

SENATE 448

TESTIMONY OF PAUL R. CIANELLI

THE NEW ENGLAND CABLE & TELECOMMUNICATIONS ASSOCIATION

The Energy & Technology Committee

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SB 448: CABLE TELEVISION EQUIPMENT AND THE DISCLOSURE OF RATES FOR CERTAIN SERVICES OFFERED BY TELEPHONE AND CABLE COS.

My name is Paul R. Cianelli, President and Chief Executive Officer of the New England Cable & Telecommunications Association (NECTA). NECTA represents Connecticut's cable companies which compete to provide advanced broadband, voice and video products and services to our state's business and residential consumers. NECTA respectfully offers this testimony in opposition to Senate Bill 448.

SECTION 1

REQUIREMENT TO SELL VIDEO EQUIPMENT IS PREEMPTED BY FEDERAL LAW

Section 1 proposes that all video providers must sell "any equipment necessary" to receive cable or video services. This proposal is preempted by federal law.

Section 624(f) of the Communications Act (Act) specifically provides that: "Any Federal agency, State, or franchising authority may not impose requirements regarding the *provision* or content of cable services, except as expressly provided in [Title VI of the Act]." The PURA may regulate lease rates for equipment used to receive the basic service tier, but only in communities that are not subject to effective competition, and only under the restrictions set forth in Section 623(b)(3) of the Act and the rate formula set forth in Section 76.923 of the FCC's rules. Because nothing in the Act or FCC rules allows State or local governments to mandate equipment sales, any Connecticut law imposing such requirements would violate Section 624(f).

In addition, the Act makes clear that cable equipment-related matters are exclusively within federal authority. Section 624(e) was amended in 1996 to prohibit States and franchising authorities from imposing technical mandates on cable operators: "No State or franchising authority may prohibit, condition, or restrict a cable system's use of any type of subscriber equipment or any transmission technology." Congress explained the amendment as "prohibiting States or franchising authorities from regulating in the areas of technical standards, customer equipment, and transmission technologies" in order to avoid "the patchwork of regulations that would result from a locality-by-locality approach," which it thought to be "particularly inappropriate in today's intensely dynamic technological environment." The Supreme Court had already agreed. In *City of New York v. FCC*, 486 U.S. 57 (1988), the Court quoted with approval FCC findings that "a multiplicity of mandatory and nonuniform" requirements "could 'seriously imped[e]' the 'development and marketing of signal source, transmission, and terminal equipment.'" "Technical standards that vary from community to community create potentially

serious negative consequences for cable system operators and cable consumers in terms of the cost of service and the ability of the industry to respond to technological changes.” The FCC has since held that these 1996 amendments preclude state and local set-top rules. Likewise, Section 629 assigns the FCC the task of adopting rules to foster the retail availability of set-top boxes and other navigation devices. It was under this authority that the FCC adopted the CableCARD system. Because the federal government has occupied this field, state and local regulation is preempted.

REQUIREMENT TO SELL VIDEO EQUIPMENT IS UNNECESSARY AS CABLE OPERATORS ARE ENABLING CONSUMERS TO RECEIVE CABLE VIDEO PROGRAMMING ON CONSUMER-OWNED TABLETS, GAMING STATIONS, PERSONAL COMPUTERS, SMART TVS, AND HOME NETWORKED EQUIPMENT.

Cable operators are also using creative methods to enable consumers to enjoy cable services anytime, anywhere, on any screen, and often on multiple screens in simultaneous use by the same viewer. Cable operators are enabling increasingly more consumer-owned devices to connect to cable services directly in Internet Protocol (IP). Consumers can use Cablevision’s Optimum App for iPad or Comcast’s AnyPlay device to view cable on their iPads while at home. Consumers can access video programming from cable operators on their personal computer using implementations of “TV Everywhere,” with no set-top box. Under recent arrangements, some consumers can access cable programming through their Microsoft Xbox game console, with no set-top box. This spring Samsung will release a Smart TV that can access cable services as a clickable screen icon displayed side-by-side with other services, without any set-top box. Sony, Panasonic, and LG plan to release similar TVs beginning later this year. Other techniques include sharing recorded cable content within home networks with a variety of retail TVs, game consoles, PCs, and mobile devices. Cox’s Trio Guide uses Multimedia over Coax Alliance (MoCA) to allow retail devices in the home to find, retrieve, play, pause, fast-forward and rewind recorded content stored on a Cox DVR, and “plug and play” MoCA-based components are available at retail. These rapidly evolving innovations are enabling consumers to enjoy content around the home on retail devices. There is no need for a state law to create a retail market.

SECTION 2

Section 2 Of SB 448 proposes that all cable and certificated video companies must identify on the company web site and in “any written material” each service offered and “the pricing options available for each such service under any service package or bundle option offered.” This proposal is unnecessary and preempted by federal law.

FEDERAL LAW PREEMPTS CONNECTICUT MARKETING LEGISLATION

Section 624(f) of the Communications Act (Act) specifically provides that: “Any Federal agency, State, or franchising authority may not impose requirements regarding the *provision* or content of cable services, except as expressly provided in [Title VI of the Act].” The PURA may regulate rates for the basic service tier, but only in communities that are not subject to effective competition, and only under the restrictions set forth in the Act and the rate formula set forth in the FCC’s rules. Because nothing in the Act or FCC rules allows State or local governments to mandate the content of cable operator marketing, any state law imposing such requirements would violate the Act. Although the Act does leave room for generally applicable state consumer protection legislation, it does not permit consumer protection rules to override these substantive provisions of the Act.

THE FCC HAS EXTENSIVE REGULATION OF CABLE MARKETING.

The Federal Communications Commission (FCC) has adopted extensive regulations for cable operator rate notices and billing disclosure. Following Congressional instruction in 1992, the FCC adopted rules addressing a variety of written notices and information that cable operators are required to give customers at the time of installation, annually, and any time upon request, including prices and options for basic and other programming services and conditions of subscriptions, billing and complaint procedures, dispute resolution, and rate and service changes. The rules also govern the times when customer service agents must be available by telephone, the hours when offices are to be open for walk-in, how bills are to be itemized and how franchise fees, other fees or taxes and the cost of compliance with certain franchise requirements are to be disclosed. An operator may choose to do additional disclosures, but FCC rules recognize that an operator should only be required to disclose all offerings at specified times, such as in its annual notice or on inquiry. It has specifically held that an operator need not market every offer. The statute and the rules authorize a cable franchise authority to enforce these customer service standards against cable operators and many have done so. But mandating disclosures more frequently or more extensively is inconsistent with FCC rules.

GENERALLY APPLICABLE FTC AND STATE CONSUMER PROTECTION LAWS ALSO REQUIRE TRUTHFUL MARKETING.

The Federal Trade Commission has a range of laws, regulations and enforcement authority at its disposal to address marketplace failures in the area of consumer protection. In interpreting Section 5 of the Act, the FTC has stated that "advertisements must be truthful and not mislead consumers in ways that affect consumers' behavior or decisions about the product or service." State consumer protection laws of general applicability often apply similar standards.

MARKETING MATERIALS CONVEY ACCURATE, CLEAR AND UNDERSTANDABLE MESSAGES IN AN INTENSELY COMPETITIVE MARKET

Marketing materials by cable companies are designed to meet these requirements, but they are also shaped even more by the intense competition in today's market from telephone, satellite, and other providers who are vigorously competing for the same consumers with a dizzying variety of offers, packages, and promotions of voice, video, and data services. The intensely competitive nature of the communications industry compels providers to do far more than just meet regulatory requirements. The marketplace requires them to provide accurate information in a clear and understandable manner through a variety of means. Cable operators provide an extensive amount of information to consumers to assist at all stages of the purchasing process, including choosing a provider, choosing a service or package, and deciding whether and when to switch an existing provider, service or package.

But this does not mean that every piece of marketing material features every single possible service offering or bundle. Websites or written materials may feature the most popular bundles, or a new promotion, in a manner designed to communicate a clear marketing message in an easily understandable manner in an intensely competitive market. Most cable operators provide detailed information about service and package availability, including channel line-ups,

broadband speed offerings, and other details, by street address or zip code. Most cable operator websites allow consumers to input their home address or zip code and view a wide variety of services and packages, including special offers, available to them. In addition, consumers can always call a cable operator for assistance in understanding available offers.

DISCLOSING EVERY CABLE OFFER ON EVERY MARKETING PIECE WOULD CONFUSE CUSTOMERS.

Requiring every marketing piece to disclose every service under any service package or bundle option offered has the potential to make information even more confusing to consumers. Cable operators communicate information to consumers about their plans and packages through a variety of formats, including direct mailings, advertising in mass media, billing inserts and company websites. Each company has its own unique assortment of service offerings, bundles, and promotions. And each operator's determination of the most appropriate offer to feature in advertisements, websites, live calls, and bills reflects its own particular circumstances. Including all of the information important to all consumers in all advertising materials would be unwieldy, confusing, and ultimately useless – if not annoying – to most customers.

CONCLUSION

For the reasons set forth above NECTA respectfully submits this testimony in opposition to Senate Bill 448. Thank you.