Testimony of

Mike Palkovic

Executive Vice President, Operations

DIRECTV, Inc.

on behalf of DIRECTV, Inc. and DISH Network

before the

House Judiciary Committee

Subcommittee on Commercial and Administrative Law

on

H.R. 3679, the "State Video Tax Fairness Act of 2007"

February 14, 2008

"No discrimination."

The State Video Tax Fairness Act is as simple as that. HR 3679's one-sentence non-discrimination principle prohibits a state from burdening satellite TV customers with higher taxes than cable customers—or vice versa. Satellite and cable should be allowed to compete on an equal playing field in the arena of television subscriptions, known in the industry as multichannel video program distribution or "MVPD." The 100 million odd subscribers should be free to choose one TV service over the other based on what they care about—price, service, and quality. States should not penalize the 30 million satellite TV customers with additional taxes for choosing the service they believe to be superior. Let the best service win.

Who could be against that? Cable. Why? Because cable has persuaded multiple states to pass taxing schemes that tilt the playing field in its favor. And it is bent on preserving the unfair advantage and proliferating these discriminatory taxing schemes nationwide.

When cable says, "Oppose HR 3679," it is advocating that a state *may* "impose a discriminatory tax on … direct broadcast satellite delivery." Literally. Instead of admitting that, cable, paradoxically, calls for "*overall* tax parity." But on closer inspection, that is a sleight of hand. Cable's definition of "overall" parity does not mean equalizing *taxes*. It means equalizing "taxes, *fees, and other charges*." So, the argument goes, if cable has to pay a fee or a charge, satellite's customers should have to pay it too—in some form or another.

The particular "fees" cable has in mind are franchise fees. Franchise fees are not taxes. They are payments cable companies negotiate to pay local governments in return for the right to dig up streets to lay cables and hang wires from utility poles. Franchise fees are rent for valuable property rights. Satellite does not pay that rent to local governments. Why? Because satellite providers do not need to dig up streets or hang wires on public property to transmit their TV signals to consumers. That is why Congress prohibited local governments from trying to collect franchise fees from satellite providers, even while authorizing local governments to collect franchise fees of up to 5% from cable. Cable's bid for "overall" parity—in taxes *and fees*—is a veiled assault on this principle, which has been critical to Congress's successful effort to promote competition in the industry over the past decade.

Cable's position, then, is stark: Cable has a cost that satellite providers do not. So every state should be allowed to gouge satellite customers with an additional 5% tax. That is not "parity." It is discrimination. It hurts consumers. Congress should prohibit it.

Our testimony begins with a reminder of Congress's stated goals in the MVPD arena. We then turn to Congress's past efforts to level the playing field by prohibiting local governments from charging franchise fees to satellite TV providers. Next, we describe the discriminatory taxes that states are beginning to pass at cable's behest. We then explain why Congress must act by passing HR 3679. Finally, we rebut cable's various arguments against HR 3679.

I. Congress Has Repeatedly Intervened to Enable Satellite TV to Compete Effectively with Cable

Let us not forget why Congress stepped into the MVPD arena in the first place: For two decades, beginning in the late 1970s, any consumer who wished to subscribe to a broad menu of television programming was stuck with one option—cable. Consumers suffered exactly what one would expect from an entrenched monopoly: stratospheric prices, abysmal service, and little innovation. Congress complained in 1992 that the "average monthly cable rate ha[d] increased almost 3 times as much as the Consumer Price Index." Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 2(a)(1), 106 Stat. 1460, 1460 (1992) (codified at 47 U.S.C. § 521 note). Congress intervened because the public was fed up, and outraged voters demanded a solution.

In response to the public outcry, Congress minced no words about the source of the problem: "Without the presence of another multi-channel video programming distributor, a cable system faces no local competition." *Id.* § 2(a)(2). "The result is undue market power for the cable operator as compared to that of consumers and video programmers." *Id*. Accordingly, Congress declared a priority to "increas[e] competition and diversity in the multichannel video programming market." *Id.* § 19, sec. 628(a), 106 Stat. at 1494 (codified at 47 U.S.C. § 548(a)). Congress knew exactly where to look for the solution—satellite TV, also known as direct-broadcast satellite or "DBS." Congress set out to "increase the availability of … satellite broadcast programming." *Id.*

To that end, Congress enacted a series of reforms, beginning with the Cable Television Consumer Protection and Competition Act of 1992, a reform with enough bipartisan support to overcome a presidential veto. Since then, Congress has supplemented the reforms to further stoke competition and raze barriers facing new rivals (especially satellite TV). The reforms have come about every few years: the Satellite Home Viewer Act of 1994, the Telecommunications Act of 1996, the Satellite Home Viewer Improvement Act of 1999, and the Satellite Home Viewer Extension and Reauthorization Act of 2004.

These legislative and regulatory measures have started to yield the desired results. Only in the past few years has satellite TV emerged as a viable rival to cable. Surveying research from "different scholars using different data and different methods … over the course of two decades," commentators have reached a definitive verdict: "The benefits of video competition are conclusive." Jerry Brito & Jerry Ellig, *Video Killed the Franchise Star: The Consumer Cost of Cable Franchising and Proposed Policy Alternatives*, 5 J. Telecomm. & High Tech. L. 199, 212 (2006). The rate of cable price increases has slowed, and the quality of service has improved.

The recent gains, however, are as incomplete as they are fragile. Cable prices still rise above the rate of inflation. The Chairman of the Federal Communications Commission ("FCC") condemned the phenomenon as recently as last month: "The average cost of the … standard cable package[] almost doubled from 1995 to 2005—increasing 93%—while the cost of other communication services didn't just increase less, they *fell*." Remarks of FCC Chairman Kevin Martin, *Rainbow Push Coalition, 11th Annual Wall Street Project Economic Summit* 1-2 (Jan. 9, 2008), *available at* http://www.fcc.gov.

Why? Because, like any entrenched interest with dominant market share, cable has fought mightily to cling to any competitive edge and to erect novel barriers to entry, often in collaboration with state and local governments. The 15-year history of promoting competition in this arena has been a history of constant vigilance by Congress and the FCC to counter these sorts of anticompetitive maneuvers.

II. Congress Prohibited Local Governments from Charging Franchise Fees to Satellite TV

Businesses do not just get to dig up public streets and hang wires from public utility poles for free. Cable companies have to negotiate franchise agreements with local governments to obtain the rights of way necessary to run cables to their subscribers' homes. Local governments have always charged for these valuable property rights. Almost invariably, the franchise fee is a percentage of cable's revenues—a cut of cable's profits. So local governments are, quite literally, partners in the regional businesses. In furtherance of cable's business interests, local governments would often bend to cable's demand to make those rights of way exclusive. And to protect the revenue stream, states and local governments routinely passed regulations to prevent competing technologies from entering the market.

Congress knew all about franchise fees when it embarked on the effort to promote satellite as a competitor to cable. The Telecommunications Act of 1996 explicitly says that satellite TV providers are "exempt from … any tax or fee imposed by any local taxing jurisdiction on direct-to-home service," Pub. L. No. 104-104, § 602(a), 110 Stat. at 144, even while approving of franchise fees imposed on cable up to a 5% cap, *see* 47 U.S.C. § 542(b). Congress took this step because satellite does not need to dig up streets or hang wires on utility poles. As the House Report explained: "Unlike other video programming distribution systems, satellite delivered programming services do not require the use of the public rights-of-way, or physical facilities or services of a community." H.R. Rep. No. 104-204(I), at 124-25 (1995). Rep. Henry Hyde, as Chair of the House Judiciary Committee, expanded on the theme: "Section 602," he said, "reflects a legislative determination that the provision of direct-to-home satellite service is national, not local in nature." 142 Cong. Rec. 2,219 (1996). He continued:

> Unlike cable and telephone companies which utilize public rights-of-way to provide service to their subscribers, providers of direct-to-home services

> utilize satellites to provide programming to their subscribers in every jurisdiction. To permit thousands of local taxing jurisdictions to tax such a national service would create an unnecessary and undue burden on the providers of such services.

Id. In short, as a matter of federal law, local governments may not charge satellite TV providers for rights of way, precisely because satellite providers do not need rights of way when distributing their programming directly to subscribers through the electromagnetic spectrum.

III. Cable Exploits a Loophole in Federal Law to Persuade States to Do Just What Congress Prohibited

Like most any business bent on preserving its dominant market position, cable is nothing if not persistent. Cable almost immediately embarked on a campaign to persuade state legislatures to do what local governments could not. Cable noticed that Congress preserved the power of a *state* to tax satellite TV services, and, if the state wished, to share the proceeds with local governments. *See* Pub. L. No. 104-104, § 602(c), 110 Stat. at 144. Invariably, cable has promoted these laws by applying a pale patina of parity. They have made the very same argument Congress already rejected in 1996: Cable pays franchise fees that, by federal law, cannot be imposed on satellite providers, so it is incumbent on the states to counteract the alleged 5% cost advantage that satellite enjoys. The states that adopt these laws know that they are undermining federal law. Examples of discriminatory state taxes include:

- **Ohio.** This is an example of a blatantly discriminatory tax. Ohio imposes a 5.5% sales tax on DBS, but no equivalent tax on cable or other MVPD competitors. OHIO REV. CODE ANN. §§ 5739.01(B)(3)(p), 5739.01(XX), 5739.02. An Ohio court struck the law as a violation of the Commerce Clause, observing that "[h]aving been prevented by Congress from using its regulatory powers to reduce competition between the two industries, the State of Ohio is trying to accomplish the same thing through its taxing power." *DIRECTV, Inc. v. Wilkins*, No. 03CVH06-7135, slip op. at 121 (Ohio Ct. C.P. Oct. 17, 2007) (unpublished).

- **Tennessee.** Tennessee also transparently discriminates. It imposes a sales tax on cable and satellite of 8.25%, but exempts the first $15.00 of cable television services. TENN. CODE ANN. §§ 67-6-226, -227. This exemption increases the relative state tax burden on DBS by approximately 35%, assuming an average monthly price of $42.76 for expanded basic programming.

- **Florida.** Florida also imposes different sales tax rates on cable (6.8%) and satellite (10.8%). FLA. STAT. § 202.12(1)(a)-(b). The legislature's express purpose was to "restructure[] state and local taxes and fees to account for *the impact of federal legislation* …." *Id.* § 202.105 (emphasis added). The discriminatory tax on DBS offsets 62% of the franchise fees that local governments can charge cable.

- **Kentucky.** Kentucky purports to have abolished franchise fees and imposed 5.4% in excise and gross revenue taxes on cable and DBS. KY. REV. STAT. ANN. §§ 136.604, 134.616. However, the same legislation creates a segregated fund for proceeds from the tax and allocates those proceeds to local governments that would otherwise be entitled to the franchise fees—in proportion to the franchise fees they had historically been collecting. *Id.* §§ 136.648(3), 136.650(1)-(2), 136.652(2). In essence, the Commonwealth has therefore stepped in as the collection agent for cable's franchise fee in order to extend the fee to DBS.

- **North Carolina.** In a scheme similar to Kentucky's, North Carolina imposes a 6.75% tax on the gross receipts of both cable and DBS and preempts local franchise fees on cable. N.C. GEN. STAT. § 105-164.4(a)(6). Proceeds from the tax are allocated to local governments in an amount initially based on historical franchise fees and now based on population ratios. *Id*. §§ 105-164.44I(c) 105-164.44I(d).

- **Utah.** Both cable and DBS pay a 6.25% sales tax, but cable receives a 50% credit against the tax for any franchise fees paid. UTAH CODE ANN. §59-26-104.5. The credit lowers the effective rate of tax on cable providers and will save cable approximately $9,536,000 in 2008 and $10,013,000 in 2009. Fiscal Note, Utah State Leg., SB0145 (Jan. 30, 2007).

Cable has recruited sponsors to introduce discriminatory tax bills in Georgia, Iowa, Michigan, and New Jersey, as well. H.B. 979, 149th Gen. Assem., Reg. Sess. (Ga. 2008); S. File 390, 82nd Gen. Assem., Reg. Sess. (Iowa 2007); H.B. 4581, 94th Reg. Sess. (Mich. 2007); Assem. No. 3415, 212th Leg. (N.J. 2006). The details vary but the basic scheme is the same: To saddle satellite TV customers with taxes higher than those paid by cable, giving cable an effective price advantage of 5% or more.

Moreover, some schemes replicate exactly the sort of dizzying patchwork of local regulation from which Congress sought to protect satellite. For instance, in 2005 the Kentucky legislature amended its utility gross receipts license tax, authorizing Kentucky school districts to individually decide whether or not to levy the tax on DBS and, consistent with state guidelines, to set the applicable tax rate. KY. REV. STAT. ANN. §160.614. The burdens associated with such a tax scheme—*i.e.*, matching each address of thousands of DBS subscribers to the appropriate school districts, determining whether each school district had opted to apply the tax, and where it had, calculating the amount of the tax based on each district's rate—are costs that Congress clearly intended to prevent DBS, a uniquely nationwide competitor, from facing.

These laws will sweep the country—unless Congress acts now.

IV. Congress Should Close the Loophole

The sole purpose of HR 3679 is to restore the balance Congress struck in 1996. The bill would preclude states from acting at cable's behest to undermine federal law through the transparent device of restructuring their state and local taxes and fees. Congress should pass HR 3679 because the imperative of protecting satellite TV providers from unjustified fees is every bit as important now as it was a decade ago.

HR 3679 is as simple as it is unobjectionable. Its one sentence says: "No State shall impose a discriminatory tax on any means of providing multichannel video programming distribution services." States may not use their taxing power to favor cable over satellite—or vice versa. This is essentially the same protection Congress already provided for IP video, which is shielded under the Internet Tax Freedom Act's prohibition against discriminatory taxes on electronic commerce. Pub. L. No. 105-277, §1101(a)(2), 112 Stat. 2681 (1998); *as amended* Pub. L. No. 107-75, 115 Stat. 703 (2001); Pub. L. No. 108-435, 118 Stat. 2615 (2004); Pub. L. No. 110-108, 121 Stat. 1024 (2007).

Congress must take this modest step if it wants to have any hope of preserving the extraordinary advances it has made in promoting competition between cable and satellite TV. Consumers should be free to choose between satellite and cable based upon what they care about—price, quality, and service. Satellite TV consistently beats cable on these criteria. States should not be allowed to punish the 30 million American households that subscribe to satellite TV for choosing the product they consider superior.

If Congress does not act now, discriminatory taxes will become the norm. Cable will enjoy an automatic, and artificial, 5% cost advantage over satellite providers nationwide. That will, of course, hurt satellite customers. But it will also hurt cable customers because as long as it can keep satellite prices artificially high, cable can afford to inflate its own prices as well. In the end, competition will diminish, prices will rise, and consumers will suffer.

To be sure, satellite providers can continue to sue to invalidate these discriminatory laws, as they successfully did in Ohio. But in the absence of a clear Congressional command, some courts have been reluctant to invalidate state laws based upon broad constitutional proscriptions. Satellite providers will continue to press ahead in the courts, if need be. But they should not have to spend millions of dollars trying to persuade federal judges to do what Congress clearly has the authority to do and what Congress obviously has intended all along.

V. Cable's Arguments in Support of Discrimination Are Wrong

There is no avoiding this simple truth: In opposing HR 3679, cable is taking the position that a state *should* be allowed to "impose a discriminatory tax on any means of providing multichannel video programming distribution services." Cable cannot bring itself to put it quite that starkly. So it clothes the message in a variety of other arguments. Each of cable's arguments is wrong. Contrary to what cable says:

Discriminatory state laws do NOT promote "tax parity"

Cable begins its attack, inauspiciously, with a paradox that would make even Big Brother blush. It opposes a law prohibiting states from "impos[ing] a discriminatory tax" by asserting that such a law "prohibits states from establishing tax parity."

In truth, cable is not advocating "tax parity." It seeks to equalize "taxes, *fees, and other charges*." Every time cable complains that it "pay[s] more in state and local taxes *and fees* than … satellite … television service," it is referring mainly to *franchise fees*. And every time cable says that states should be allowed to equalize cable's franchise fees with offsetting taxes on satellite, it is contradicting Congress's explicit policy of allowing local governments to impose franchise fees on cable—up to a limit of 5%—but prohibiting them from imposing any franchise fees on satellite.

Franchise fees are NOT taxes, and should not be equalized between businesses that need to acquire valuable property rights and businesses that do not

Congress was correct in 1996, when it concluded that it is appropriate for local governments to charge cable franchise fees, but inappropriate for them to charge franchise fees to satellite TV providers. And it is still correct.

Cable's franchise fees are like rent, a real economic cost that arises from its singular method of distributing video programming. Unlike taxes, which generate revenue for the general operation of government, franchise fees are compensation for costs imposed on, or benefits derived from, local governments—extraordinarily valuable benefits.

Just as satellite TV providers have to pay billions of dollars to buy, launch, and maintain satellites, cable providers have to pay real money to lay cables on public property. Just as satellite providers cannot credibly argue that cable companies should bear a heavier tax to offset the cost of buying satellites, cable cannot get away with arguing that satellite providers should be burdened with a heavier tax to offset cable's costs of doing business.

Don't take our word for it. Let's look at how everyone else—including cable, itself—describes franchise fees:

When convenient, cable admits that franchise fees are costs that pay for valuable rights of way:

- Cable argues that franchise fees are costs when disputing the amount of those liabilities in federal courts, which can enjoin the collection of fees, but not taxes. *E.g., Time Warner Entertainment-Advance/Newhouse Partnership v. City of Lincoln*, 360 F. Supp. 2d 1012 (D. Neb. 2005).

- Cable reports local rights of way as valuable assets—worth billions—when making financial disclosures to shareholders. *See* Time Warner Cable Inc. Quarterly Report (Form 10-Q for Q3 2007) at 27 ($38.1 billion); Charter Communications, Inc., Quarterly Report (Form 10-Q for Q3 2007) at 4, 10 ($9.1 billion); Comcast Corp. Quarterly Report (Form 10-Q for Q3 2007) at 2 ($58 billion); CSC Holdings Inc. Quarterly Report (Form 10-Q for Q3 2007) at 3, 13 ($731.8 million); Mediacom Broadband LLC, Annual Report (Form 10-K for 2006) at 27 ($1.26 billion).

Neutral observers, including Congress, uniformly find that cable's franchise fees are costs of doing business:

- In 1996, Congress described franchise fees not as taxes, but as "fair and reasonable compensation … for use of the public rights-of-way." 47 U.S.C. § 253(a), (c). Two years later, defining the term "tax" in a different law, Congress declared that "such term does not include any franchise fee or similar fee imposed by a State or local franchising authority." Internet Tax Freedom Act of 1998, Pub. L. No. 105-277, § 1105(8), 112 Stat. 2681, 2681-719 (codified as amended at 47 U.S.C. § 151 note).

- When calculating cable's gross revenues, federal courts have held that proceeds collected to pay franchise fees, unlike those collected to pay taxes, cannot be excluded. *City of Dallas v. FCC*, 118 F.3d 393, 397 (5th Cir. 1997) (holding that a franchise fee is "not a tax … but essentially a form of rent").

- Counties and municipalities persuade state courts that franchise fees are costs, not taxes, when defending the imposition of those fees without following procedural requirements for tax increases. *Bruce v. Colorado Springs*, 131 P.3d 1187 (Colo. App. 2005) (a franchise fee is the "cost of doing business"); *Kowalski v. Livonia*, 705 N.W. 2d 161 (Mich. App. 2005) ("[T]he 'franchise fee' is a voluntary payment and consideration in exchange for a commodity.").

- Accountants require cable to treat franchise fees as a cost of doing business similar to salaries, rent, and programming and marketing costs. Financial Accounting Standards Board, *Statement of Financial Accounting Standards No. 51*, at 9 (Nov. 1981).

Satellite's exemption from franchise fees is NOT "preferential tax treatment"

For all these reasons, cable is just plain wrong when it asserts that the differential treatment of franchise fees amounts to "preferential tax treatment." The main effect of the preemption provision is to prohibit local governments from fleecing satellite subscribers by exacting franchise fees for rights of way that satellite providers do not use and do not need. Congress essentially said that since satellite providers do not rent public property, local governments cannot charge them rent.

Cable complains that it is subject to other local impositions, such as sales taxes, that satellite does not have to pay. As Congress understood, there are serious policy problems—and, indeed, even constitutional problems—with trying to tax a service with virtually no nexus to a state other than a signal beamed from outer space. Because of cable's significant presence and operations within each local government's jurisdiction, it receives benefits for the local taxes that it pays—benefits that satellite providers would never reap. As such, cable's local tax obligations do not justify abandoning the preemption of local fees and taxes on satellite, or letting states undermine it. That is especially true because, as Congress no doubt understood when enacting the preemption clause, if local governments are given the latitude to do so, many of them will reflexively charge satellite franchise fees but simply label them taxes.

Congressional vigilance is STILL necessary

Contrary to cable's position, Congress cannot afford to turn a blind eye to discriminatory state taxes. The federal policy of protecting satellite TV's capacity to compete with cable is as important as ever.

To be sure, Congress's initiatives to promote satellite TV have borne extraordinary fruit in record time. "Satellite competition has largely replaced price regulation as the constraining force on cable pricing and driving force for innovative services." Gregory S. Crawford, *Cable Regulation in the Satellite Era* 3 (Sept. 5, 2006) (working paper, *available at* http://www.u.arizona.edu/~gsc818/research/papers/cablereg.pdf) (surveying literature). As cable itself admits, "Competition Works. Consumers Win." NAT'L CABLE & TELECOMM. ASS'N, INDUSTRY OVERVIEW (2007), *available at* http://i.ncta.com/ncta_com/PDFs/NCTA_Annual_Report_ 04.24.07.pdf. The record so far speaks for itself:

- ***Competition Results in Lower Prices.*** Economic studies reveal, not surprisingly, that increased competition from satellite and other sources has suppressed cable price rises. In many markets where satellite achieves sufficient penetration, satellite provides the only significant price check on the incumbent cable provider, resulting in a price for cable that is estimated to be 15% lower than it would be without competition. *See* Crawford, *Cable Regulation in the Satellite Era* at 2, 26-27.

- ***Competition Leads to Increased Quality.*** The presence of satellite competition also leads to improved quality of service. *See* U.S. Gov't Accountability Office, *The Effect of Competition from Satellite Providers on Cable Rates* 4 (July 2000). In addition to "expanding channel capacity," cable has responded to satellite competition by "deploying premium tiers, video on-demand, high definition programming, and digital video recorder services." Daniel L. Brenner, *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming: Comments of Cable* 10-12 (Nov. 29, 2006), *available at* http://www.ncta.com/PublicationType/Regulatory Filing/3714.aspx.

But this is no time for complacency. Demand for satellite TV appears to be extraordinarily sensitive to price. *See* Austan Goolsbee & Amil Petrin, *The Consumer Gains from Direct Broadcast Satellites and the Competition with Cable Television* 27 (June 2001), *available at* http://www.nber.org/papers/w8317. A discriminatory tax that effectively increases the cost of satellite TV relative to cable by 5% will subvert satellite TV's role as a viable alternative to cable in a particular regional market. And the moment robust competition is undermined, prices will rise—not just for satellite subscribers, but for cable subscribers as well.

The growth of satellite TV providers is no excuse to reverse federal protections

Cable is still the dominant form of distribution around the country—with 70% of all U.S. subscribers. Even satellite's 30% following is misleading, for it represents some markets with deep penetration and others will little penetration—e.g., in urban markets satellite has less than a 13% share of subscribers. U.S. Gov't Accountability Office, *Direct Broadcast Satellite Subscribership Has Grown Rapidly, But Varies Across Different Types of Markets* 7, 14-15 (April 2005). Cable could still reverse the tide of competition by hawking anticompetitive schemes of the sort that it has successfully pressed in multiple states.

Closing the loophole in federal law is NOT a tax hike

Cable argues that HR 3679 "would also likely result in a direct increase in the aggregate taxes on cable customers in states that have enacted" these discriminatory laws. Of course, the only time HR 3679 could impact a state's tax laws is if the state has violated the proscription that "[n]o state shall impose a discriminatory tax on … direct broadcast satellite delivery." So cable's insistence that states will have to change their taxes is a concession that states are currently discriminating.

In any event, cable is wrong. When a state uses its tax laws to discriminate, and that discrimination is illegal, the state must stop discriminating. It could do that in three ways. The most obvious way is to *repeal* the tax that burdens satellite discriminatorily. Another alternative is to *impose* the tax evenhandedly on cable as well. The most likely choice, however, is to spread the tax burden currently imposed on satellite subscribers across the overall population of subscribers (which is more than three times the size), so the net tax remains the same and the tax on satellite subscribers declines to a third its present size. The choice is the state's to make. Whatever course the state takes, the result will be the same: Consumers will benefit from the robust competition that comes with an even playing field, and the benefit will more than compensate for incremental tax burden that a state might impose to level the playing field.

This is NOT about states' rights

As a last resort, cable portrays this issue as a improper intrusion on "the rights of states" to fashion their own tax schemes. Cable, however, had no trouble urging Congress to override state and local prerogatives when it lobbied for a 5% cap on franchise fees in 1996. And cable did not give a second thought to states' rights when it lobbied just this past summer for a permanent *moratorium* (not simply a principle of non-discrimination) on state taxes on internet access. Cable's pitch was that "[t]he actions of … errant states must be addressed because they … circumvent the will of Congress." *Hearing on the Internet Tax Freedom Act Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary*, 110th Cong. 3 (July 26, 2007) (written testimony of Meredith Garwood, Vice President Tax Policy, Time Warner Cable). It went on to assert: "It is hard to imagine that at some point in the future it will make sense to allow access to the Internet to be taxed by thousands of taxing jurisdictions." *Id.* at 2.

The same is true for satellite. The existing preemption statute already addresses the burden of a national service dealing with "thousands of taxing jurisdictions." All HR 3679 would do is deal with the "actions of errant states."

In enacting HR 3679, Congress would be protecting important national interests in an enormous national market, encompassing 100 million American households. Congress has already wisely made the decision not to allow states or local governments to interfere with competition in this national market, particularly when they do so at the behest of the interest with dominant market position. This important goal cannot be defeated by wafting around states' rights and calling it a day.

Congress would advance those national interests while allowing the states to remain free to tax to their hearts' content, so long as they do so without discriminating.