

**Testimony of Terry Huval  
Director of Utilities  
Lafayette, Louisiana**

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

Madam Chairman and Members of the committee, my name is Terry Huval, and I serve as the Director of Utilities of the Lafayette City-Parish Consolidated Government in Lafayette, Louisiana. I am appearing here today on behalf of my community and on behalf of the American Public Power Association (APPA), an association representing the interests of over 2000 public power communities in North America. Thank you for the invitation to participate in this important hearing regarding efforts to expand Internet access to small businesses in both commercial locations and in the home.

**I. LAFAYETTE’S VISION AND COMMUNITY SUPPORT**

Lafayette believes the Internet and major broadband is as important to the future of our citizens and businesses as was the construction of our own electric utility system, a critical infrastructure proposition that received a unanimous vote of approval from its community in 1896. Some 109 years later, Lafayette’s citizens overwhelmingly supported the entry of our local government into the telecommunications business through a 62% vote of approval at a public referendum in 2005. This new communications system is named after the city’s utility enterprise, Lafayette Utilities System (LUS) and operates under the trade name of “LUS Fiber”.

LUS Fiber is already serving thousands of customers today, both homes and businesses, and is providing its customers with the nation's fastest Internet speeds at unprecedented low prices. Lafayette is currently the largest U.S. city with a community-owned fiber system. The LUS Fiber to the Home and business system is expected to complete its citywide street-by-street deployment by July 2010, which is some 9 months ahead of schedule. While this brief description of Lafayette's progress on this initiative would appear straightforward enough, the lengthy and costly struggle to reach these important milestones has been anything but simple.

## **II. LEGAL INTERFERENCE BY INCUMBENT TELECOM PROVIDERS**

Subsequent to the initial public announcements made relative to Lafayette's exploration into this venture in April 2004, the city's major incumbent private telephone company (BellSouth) and cable TV company (Cox Communications), were repeatedly invited to build a fiber to the premise infrastructure in our city, in lieu of Lafayette doing so. Those companies steadfastly refused to do so, stating that Lafayette was too small of a market to make such a large investment. Despite their refusal to make the investment themselves, these telecommunications providers aggressively opposed the city's entry into the telecommunications arena. Within days of the city's announcement to perform a market survey to find out if there was sufficient interest in the community for the city to move forward with such an initiative, BellSouth orchestrated legislation which, while self-styled as a "fairness" bill, would have effectively prohibited any local government in Louisiana from offering telecommunications services. Because of the political influence and

unlimited resources of these mammoth telephone and cable corporations, Lafayette could not kill this legislation outright and was forced to negotiate provisions that, while not prohibitive, placed Lafayette at a significant disadvantage as compared to these very established private companies. As a result, the so-called “Local Government Fair Competition Act” (LGFCA) was enacted.

The FCC National Broadband Plan, on page 153, includes Louisiana as one of 18 states that “have passed laws to restrict or explicitly prohibit municipalities from offering broadband services.” While the Louisiana law did not prohibit Lafayette from providing broadband services, its mere presence provided, and continues to provide, a fertile playground for BellSouth (and its successor AT&T), Cox and their allies to create mischief, resulting in discouraging local governments from stepping in to provide these services even when the private telecom companies refuse to do so. In the case of Louisiana, no other local government has stepped up to attempt to provide communications services, even in instances when the private providers decline to do so. This is not surprising when one considers the direct cost for communities to pursue this as a result of lawsuits and other further provisions these private telecom companies have effectively lobbied into law. Add to that, the undesirable experiences Lafayette endured due to the aggressiveness of BellSouth, Cox and their surrogates, and it is easy to see why this law is an effective barrier to entry, even while paying lip service to the possibility of municipal involvement. In essence, the LGFCA – despite its oft stated purpose of “leveling the playing field” -- has effectively become the biggest impediment for local government to offer these services.

The LGFCA was touted by the incumbent telecom providers as being necessary to create a “level playing field” when a governmental entity enters the market place; however, one cannot help but note the irony of that assertion. Lafayette certainly agrees that the playing field is not level, but all of the advantages go to the private providers.

For example, while Cox Communications can make rate decisions in a private conference room several states away, Lafayette conducts its business in an open forum, as it should. While Cox can make repeated and periodic requests for documents under the Public Records Law, it is not subject to a corresponding obligation – a “show me your plans, but don’t dare ask to see mine” mentality. Louisiana law limits the ability of a governmental enterprise to advertise, but nothing prevents the incumbent providers from spending millions of dollars in advertising campaigns. An important focal point of the legal challenges involved the right or ability of Lafayette to pledge assets of the utilities system as security for the bonds, something that the private corporations do all of the time without the slightest scrutiny. To be sure, the “playing field is not level,” but it is the government which is disadvantaged, not the private companies.

Lafayette’s story continues...Once the Louisiana legislation was put into law in July 2004, BellSouth took advantage of their first opportunity to file suit. The suit pushed the envelope concerning a referendum election, which was not a direct requirement in the negotiations of LGFCA. However, as a result of adverse rulings in the state district court and state court of appeals, Lafayette of its own accord brought the issue to a public referendum vote. As it turned out, the arrogant push back by BellSouth and Cox ignited many in the community. Grassroots support sprang up in many sectors of the city. By the

time the July 16, 2005 election rolled around, Lafayette's fiber initiative had gained the endorsement of both the Parish Democratic Executive Committee and the Parish Republican Executive Committee. It also received the endorsement of the Greater Lafayette Chamber of Commerce and a number of other established organizations in the community. In addition, the local daily newspaper issued five editorials in support of the initiative and the local weekly paper also issued editorials in support of the initiative.

Despite an aggressive campaign by the private telecom entities and their allies designed to incite fear or uncertainty in the citizenry, the referendum passed by a 62% vote, with nearly every precinct in support. The only organized opposition was from a group consisting of three citizens whose arguments seemed curiously consistent with those of the incumbent telecom companies and their state organizations.

With a successful public vote behind it, Lafayette began its efforts to secure funding for the project through the issuance of tax-exempt municipal bonds. The corresponding bond ordinance was unanimously approved by both the governing authority of the utilities department and the city-parish council, as well as the State Bond Commission, but soon was challenged by the filing of suits by the incumbent companies and their respective state organizations. The state district court ruled in favor of the city, but that decision was overturned against the city by the state appeals court. Although Lafayette disagreed with the higher court ruling, Lafayette modified its bond ordinance accordingly and again received unanimous support from the aforementioned bodies. The bond ordinance again received a legal challenge, but this time by two citizens of the community. To this day I still do not know what these two citizens even look like. Some suggest the extensive legal costs associated with the subsequent court proceedings were underwritten by others. Even

the Chief Justice of the Louisiana Supreme Court – a long standing friend of your family, Madam Chairman -- asked the plaintiffs' attorney if they were being paid by the telephone company, during the ultimate Supreme Court hearing on this issue.

This third case also resulted in a ruling in Lafayette's favor by the state district court, but was subsequently overturned by the appeals court. This time, Lafayette appealed the ruling to the State Supreme Court, which overturned the appeals court by a unanimous 7-0 decision in February 2007.

During these court battles, Lafayette also had to endure additional struggles in the Louisiana Public Service Commission (LPSC). Although state law does not allow the LPSC to regulate a municipally-owned utility system, certain aspects of the LGFCA regarding cost allocations and affiliate transactions required additional rule-making beyond the Act itself. Lafayette agreed that the LPSC, which has developed similar rules for private telecom companies, would be an appropriate forum to develop such rules. Again, however, BellSouth and Cox used this additional opportunity to try to make the mandates of the LGFCA even more onerous for Lafayette. Those interventions forced more costs on Lafayette through some of the resultant rules.

In addition, the private telecom companies were successful in 2005 to amend LGFCA by including a mandatory provision in the LGFCA forcing a public referendum, even though the prior year's negotiation of the act did not include such a requirement. This same amendment to the LGFCA included an unduly onerous provision that would suspend the obligation of a private cable TV or telephone to pay franchise fees to any local government choosing to provide telecom services in the event a public referendum was not held. This suspension of franchise fee payments would remain in force until the

communications enterprise of the local government paid the same level of franchise fee paid by the private providers over the previous 10 years. The punitive nature of this provision meant that local governments would have to reduce their budgets, perhaps cutting vital services like police and fire protection, if the community wanted to enter the telecommunications arena for the good of its community. This is yet another example of the “unfair” Act, which was supposedly based on the concept of “fairness”.

As one can readily see, the incumbent providers have gone to grossly excessive lengths to do all they can to discourage local governments from providing these essential services to their citizens and businesses.

By the time the Louisiana Supreme Court rendered its decision in 2007, almost three years had passed since the city’s first announcement of this project in 2004. The political and legal battles brought and promoted by the incumbent telecoms cost the city of Lafayette nearly \$4 million. Interestingly enough, Cox Communications, which had been increasing its rates several times a year prior to Lafayette’s initial announcement to explore its offering of telecommunications services, decided to freeze its rates in Lafayette between 2004 and 2007. At the same time, Cox continued to increase its rates in other parts of the state. Estimates indicate that Lafayette citizens and businesses saved nearly \$4 million due to these deferred cable rate increases, so in a roundabout way Lafayette’s citizens saved in reduced cable TV rates the amount the city spent defending itself in this extensive litigation process.

### **III. CONTINUED INTIMIDATION BY INCUMBENT TELECOM PROVIDERS**

It has been interesting to observe the interplay between BellSouth and Cox, which sometimes resembled a strategy of “good cop/bad cop”. For example, BellSouth was clearly the leader in the legislative battle and early lawsuits. Cox would remain quiet for a while and let BellSouth take the public blows, and then suddenly Cox would become the notable aggressor with strategies like push-polls, attempting to poison the minds of the community members being polled in order to get responses that would be against the city’s fiber initiative. One member of the community recorded the push-poll he was receiving. One of the questions alluded to the city requirements for lawn watering during dry summer conditions. The question generally was phrased as “Since the city only allows you to water your lawn only three days per week, how do you feel about the city offering you cable TV service where you could only watch television three days per week?” The community member and, ultimately, the out-of-state questioner in this push-poll, are both heard chuckling at the ridiculous nature of the questions.

Since the Supreme Court decision, Cox Communications has made very frequent public records requests and is using other tactics to attempt to undermine Lafayette’s market penetration efforts. Cox has increased its rates in the multi-parish area, which includes Lafayette, and is going door-to-door to offer lower customized pricing to regain customers already being served by LUS Fiber. Apparently the notion of “fairness” espoused by the private companies does not include the increasing of rates to customers in non-Lafayette areas who have very few competitive options which allows Cox to use the resultant higher



revenues to offer much lower pricing in Lafayette areas where there is now meaningful competition from LUS Fiber.

In addition, Cox representatives were recently active in attempting to undermine the future of the city's century-old electric, water and sewer utility system. During a recent rate increase effort for these traditional utilities, Cox representatives were lobbying Lafayette council members to oppose the rate increase in order to adversely affect the utility system's future viability. All of these examples indicate an underlying strategy to hurt the city simply because the city voters dared to choose to authorize the building of their own telecommunications system.

Lafayette has observed that intimidating issues with the telephone company virtually ceased after AT&T absorbed BellSouth, but one can only wonder what may lurk ahead.

As long as the LGFCA remains in force, the private telecommunications companies will continue to retaliate against Lafayette's communications initiative in an effort to intimidate Lafayette and its citizens.

#### **IV. LAFAYETTE DEPLOYS ITS SYSTEM – AND EXCEEDS EXPECTATIONS**

Subsequent to the favorable state Supreme Court ruling, Lafayette issued \$110.4 million in tax-exempt municipal bonds in June 2007. The city secured the necessary resources to help it engineer the project and bid out certain sections of it for construction. The city added the staff necessary to support this effort. Field construction began in February 2008 and the city established its trade name of "LUS Fiber" and began serving its first customers in February 2009. LUS Fiber offers video, phone and Internet services to

residential and business customers at pricing levels, on average, 20% less than the private companies.

While the provision of these traditional services is necessary to satisfy the financial obligations of LUS Fiber, the primary purpose of this initiative is to build the broadband infrastructure of the future. The gradual convergence of video and phone to the Internet will create a greater demand for significant bandwidth. The LUS Fiber system is designed to offer likely the fastest home and small business Internet speeds in the U.S. today, but more importantly the system can be incrementally upgraded to even faster speeds as the technology continues to mature.

As a result of LUS Fiber's focus to offer superior Internet fees at great value, many consider LUS Fiber's Internet services as its most impressive product offering. Its Internet service offerings are:

<b>Residential</b>	<b>Commercial</b>
10 Mbps - \$28.95	10 Mbps – \$64.95
30 Mbps - \$44.95	50 Mbps - \$119.95
50 Mbps - \$57.95	100 Mbps - \$199.95

Even more significant than these speeds and competitive price points, is the fact that these Internet speeds are symmetrical, which means the same speed for both upload and download. This is in stark contrast to the Internet offerings of most telephone and cable companies where the upload speeds are about 1/10<sup>th</sup> of the download speeds. A faster upload speed means less time to upload large files, such as video and large data files. In addition, because of the inherently robust nature of a fiber-to-the-premise infrastructure,

these Internet speeds are achievable virtually 100% of the time, even during peak usage conditions.

The most notable feature of LUS Fiber's Internet offering, however, is that all of its retail Internet customers receive 100 Mbps peer-to-peer Intranet capacity at no additional charge. This provides a true level playing field for all residents and businesses in the community. While there may be few applications for such high bandwidth today, local medical and other business institutions are already searching out ways to use this bandwidth to provide for better healthcare and more efficient business transactions. The Lafayette initiative has been held up as a model for local governments wanting to improve the future of their communities.

Just this past week a highly successful event was held in Lafayette, bringing in some of the most prominent players in the international broadband arena. The event, Fiber Fête, was hosted by businesses from Lafayette, the Louisiana Economic Development Department, Lafayette Economic Development Authority, LUS Fiber and the Lafayette Consolidated Government. A stated goal of the event was to ignite innovation on how to best use the significant bandwidth being offered by Lafayette.

The turnout at the event by significant players in the broadband world was visible evidence of the enthusiasm expressed by many in the country concerning Lafayette's bold initiative. In attendance were representatives from Google, Harvard University Law School, Cisco, City of Seattle, City of San Francisco, the Ford Foundation and many other visionaries, all intent on discussing the many potential uses of the power of broadband. The event provided an opportunity for local innovators and business leaders to interact with leading global application developers, network builders, venture capitalists, entrepreneurs and policy experts, and on-line business leaders. Fiber Fête effectively created a forum to

discuss specifics of what our connected future can look like in a networked environment.

Numerous practical and futuristic ideas emanated from the participants.

With the extraordinary robust capacity being offered by LUS Fiber, health care, hospitals and doctors' offices can now send large X-ray or MRI files to specialists anywhere in the world who can examine and diagnose on the spot, allowing for more responsive and lower cost health care. Through Lafayette's fiber system, students in Lafayette's public classrooms have already participated in a live video conference collaboration with students in San Francisco – the possibilities for future collaborations are endless, either from coast-to-coast or internationally. The oil and gas industry can now transmit large files of seismic information for offshore oil and gas exploration to Houston at lightning speeds. Movie animators producing films can transport them from Lafayette back to Hollywood or New York. Lifelike video conferencing from the home can reduce commuter traffic, and the resulting impacts of highway congestion and corresponding CO<sub>2</sub> emissions. The possibilities are virtually endless.

Imagine what Lafayette leaders envisioned in 1896 with the establishment of its own electric system. Chances are they could only see light bulbs and motors as the new inventions of the day. Just like the vast evolution in the uses of electricity, the uses for true high speed broadband (100 Mbps and above) are on the verge of continued evolution. Fiber-connected communities will help small businesses flourish and create more opportunities for creativity and entrepreneurship.

It cannot be stated enough that Lafayette's objectives in this initiative are far more than just providing competitive options for cable TV, phone and Internet. LUS Fiber's service offerings and pricing are what are necessary to bring in the revenue stream to pay for this highway of commerce of the future. All indications are that all these separate

services will converge into one major service – Broadband. One can look at this in the same way as in the various ways to use electrical power – to power air conditioners, televisions, computers, toaster, and the list continues. Yet, there is no “separate power bill” for the services to power each of these devices. Instead, it is simply referred to as electric services, which power an endless number of devices used in home and business. In the case of today’s telecom services, it will become simply Broadband as the infrastructure for tomorrow.

As we wrap this concept of broadband around the purpose of this Committee for Small Business and Entrepreneurship, it is easy to imagine a world where broadband access is no longer a limiting factor, but is instead an enabling factor. Significant broadband access to masses allows all citizens and small business an equal footing to innovate, create and develop new applications that can be marketed. It now opens a door, that for too many, has remained shut due to the sleight of hand antics of many private telecom companies who talk the game of broadband but only offer embarrassing low levels of capability.

Lafayette’s initiative is to build and operate an infrastructure that offers a “hand up” to those who need the tools to make a better life for themselves and their community, and to pay for that infrastructure through selling popular services to customers.

## **V. OTHER RELATED ISSUES**

**Digital Divide** - One of the stated visions of LUS Fiber in proposing its communications system was to help bridge the digital divide. With the approximate 20% savings customers could enjoy through LUS Fiber’s lower rates for conventional telephone and cable TV services, a home without an Internet connection could now purchase Internet services with those savings. For example, LUS Fiber offers a “Triple Play” of video, Internet and phone

for \$85 per month (83 channels of video service, 10 Mbps Internet and local phone service). Many customers, especially those in low-income areas, find this offer attractive.

In a focused effort to address the digital divide, LUS Fiber conducted a survey in conjunction with the University of Louisiana at Lafayette's Department of Sociology, Anthropology, and Child and Family Studies to determine a baseline for broadband penetration rates in the City. The study was developed to achieve maximum comparability with data at the national level. Some questions mirrored those asked by the Pew Internet and American Life Project and the Annenberg's Digital Future Report (USC Annenberg School Center for the Digital Future).

This survey "Internet Use in Lafayette, LA – 2009 Baseline Study" provides a solid reference point that can be used to measure the future effectiveness of the deployment of various LUS Fiber programs and other efforts in our community to bring more of Lafayette's citizens into the digital economy.

Results from the survey concluded that low-income, African American Internet usage falls well below the national averages in the United States. The national average of African American computer use is 66% while Lafayette computer use is 61% and 57% for African Americans and Creoles, respectively. The national average of African American Internet use is 67% while Lafayette Internet use is 51% and 40% for African Americans and Creoles, respectively.

To have expended resources to perform the study is strong evidence that Lafayette's focus is in finding ways to help everyone in the community who aspires to a better way of life.

**BTOP Grant Application** – Leveraging the power of the bandwidth capabilities of LUS Fiber, the Lafayette Consolidated Government applied for several Broadband Technology Opportunities Program (BTOP) grants. Using the survey previously mentioned will provide a solid means to monitor and determine the effectiveness of the deployment of this BTOP grant and other efforts in our community to bring more of Lafayette’s citizens into the digital economy. As part of this proposed BTOP application, LUS Fiber would provide free Internet service for two years to graduates of the Build (or Earn)-A-Computer program.

The Lafayette Students Build-A-Computer Program proposes to increase broadband adoption among low-income students by providing training and free computers for graduates of the program. It has already shown success in its early efforts, made possible through local donations of used business computers, and will be able to expand to serve more community need with additional funding. The program is administered through The Heritage School of the Arts & Technology, a non-profit entity which provides volunteers to assist the students to re-purpose these used computers. The Heritage School trains the students in the building and operation of computers.

Through its BTOP grant application, LUS Fiber proposes to provide additional new computers and Internet service. The program will target 1,000 disadvantaged students from low performing schools in the City and provide a total of 35,000 hours of training. The project goal is to educate our youth and increase access to the Internet in our community.

In addition, the Lafayette Consolidated Government has made a BTOP grant application to expand public computing centers in the city libraries and the local low-income housing authority. These expansions will help address the established and expanded demand for public computer access already experienced in the current public computing centers operated by these two entities. LUS Fiber will be the service provider at

all of these locations.

**Smart Grid Investment Grant** – Lafayette Utilities System through Lafayette Consolidated Government applied for and was awarded a Smart Grid Investment Grant through the Department of Energy for \$11.63 million. The project is greatly enhanced by the potential availability of fiber to every home and business in the city of Lafayette. Advanced metering infrastructure will be installed including two-way communications via the fiber system. Customers will be able to harness the power of information about their electricity and water use through the customer systems and in-home displays installed. Electric distribution and transmission automation will be possible to automate, monitor and control devices on the grid, all to the benefit of more reliable and cost-effective utilities services. Benefits expected from this program include more stable utility bills, consumer monitoring and control of utility usage, outage management, demand side management reducing system loadings and corresponding green house gas emissions.

## **VI. CONCLUSION**

Lafayette, Louisiana is an oasis of major broadband connectivity through its successful fiber deployment. This accomplishment has come at a high cost to Lafayette's citizens and associated delays due to the significant impediments placed by private telecom entities, like BellSouth and Cox. It is unfortunate that the national policies of the past have failed to even approach a world-class broadband system. The U.S. continues to lag behind many countries in Europe and Asia. Clearly, major policy changes need to be made in this country that will allow and encourage ALL possible participants in the construction and operation of major broadband infrastructure, preferably a fiber to the premise system.



Lafayette joins with a growing number of communities, citizens and business owners who believe that the answer to the issue of inadequate broadband is to remove limitations and impediments on local governments wishing to make these investments to help move their communities forward. We further believe that such a policy change is of considerable importance to consumer protection and the public interest.

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Madam Chairman, thank you again for inviting me to testify. Lafayette appreciates this opportunity to help it help its small businesses, entrepreneurs and residential customers.