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MEMORANDUM

To: Municipalities

From: John Pestle

Re: Contacting Congress re Preserving Cable Franchising

Date: April 21, 2005

Municipalities need to immediately write and call their U.S. Representatives asking that cable franchising be preserved. The reason is that there is a major threat to cable franchises in Congress, which is holding hearings on adopting legislation limiting or abolishing cable franchises in order to aid the provision of new "Internet Protocol" (IP) video, voice and data services. If this occurs, cable and telephone franchises are at risk.

By way of background, phone companies are starting to provide cable services, so they can provide a package of video, voice and data services. This is so they can compete with the cable companies which are now providing phone service, in addition to video and data (cable modem) service. The phone companies are pressing hard for legislation creating a new Federal regulatory scheme for this package of services, claiming that it is needed due to the Internet Protocol technology used to provide the services, and the need for "one national regulatory scheme" to aid their rollout. They want local cable franchises preempted (such as with a state or national franchise) or at least severely limited. They claim that local franchising is the biggest road block to their providing these services. Cable companies are apparently saying that if this occurs, they should be relieved of many existing franchise obligations.

Simply put, the phone companies are saying they will provide advanced forms of cable service, much faster data service, and phone service all over one wire and are spending billions of dollars to do this. But they say they can not provide the services quickly if they have to obtain a separate franchise from each municipality, which would unduly delay things and lead to too much variation. Thus, the phone companies claim that to allow a rapid rollout of these new "Internet Protocol" services, Congress should replace the separate regulatory schemes that currently apply to telephone, video, and data with a single national scheme with minimal regulation in which local franchises would be abolished or severally cut back. See H.R. 214 (on our website) for one bill which has been introduced to accomplish this.

The House Telecommunications Subcommittee has been holding hearings on this topic, and will likely produce legislation this summer. From our meetings with key players on the Committee, and comments by Committee members at hearings, the legislation would likely create a uniform Federal legislative scheme for IP services (video, voice and data) with only a limited amount of Federal, state or local regulation allowed. The FCC would enforce the legislation, and municipalities would be very limited in what they could do.

Municipalities need to contact Congress immediately asking it to preserve cable franchises, and such major elements of them as local control of rights of way; public, education and government channels; franchise fees; customer service; insurance and bonds; and providers having to relocate lines at their expense. Similarly, municipalities may wish to ask that telephone franchising be preserved.

Congressional staffers supportive of municipalities have indicated that faxes, calls and letters from elected officials stressing key points such as these are the most effective thing municipalities can do.

A suggested letter to Congress is on our website, www.varnumlaw.com/cable.

Due to security/anthrax screening, letters mailed to Congress are very slow in getting through, so please fax the letters in addition to mailing them (fax numbers for key Representatives are on the suggested letter).