

**Testimony of Robert K. Johnson  
Consumers for Competitive Choice  
Before the  
General Assembly of Pennsylvania  
House Consumer Affairs Committee  
Regarding House Bill 1490  
February 7, 2008**

I am honored to be here today to testify about HB 1490, the "Consumer Cable Franchising and High-speed Broadband Promotion Act." My name is Bob Johnson and I am the President of Consumers for Competitive Choice, an alliance of consumer organizations with one million members throughout the United States, including small business owners, residential consumers, farmers, seniors and persons of color. I speak today specifically on behalf of our thousands of Pennsylvania constituents.

As our name suggests, we believe that consumers are best served by a vibrant competitive marketplace. Regulation should focus on policies that encourage investment and protect consumers from any potential excesses in the market; it should not interfere with the economic incentives found in a free market. That is the formula for consumer success in the telecommunications and video markets. The Federal Communications Commission and a number of states have followed this recipe in the past few years and the result is stimulation of consumer choice in the video and broadband markets as competition and investment are encouraged. California, Texas, Florida and Indiana are examples of states that have seen investment and consumer choice increase as a result of this communications policy.

As I examine HB 1490 in its current form, I am concerned that it will not produce the same kind of benefits that are enjoyed by consumers in these other states. Indeed, it is likely that this bill will discourage investment in Pennsylvania's broadband and video infrastructure, with adverse consequences for Pennsylvania consumers. That would be most unfortunate.

The reason is quite simple. HB 1490 uses a "stick" approach to communications policy while other states are successfully using a "carrot." They are allowing capital to be invested and infrastructure to be built free of intrusive mandates. With the exception of prohibitions on discrimination, they allow the market to decide where and how investments are made. In a national market where communications companies are making billion-dollar investments, where do think capital is most likely to be deployed? Which states will have infrastructure built? Which states will have jobs created? Which states' consumers are most likely to benefit? It is not going to be the state that uses a stick approach via mandates.

HB 1490 attempts to address an important consumer issue and it is commendable for that. Cable competition and the build-out of infrastructure are vital to economic growth and consumer well-being. We know that key services like tele-medicine, distance education and the delivery of essential social services can flourish in this environment. This is truly a seminal quality of life issue for many consumers.

Streamlining entry requirements into the cable marketplace is a key first step. Making it easier to get into the market via a more efficient, predictable process is a great carrot. That is what other successful states have done...and that is where they have stopped.

But this bill goes further, and does so in manner that is overly prescriptive, and ultimately counter-productive. Simply put, this bill tries to do too much. Ironically, because of that, it will not deliver the consumer benefits it anticipates.

There is one major problem that is most acute. The deployment provisions of Section 30A15 are most troubling. At a 30,000-foot level, this looks like a great provision to ensure that all consumers get broadband and video. It requires an entity that holds a statewide franchise to build out facilities and provide access to all households within a service area in a time horizon as short as three years. That certainly is a laudable

public policy goal. Everybody gets broadband access; no one is left behind. But it is only a good goal if it is achievable.

The problem is that it is simply unworkable in today's economic environment and may ultimately keep competition out of Pennsylvania. If passed, this would be by far the most aggressive build-out schedule in the nation. That may seem good on the surface, but it comes with a significant downside. Communications companies — or, more correctly, the firms that provide the financing for their massive capital projects — abhor a government mandate. And since so many other states are open to competition without the perceived financial handcuffs of a mandate, capital will flow elsewhere. Infrastructure will be built elsewhere. Jobs will be created elsewhere. And Pennsylvania consumers will be left behind.

This is really just common sense. Imagine you are considering building a hamburger stand and can choose between two cities, one which will require you to build ten more stands in the next three years and one that does not impose such a requirement. Where will you build? One choice makes clear economic sense over the other. One choice allows you to make business decisions, and the other takes that out of your hands and forces a decision upon you.

In a simplistic way, that is the dynamic here. Pennsylvania can pass the most aggressive build-out schedule in the nation, but capital will likely flow to other states as a result. Money is tight, and it will flow to the projects that make the most economic sense.

That is even more a probability now, as prospects of a recession further cloud broadband deployment plans. It is not just a matter of financing to build infrastructure, it is a matter of consumer demand. We know that consumer demand for broadband is elastic; as money becomes tight, it is something that households cut back on. Billion-dollar infrastructure projects already carry significant risks in this environment. This bill multiplies the risk, and hence the likelihood that the investment will not be undertaken here.

Pennsylvania is to be commended for considering the progressive streamlining of video regulation. But care needs to be taken to ensure that the benefits of competition actually reach consumers. For that to occur, the aggressive build-out provisions and numerous other regulatory mandates of HB 1490 need to be recognized for the problems they create, and not as a solution that will encourage statewide deployment of communications infrastructure and effective cable competition.

Thank you for this opportunity to testify. I will be happy to answer any questions you may have.