

**Prepared Statement of
Steve Friedman
Chief Operating Officer of Wave Broadband
Chairman of the American Cable Association**

**Before the
U.S. Senate Committee on Small Business & Entrepreneurship**

**Hearing on
“Connecting Main Street to the World: Federal Efforts to Expand Small Business Internet
Access”**

April 27, 2010

Thank you, Chairwoman Landrieu and Members of the Committee. It is a great honor and a privilege for me to be here before this Committee to tell you about the investment in broadband being made by my independent company as well as the members of the American Cable Association (ACA).

My name is Steve Friedman, and I am the Chief Operating Officer of Wave Broadband and Chairman of the ACA. ACA represents nearly 900 small and medium-sized cable companies providing advanced video, telephone service, and, most importantly, high-speed broadband Internet access to more than 7 million customers in predominantly rural and smaller markets in every state.

My company, Wave Broadband, is a cable, Internet and phone services company currently serving more than 175,000 customers in Washington, Oregon and California. Headquartered in Kirkland, Washington, we employ more than 600 individuals. Wave also provides business-class Internet, phone and cable service to companies of all sizes, from Seattle to San Francisco.

The communities we serve vary from suburban to rural areas and are unique from large urban providers who, like other ACA members, pass fewer homes per mile with plant necessary to serve our customers. This increases the cost to construct and upgrade our systems and to operate them on an ongoing basis. Wave has built a broadband company that is designed to offer our customers the services they expect, including digital and HD video services, phone, and, of course, high-speed Internet. Our Internet services offer our customers speeds up to 50 Mbps. We did this by ensuring every Wave system is fully upgraded and has sufficient capacity to ensure these speeds from our customer’s home or business, through our last- and middle-mile, until they reach the Internet. We accomplished this by investing in the fiber network expansion and coaxial network upgrades necessary to deliver these services.

As an association representing small and medium-sized independent cable operators, we have a unique perspective on the broadband marketplace. Our members have historically

invested in communities where the “big guys” find it unattractive to provide service, ranging from rural places like Calcasieu Parish, Louisiana, to more urban and suburban markets in all 50 states. Our members’ networks are being used today to connect small businesses in rural America to the world via the Internet. And to date, small cable operators have built these networks and provided these services to residential and small business without any direct federal subsidy.

I appreciate the opportunity today to share with you ACA's perspective on connecting main street to the world, both with regard to private investment, and suggestions on actions by Congress, the FCC, and other federal agencies that would help further our efforts.

The Small Cable Industry is Well Situated to Provide 100 Mbps Broadband Service to its Customers

In its earliest days, small cable operators were entrepreneurs who invested private funds to bring the latest communications services to their communities. At the time, cable operators pioneered the delivery of broadcast stations to consumers who couldn’t receive these signals over-the-air. My family was one of those pioneers. In later years, smaller cable providers helped increase consumer access to vital news and other local information by offering cable networks, such as CNN and C-SPAN, in their communities. All of this was accomplished by independent businessmen who did not receive operating subsidies from the government.

Beginning about 15 years ago, smaller cable operators once again made significant private investment in their infrastructure, upgrading their distribution networks in order to begin offering their customers various digital services. These upgrades provided hundreds of channels and crisper television pictures. The underlying technology later allowed for the launch of other advanced services, such as High Definition TV services, video-on-demand, competitive phone, and – most important for this discussion – broadband.

In hindsight, the small cable industry’s need to reinvest its private capital to rebuild its infrastructure to provide the advanced services of today may seem obvious. However, at the time the return on the investment was far from certain. Smaller cable operators took a chance on the potential of broadband, and it paid off for the consumers and the communities they served.

“Indeed, cable may be one of the only businesses to ever build out an infrastructure and then completely rebuild it for a product that is likely to challenge, if not replace, the product for which the original infrastructure was built,” said Federal Communications Commission Omnibus Broadband Initiative Executive Director Blair Levin, speaking at our association’s conference on April 20, 2010.

Today the vast majority of the country can receive broadband services from cable operators. High-speed broadband service from a cable operator is available to 92% of

businesses across the country – the majority of which experience speeds of at least 3 Mbps. Through private investment, ACA members have been meeting the needs of small businesses and households in smaller markets and rural areas.

And because of cable's private investment years ago, cable is now well-positioned to provide even better service in the future. With the advent of DOCSIS 3.0, a technology standard developed by the cable industry which allows for high-speed data transfer over the coaxial infrastructure, cable operators can deliver speeds as fast as 100 Mbps to businesses and consumers. Doing so requires two primary components: A DOCSIS 3.0 cable modem located at the customer's facility, and upgrades at the cable TV head-end, where video, phone, and broadband signals are processed.

What does this all mean? It means that small cable operators are poised to deliver on the goal of President Obama and Federal Communications Commission Chairman Julius Genachowski to deliver 100 Mbps speeds to 92% of small and large businesses without the need for extensive government spending. With existing last-mile infrastructure and the new DOCSIS 3.0 standard, cable can continue to lead the way in providing the services that are needed to small businesses in rural areas, including high-speed access, and they can and will do it through private investment.

Having said that, I'm not suggesting there won't be hurdles and the need for some government help. There is an important role for Congress, the FCC, and the Administration to play in encouraging deployment of broadband in areas without cable last-mile infrastructure, and to help areas that lack sufficient middle-mile capacity or access to middle-mile services at reasonable costs, and in ensuring the costs of the services remain affordable. ACA believes that the government can and should act by:

- Increasing the Availability of Low-Cost, High-Capacity Middle-Mile Infrastructure
- Updating the Set-Top Box Rules to Restart the Cable Industry's Digital Transition
- Reforming the Pole Attachment Rules to Lower Broadband Costs and Continue Expansion
- Prohibiting BIP and BTOP Funding From Going to Areas Already Served; and
- Ensuring that Government-Funded Broadband Deployment Programs Are Technology- and Industry-Neutral

Small Cable Operators Need Access to Low-Cost, High-Capacity Middle-Mile Infrastructure

Over the years, ACA has demonstrated that the issues and challenges facing rural areas and the small cable operators that serve them are substantially different from the issues and concerns facing urban areas and companies the size of Comcast Corporation and Time Warner Cable.

As we talk about broadband, that distinction becomes even more critical.

Although many focus exclusively on the need to upgrade the Internet communications path that enters the home and office, ACA has attempted to draw attention to the middle-mile – the part of the network that runs between a cable broadband provider’s central office and an access point to the Internet’s backbone.

Why is funding for middle-mile infrastructure projects so crucial?

ACA members have already upgraded their local networks, providing consumers with much faster broadband speeds. But in many instances, because our networks are often outside core urban areas, today’s middle-mile links are very expensive, low-capacity facilities that effectively slow data speeds between what the local cable network can supply and what is actually delivered to or received from the Internet backbone. In other words, our members and their broadband customers face major data checkpoints because middle-mile network providers have failed to invest adequately in these facilities. This further harms the ability of our communities to stimulate business activity and create jobs.

Upgrading these middle-mile links would help address these concerns and would take advantage of the investment already made in the local communities by facilitating build-out without showing preference to a last-mile provider. It will also bring down the costs to provide higher speeds to businesses and households in these more rural areas.

ACA members have considered constructing their own middle-mile links, but because the distance between those two points can be many miles, if not counties apart, most of them simply cannot do so in a fiscally prudent manner. Instead, we need to find ways to encourage current and prospective middle-mile providers to deploy new facilities.

The NTIA’s focus in the Broadband Technology Opportunities Program (BTOP) on middle-mile is encouraging. But, certainly, NTIA’s efforts, while significant, are only a small step. We are thus heartened by the FCC’s focus on this issue in the National Broadband Plan. A key now is to ensure that the FCC expeditiously follows through and implements the proposals set forth in the National Broadband Plan.

Smaller Operators need the FCC to Update the Set-Top Box Rules to Restart the Cable Digital Transition

Set-top box rules requiring separable security have a negative impact on the development of greater broadband speeds in small systems.

In order for a smaller cable operator with a channel capacity constrained system to provide faster broadband, the provider must come up with additional bandwidth in its headend. For many operators, the most cost-effective way to accomplish this goal is by transitioning their analog channels to digital. However, in order to ensure that cable subscribers do not lose access to the programming that is converted to digital, the cable operator must provide a digital set-top box for each of its subscribers’ televisions.

After the ban on integrated set-top boxes was imposed by the FCC nearly three years ago, the price of a set-top box that allows for the delivery of digital programming rose dramatically compared to the non-separable security boxes available before the rule. As a result, many smaller cable operators could no longer afford to continue their transition to digital, or pursue the transition to all-digital video as an option, and therefore could not free up bandwidth for broadband and other advanced services.

If relieved from the financially onerous set-top box rules imposed by the FCC in 2007, smaller cable operators could free up bandwidth in their systems in a cost-effective manner and provide their customers with faster broadband speeds. After advocating for changes in the rules over the past few years, ACA was pleased that the FCC recognized the consumer benefits of such a policy change in its Further Notice of Proposed Rulemaking adopted on April 21.

We are also pleased that the FCC has recognized the hardship that its cable set-top box rules has caused smaller operators and has tentatively concluded that granting smaller operators the opportunity to purchase low-cost, low-functionality HD set-top boxes would permit smaller cable operators to transition to all-digital systems in an affordable manner. Once these operators can free-up channel capacity, they can continue their upgrades to DOCSIS 3.0 and supply customers with stunningly fast broadband speeds of up to 100 Mbps. We hope that the FCC will vote on this rule change by year's end.

Pole Attachment Reform is Necessary for Affordable Service and Continued Expansion

The cooperative and municipal exemption contained in the Federal Pole Attachment Act of 1978 is a barrier to the deployment and expansion of broadband and other services by small cable operators, particularly those in smaller markets and rural areas. The high pole attachment rates demanded by cooperatives and municipalities affect both expansion and the cost of services. ACA applauds the FCC for recommending to Congress in its National Broadband Plan that the 32-year old exemption be eliminated.

While cooperatives and municipalities – whose pole attachments are not regulated – claim their fees are based on actual costs, smaller operators too often find the true cost-based rate would be significantly lower. In fact, smaller operators find that many times the charges are far in excess of the pole attachment rates charged by investor-owned utilities that are subject to the FCC pole attachment rules. For more than 30 years, the FCC and many state commissions that regulate pole attachments have used a cable-rate methodology designed to fully compensate pole owners for the use of their property. However, in many instances, the rates charged by unregulated pole attachment owners are dramatically higher than the rates determined using this formula, which the courts have found to be fully compensatory. Because, there is no difference in the poles, and no difference in the administration and maintenance of them – the obvious reason for the difference in fees is that investor-owned utilities are regulated, while the cooperatives and municipalities are unregulated and free to charge whatever they like for the vital resource they control.

In recent years, some cooperatives and municipalities have also become broadband competitors to smaller cable operators, giving them an added anticompetitive incentive to artificially inflate pole attachment rates. Any asserted justification for treating these entities differently from investor-owned utilities has faded in the more than 30 years since the exemption was put into place.

Smaller operators are often both resource-limited and heavily reliant on pole attachments. Aerial or overhead construction to expand broadband to unserved homes requires utilizing existing poles or obtaining rights to attach to poles, as underground construction is at least three times more expensive. Since independent operators serve less dense areas, or fewer homes per mile, their costs per customer for pole attachments are noticeably higher. This makes construction costs higher and ongoing operating costs greater, in order to deploy broadband or offer faster broadband speeds. Independent operators cannot afford to absorb the rate increases, and therefore must either pass along these costs to their customers or put in less money toward reinvesting in these system upgrades. This situation ensures that the costs of broadband is unnecessarily high, and must be remedied.

ACA praises the FCC for suggesting that Congress eliminate the exemption for cooperatives and municipalities with regard to pole attachments to bring fairness back to the market for consumers and competition. Pole attachment reform is one of the most critical pieces necessary to carry out the goals of the National Broadband Plan, and we encourage Congress to take action as requested by the FCC.

BIP and BTOP Money Should be Directed to Unserved Areas First

ACA supports the Administration's goals of providing more broadband services to consumers in sparsely populated areas of the country through the Rural Utilities Service (RUS) and the National Telecommunications and Information Administration (NTIA). However, we were particularly disappointed to discover that the agencies' funded projects in the first round that would overbuild ACA members and others who had already invested private capital to deploy broadband in their communities. These members providing high-speed broadband services are now faced with competing against governmentally subsidized entities.

As small companies ourselves, we see this is less as an issue of "serving businesses with broadband," than as one of small businesses being hurt by well-intentioned, yet poorly developed and implemented government policies. I would be remiss if I didn't take this opportunity to raise these concerns to you and the members of this Committee, which is the watchdog of small business concerns.

ACA supported the RUS's Broadband Investment Program (BIP) despite its longstanding concerns regarding the administration of the RUS's Rural Broadband Access Loan and Loan Guarantee Program ("Loan Program"), which had directed money towards new entrants in communities that already had broadband service rather than giving priority to applicants in truly unserved communities. We were optimistic that the RUS's BIP would be run differently

from the loan program after hearing the words of U.S. Department of Agriculture Secretary Vilsack when he said, "It's important for folks to give us an opportunity to prove that past mistakes are in the past and corrected and that we will do a more progressive job to make sure people who need broadband service will get it."¹

Therefore, it is with great disappointment that we now learn from our members that loans and grants from RUS's BIP are being awarded in areas that are already sufficiently served with broadband. Two specific examples of such RUS BIP funding in Hays, KS and Vinton/Moss Bluff, LA highlight this problem:

- On January 25, 2010, Rural Telephone Service Company (RTSC) received a \$101 million RUS award, which will be used in part to provide additional broadband services in Hays, KS, an area that already receives such services from employee-owned Eagle Communications and numerous other local providers. In the past few years, Eagle Communications has invested more than \$20 million in private capital to upgrade and provide these services, which include broadband speeds for residential customers up to 10 Mbps, and speeds for business customers up to 100 Mbps. The \$101 million RUS award to RTSC endangers Eagle Communications, and threatens the 277 individuals who work for the company.
- Likewise, on February 17, 2010, the RUS awarded \$33.2 million to LBH, LLC (LBH), to deploy broadband in and around Vinton/Moss Bluff, LA, an area already served by James Cable, a small cable operator. James Cable, which locally employs 21 people, had invested more than \$7.5 million in the area in recent years, and the homes and businesses of Vinton/Moss Bluff today are able to receive broadband speeds up to 8 Mbps. James Cable also planned to offer residential and enterprise phone service this year. Despite submitting a formal response to LBH's application at the RUS last year showing where James Cable's broadband service was available, the agency awarded LBH with tens of millions of dollars to provide service in an area already adequately served.

This problem has occurred with NTIA funding as well:

- On March 25, Zito Media Communications II, LLC (Zito) received a \$6.1 million NTIA award, which will be used in part to provide additional broadband middle-mile fiber facilities in Northeastern Ohio and Northwestern Pennsylvania. In addition to already providing a high-speed network in part of the project's area, ACA member Armstrong also uses that network to provide broadband service to nearly 40,000 homes in Crawford County, PA. Armstrong has made available 10 Mbps to its Internet customers, and will soon offer a 50-Mbps service. Funding a new network in this area would not make broadband available in areas where it is needed most. It is important to also note that Armstrong provides broadband service to 110 hospitals and medical facilities, 60

¹ Washington Post; February 12, 2009; <http://www.washingtonpost.com/wp-dyn/content/article/2009/02/11/AR2009021103832.html>

government offices, 70 schools, 47 police and fire stations, and eight libraries in Zito's proposed service area. These numbers represent far more anchor institutions than Zito indicated existed in the entire proposed funded service area. Even more disappointing was the fact that it appears Zito was contacting Armstrong's customers when they learned that a broadband stimulus award was forthcoming to get them to switch to Zito when its network is complete.

In light of the above, we believe that the RUS and NTIA must take additional steps right away to ensure that funds are neither loaned nor granted to any applicant who would spend the money to build last-mile or middle-mile infrastructure in an area already served by a wireline broadband operator. The RUS and NTIA should immediately review and modify all proposals of all first-round awardees to ensure that no funding will be used to overbuild existing Internet access providers – particularly the three instances above – and then concentrate in the second round on providing loans and grants to the truly unserved areas of the country.

Broadband Deployment Programs Must be Technology- and Industry-Neutral

The RUS and NTIA promulgated rules that lack balance and fairness, so much so that it would not be an exaggeration to say that the rules have effectively excluded small cable operators from meaningful participation in the broadband stimulus programs. Such an outcome is neither good for ACA members, nor the millions of Americans on the wrong side of the digital divide in the areas they serve.

As they stand today, the rules applicable to second-round broadband stimulus funding appear to advantage certain segments of the telecommunications industry over small cable operators interested in obtaining broadband infrastructure loans and grants for last-mile broadband deployment. ACA is disappointed that NTIA and RUS have structurally modified the second-round rules for broadband stimulus funding in a way that makes it harder for small cable providers to receive last-mile funding. Moreover, the rules seem to favor every entity except small cable operators, who are ideal candidates to deliver state-of-the-art broadband facilities to rural and remote communities. This is particularly troublesome considering reports that small telephone companies collected \$250 million of the \$310 million awarded by RUS in first-round broadband stimulus funding – more than 80% of the total awarded.

After a careful review of the separate RUS and NTIA NOFAs that were released on January 15, 2010, ACA discovered that the RUS made various adjustments to its second-round funding rules that tilted in favor of rural telephone and satellite companies to a degree that gives them a decided advantage over smaller cable operators that decide to apply for last-mile grants and loans. For instance, RUS opted to increase the number of points (from five to eight) out of 100 automatically awarded to applicants that have previously borrowed funds under Title II of the Rural Electric Act of 1936, which are overwhelmingly traditional telephone companies. Thus, traditional cable providers are placed at an automatic eight-point disadvantage over such companies merely because the cable companies built their systems

through private investment rather than with government subsidized money. Moreover, RUS plans to set aside \$100 million in grants specifically for satellite broadband targeted at rural unserved areas – areas that might be targeted by small cable operators for the build-out of wireline broadband.

The decision to bolster incumbent RUS borrowers has taken on greater urgency because NTIA states that the majority of its allotted \$2.6 billion in second-round broadband grants will go to middle-mile focused projects, while the RUS's \$2.2 billion in grants and loans will mostly go toward last-mile infrastructure projects. If the first round of funding is any indication, competition for the funds will be fierce, with the amount requested far exceeding the amount of funds available. ACA, which has maintained all along that a five-point preference was excessive and suggested a lower preference be given in commenting on the plan, is perplexed as to why RUS would make matters worse by increasing that amount to eight points.

In our new era of open government, we hope that future government programs would be designed in a more technology- and industry-neutral manner that would not disadvantage small cable operators. Favoritism and disparate regulatory treatment are not a formula for success.

Conclusion

On behalf of ACA and my company, we appreciate what Congress, the FCC, and the funding agencies are doing to support broadband expansion and growth in smaller markets and rural areas. We support you and pledge to be beside you in this effort.

Our hope is that reasonable revisions to existing statutes, FCC regulations, and the BTOP and BIP rules as outlined here will promote even greater private investment, and ensure that where federal funds are spent on broadband, they are spent in a cost-efficient way in areas that are truly unserved.

Thank you for your attention, and I would be pleased to answer your questions.