on the municipalities to have these old franchise agreements, and that is going to be a real serious problem.

{89} **Ogburn:** May I respond to that for a second? One possible solution that we discussed in the General Assembly this past year was the infrastructure maintenance. The idea there is that it would be, what we threw on the table was .25 %, but "X" per cent across I-LEC, C-LEC, anybody who is offering telecommunications services, across the board, every municipality, regardless of whether I have got a franchise that is 50 years old or not, but that would be the only fee collected by the city. So that is one possible solution to that problem.

{90} **Audience:** May I comment on that? For those of you that do not know me, my name is Roger Wiley and I am special counsel for VACO. David, I heard you arguing, if we levy new charges, and get away from gross receipt fees, and levy new charges based on some level of usage, say the number of feet or the number of miles of installation and I understand that when the vested rights should remain there, but it seems to be that what is--the locality--you know, is really between a rock and a hard place. Because on the one hand, you have your vested rights argument, and on the other hand, they have the C-LEX argument, which does not create level playing field. I have been grappling for a way out of this dilemma, and I keep coming back to some sort of gross receipts charge that you propose as the only way really to avoid that kind of an unfair situation.

{91} **Ogburn:** I do not disagree with that analysis at all, and that is one of the reasons that we came in with that proposal. It was a combination of creating a level playing field between I-LECs and C-LECs, as well as having something that is easy to administer. I think we all agree that when we started talking about activity-related costs, that we were going to create bureaucracies in determining what those costs were, and that is not in anybody's interest, except for maybe the people who populate those bureaucracies.

{92} **Audience:** The Congress and the General Assembly both may address this issue. At what point, if at all, can a fee be considered and possibly implemented?

{93} **Kaine:** There is no bright line to answer that question. These issues will get hashed out in Federal Courts and they will get hashed out certainly before the FCC, because the provisions in the localities cannot prohibit service. What is the prohibition of service? The FCC is wrestling with that question right now. As I said, the FCC is even sort of wrestling with its own role as to how much it wants to get into a question like that, and make rules for how much it wants to let courts within the judicial review process make that determination. So there is no clear answer to that question.

{94} **Ogburn:** No, I agree, but there are arguments on each side and the FCC has not said anything yet, and until the FCC says something, it is probably likely that it will end up in court. In think we are a long way from having a bright line there as to what might be a very big issue.

{95} **Audience:** A couple of comments. One, my impression from going to the National League of Cities

seminars on the Telecommunications Act, the Colorado law was discussed. My impression of that was that the bill was passed in about two months and signed into law. Before anybody in Colorado knew what the Telecommunications Act of 1996 said, and what the effect of the Colorado bill was going to be, it was a communication that ended up being billed, drafted, and sponsored by them, and they were hit with a truck before they ever knew it in the localities in Colorado.

{96} The question of equal franchises has been mentioned. Franchises with gas companies, telephone companies, electric companies, have all been negotiated by different localities at different times, and they all have different terms. And, I think they have all grown in length, but the classic example that I know something about is the City of Portsmouth granted a franchise to the Portsmouth Gas Company in 1868, at which time there were no constitutional limits on franchises. And the only thing it said, really, was that you have the right to put gas lines in the public right-of-way. And they tried to change that, and in the case of City of Portsmouth v. Portsmouth Gas Company[25], which went before the Virginia Supreme Court in 1920. They wrote that Portsmouth Gas Company has perpetual franchise, and could not be changed. So if we have got this rule about everybody's getting the same franchise, boy, the City of Portsmouth is the place to be!

{97} **Gambardella:** Let me ask you, Tim, just quickly, is Colorado a home rule state? I think it is.

{98} **Audience:** Yes, it is a home rule state.

{99} **Gambardella:** How does that affect the analysis?

{100} **Kaine:** I am not sure that--my impression, and it is limited, and it is from talking to a city council member in Arvada, Colorado, is that regardless of home rule, this is a state-wide application. That is what I, so in some way, it trumps the home rule that they have. Now that is from a very limited conversation that is my understanding.

{101} **Audience:** Tim, in your second principle, you used the word, "fair compensation" in respect to rights-of-way. Does that mean cost based?

{102} **Kaine:** As long as--yes, it does mean cost based, with a fair accounting of what all of the costs are. Well, not cost of service--cost of the locality, in all of the costs, not just the permitting and inspection, but cost, some fair cost for use of the right-of-way. I understand David's argument about how the telecommunications provider be treated differently from the person who is building the canopy, but the fact is, people who incur at all into rights-of-way in the city pay for that, and it is hard to make an argument that some people should not pay for it because their activity is more valuable that others.

{103} **Audience:** Tim, on this concept of cost based, brought back one of the comments you made during your speech, you talked about the need of localities, and certainly Richmond has a need to devote revenues to education, crime fighting, etc. When you talk about cost, maybe my notion of cost and Lewis' notion of cost is different from yours. Are you talking about cost which would enhance the revenue side of your budget, such that you could use telecommunications rights-of-way management costs to fund the schools, etc., the police force? Is that your concept of cost?

{104} **Kaine:** No, I'm using it more narrowly. But, my definition of cost, I think, would still be broader than a lot of folks, in terms of what would go into a fair cost calculation. You know, it is not limited to the time it takes for the guy to process the application from the desk, you know, there is cost there that is pretty minimum, but it is a whole lot of other things in addition to that reflect, you know, some notion of the cost to locality of having the rights-of-way incurred upon.

[*] Anthony Gambardella is an attorney with Woods, Rogers & Hazlegrove, P.L.C. He concentrates his practice in the areas of tellecomunications, energy, public utilities and other administrative law matters. He was formerly the General Counsel of the Virginia State Corporation Commission and has previously served as a Senior Assistant Attorney General of Virginia in charge of the Antitrust and Consumer Litigation Section of the Attorney General's Office. Mr. Gambardella holds a Bachelor of Arts degree in economics from the College of William & Mary and a law degree from the Univeristy of Virginia School of Law.

[*] Timothy Kaine is a director in the Richmond office of Mezzullo & McCandlish. He is a graduate of the University of Missouri and Harvard Law School. His practice specialties are civil litigation and local government law and he has represented a number of municipalities in matters concerning the regulation and taxation of utilities. Since 1994, Mr. Kaine has served on the Richmond City Council. He is also a member of the Telecommunications Task Force of the Virginia Municipal League and was recently appointed by the Federal Communication Commission to serve on its newly-formed State and Local Government Advisory Committee.

[*] David W. Ogburn is Assistant General Counsel of Bell Atlantic-Virginia. Mr. Ogburn holds a Bachelor of Arts degree in economics and a law degree from the University of Virginia.

[*] Dana G. Coltrin is Vice President and General Manager of Cox Fibernet, a Competitive Local Exchange Carrier (C-LEC), Local Loop Access, Private Newtwork Provider and Interstate Carrier in the Hampton Roads Virginia Market. Mr. Coltrin is serves as a founding member and past Chiarman of the Board for the Virginia Utility Coordinating Committee. He is also a member of the Executive Committee of the Board of Directors of the Virginia Telecommunications Industries Association and the Advisory Board overseeing the Network Infrastructure for Education Program at Old Dominion University.

[**] **NOTE:** All endnote citations in this article follow the conventions appropriate to the edition of THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION that was in effect at the time of publication. When citing to this article, please use the format required by the Seventeenth Edition of THE BLUEBOOK, provided below for your convenience.

Anthony Gambardella, Timothy M. Kaine, David W. Ogburn, Jr. & Dana Coltrin, *Local Franchising: What Role Will Localities Play in the Regulation of the Telecommunications Industry? Will They Become Providers of Telecommunications Service to the Public?*, 4 RICH. J. L. & TECH. 4 (Fall 1997), *at* http://www.richmond.edu/~jolt/v4si/speech4.html.

[1] Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 86 (codified at 47 U.S.C. § 151 *et seq*.).

[2] *Feds Have No Place in Local Zoning Decisions*, USA TODAY, Aug. 7, 1991, at 10A. *See generally* Gregg Fields, *Zoning Battles Brew Over Cellular Towers*, NEW ORLEANS TIMES-PICAYUNE, August 11, 1995, at C1.

[3] *See* Telecommunications Act of 1996, 47 U.S.C.A. § 254 (West).

[4] *Id*. at § 332(c)(7).

[5] *Id*.

[6] *Id*. at § 332(c)(7)(B)(iv).

[7] *See* 11 FCC Rcd. 12741 (1996) (decided in Memorandum Opinion & Order, In the Matter of TCI Cablevision of Oakland, County, Inc., FCC 97-331 (released Sept. 19, 1997)).

[8] *See* In the Matter of Federal-State Joint Board on Universal Service, 12 FCC Rcd. 8776 (1997).

[9] *See* Telecommunications Act of 1996, 47 U.S.C.A. § 253 (West).

[10] Telecommunications Act of 1996 § 253(c), 47 U.S.C.A. § 253(c) (1997).

[11] Implementation of Section 302 of Telecommunications Act of 1996, Open Video Systems, FCC 96-249, CS Docket No. 96-46, ¶ 201; <http://www.fcc.gov/Bureaus/Cable/Orders/1996_TXT/fcc96249.txt>.

[12] VA. CODE ANN. § 56-234 (Repl. Vol. 1995).

[13] Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (codified as amended in scattered sections of 47 U.S.C.) (1991).

[14] Roanoke, Va., Telecommunications Regulatory Ordinance (August 26, 1996).

[15] *Id*. 47 U.S.C.A. § 253(c) (1997)

[16] County of Fairfax v. Southern Iron Works, Inc., 242 Va. 435, 448,

410 S.E.2d 674, 682 (1991).

[17] H.D. 2915, Va. Gen. Assembly (Va. Jan. 22, 1997) (unenacted).

[18] H.D. 2915, Va. Gen. Assembly (amend and reenact Va. Code. Ann. §§ 56-458, -462 (1997) (March 18, 1997) (enacted).

[19] COLO. REV. STAT. ANN. § 38-5.5-101-08 (West 1997).

[20] COLO. REV. STAT. ANN. § 38-5.5-101(1)(b) (West 1997)

[21] VA. CODE ANN. § 15.1-292 (Cum. Supp. 1996).

[22] Southern Iron Works, Inc., 242 Va. at 448, 410 S.E.2d at 682 (1991).

[23] H.D. 2915, Va. Gen. Assembly (Va. Jan. 15, 1997) (unenacted).

[24] VA. CODE ANN. § 58.1-2690 (Repl. Vol. 1997).

[25] 132 Va. 480 (1922).
