the FCC in the Telecommunications Act of 1996 to promote the goal of widespread deployment of "advanced services."

"Advanced Services" have been defined "without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology."[5] The FCC states it is "committed to carrying out Congress's directive to ensure that advanced telecommunications capability is deployed in a reasonable and timely manner to all Americans."[6]

The proposed legislation is directly responsive to this goal and will facilitate its achievement. The CBA urges its passage forthwith.

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[5] Telecommunications Act of 1996, Pub.L. 104-104, Title VII, §706(c)(1), February 8, 1996, 110 Stat. 153, reproduced in the notes under 47 U.S.C. § 157.

[6] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 14 FCC Rcd 2398 at 2402, (Feb. 2, 1999).

1990s, the FCC has given holders of wireless licenses flexibility in their use. This opened the door for wireless Internet access, which is now available in dedicated modems or even in wireless phones themselves. We've continued to promote competition by making more spectrum available and doing so without restrictions as to [its] use." S. 2454 would provide that flexibility to LPTV operators as well.

Furthermore, in a report to Congress, the FCC stated, "It has become clear that wireless licensees providing fixed wireless services have the potential to create facilities-based competition beyond the traditional mobile markets."[2] One example the Commission gave of entities promoting competition in this way were low-power TV licensees providing Internet access. According to the Commission, "In addition to the traditional wireless cable operators, there are several wireless cable licensees who were not previously video programming distributors, but which instead provide Internet access. These entities tend to be start-up companies using MMDS or low-power television licenses."[3]

The need to provide high speed DSL quality Internet service to areas not currently served at a cost effective price is a key public interest concern as the FCC has repeatedly recognized. In a July 20, 1999 speech, Chairman Kennard said, "Our challenge is not just to build an Internet that goes faster, but that goes farther – that reaches all Americans.... We need to make sure that the opportunities that the Internet and new communications technologies provide are available to all Americans."[4] This high priority initiative is also fully consistent with Congress's direction to

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[2] *Implementation of Section 6002(b) of the Omnibus Budged Reconciliation Act of 1993*, 14 FCC Rcd 10145, Appendix F at 10255 (June 24, 1999).

[3] *Id.*

[4] Remarks by FCC Chairman William E. Kennard Before the Federal Communications Bar, Northern California Chapter, San Francisco (July 20, 1999).

expensive outdoor antenna to bring signals into the home, the office or the classroom. And even then, there are distance limitations due to the lower propagation characteristics of the signal at those frequencies. LPTV stations operating in the UHF band, however, can deliver high-speed wireless Internet access to homes, offices and classrooms in most cases without the need for exterior antennae.

The recent history of the telecommunications industry aptly illustrates the demand and utility of unwired access to digital services. Wireless telecommunications has been a substantial enhancement to the United States economy. Wireless Internet access promises similar economic benefits. The use of low-power television stations to provide high-speed digital Internet access is particularly appropriate given that such stations have struggled for market acceptance. Allowing their facilities to be used for wireless Internet access would facilitate the highest and best use of their facilities. Moreover, use of low-power television stations for wireless Internet access would facilitate the national priority of the provision of Internet access to schools and public libraries across the nation without the necessity for expensive and disruptive rewiring of those facilities. Rewiring the existing base of schools and public libraries runs the further substantial risk of adverse environmental consequences stemming from, among other things, asbestos release. Moreover, among the other uses for this novel service is to make available telemedicine of digital television quality. Telemedicine will enhance the ability of physicians and emergency room personnel to treat injured or ill patients from rural and remote areas.

Allowing LPTV stations to provide digital data services -- while it is certainly innovative -- is fully in keeping with the policy goals the FCC has announced. In a July 20, 1999, speech, FCC Chairman Kennard described the Commission's program for flexible use of wireless spectrum as an effort aimed at promoting competition. Specifically, he stated, "Since the early

Telecommunications in Rural America, NTIA found that rural areas are currently lagging far behind urban areas in access to high-speed Internet service. The report found that broadband services were essentially limited to two technologies: cable modem and digital subscriber line ("DSL"). The report also pointed out that these technologies were primarily available only in urban areas. The report found that less than five percent of towns of 10,000 or fewer have cable modem service, while 65 percent of cities of 250,000 or more had such service. Both of those figures I submit are plainly inadequate.

DSL service was likewise found chiefly limited to urban areas. Of cities of more than 100,000, only 56 percent had DSL service. However, fewer than five percent of cities of 10,000 or less had such service. And deployment of either cable modem or DSL service in rural areas was found to be even lower. The reason for these abysmally low rates of service in the rural areas was found to be economic. According to the Report, "For wireline construction, the cost to serve a customer increases the greater the distance among customers."

The economics of wireless operations in rural areas, however, are much more favorable. However, there is a major problem in achieving the potential for wireless high-speed Internet access, which this Committee may help resolve by favorable action on S.2454: the lack of sufficient and adequate spectrum. Currently, spectrum available for two-way wireless high-speed data services is restricted to LMDS/MMDS and unlicensed PCS spectrum. Other wireless spectrum suffers from technical or practical problems, including the high demand for mobile voice service. These currently available bands, however, are in the microwave area of the electromagnetic spectrum. Microwave spectrum is particularly unsuited to this type of service. It suffers signal degradation from rain; it is impeded by trees and foliage; and it cannot easily penetrate into building structures. Thus, existing wireless data applications require a relatively

engaged in digital data services but cannot gain Class A status as a television broadcast station. To correct this problem, CBA recommends the Committee simply include in this legislation clarifying language on the purpose of Sec. (f)(2)(c) of the CBPA and direct the Commission to implement public interest standards and appropriate regulations within a reasonable period not to exceed 12 months. The CBA board strongly recommends expedited approval of this legislation.

To understand the value of data services and the importance of this legislation to underserved areas, you only need to look at the impact of the Internet on society. In its short period of existence, the Internet has grown to become an important medium for the conduct of commerce, the education of our children, and the maintenance of the informed and enlightened electorate necessary to our free society. Given its status in the United States as a substantial educational, promotional, sales and distribution channel, the Internet is one of the engines which is driving the United States economy to record levels of productivity and employment. Recent estimates are that e-commence will total some $300 billion by 2002. Enactment of S.2454 will serve to facilitate full public access to the Internet which will, in turn, inure to the continued expansion of the economy.

As Congress, the administration, and the FCC have all recognized, not every American has been able to enjoy fully the benefits of the Internet, especially high-speed Internet service. As FCC Chairman Kennard said just last week in a speech in Atlanta, "The Internet can either be the great equalizer, or just another missed opportunity. Access . . . access makes the difference."[1]

Access to high speed Internet service is severely restricted in this nation. Indeed, it has been suggested that we confront a "digital divide." In its recent report on Advanced

[1] Remark of William E. Kennard at The Supercomm 2000 International Dinner, Atlanta, GA (June 5, 2000).

legislation to limit eligibility under this Act to existing licensees and holders of construction permits. We suggest a cutoff date of June 30, 2000. This would effectively eliminate speculators from the upcoming filing window.

Secondly, CBA is also concerned that this legislation could provide incentives to non-Class A LPTV broadcast stations to become data service providers because this legislation would provide them the only pathway to protect their license. That clearly isn't the purpose of this legislation and CBA wants to be certain that this is not an unintended result.

Mr. Chairman, in S. 1547, the Community Broadcasters Protection Act of 1999 which you authored last year and which became law on November 29, 1999, you provided LPTV licensees two opportunities to qualify for a permanent, Class A license. First, a station was eligible if for 90 days before enactment it was on the air 18 hours per day and averaged no fewer than 3-hours of locally originated programming on a weekly basis. Second, a station could become eligible if the Commission determined it was in the public interest.

I believe you understood and we shared that view, that the Commission would develop, through its regulatory process, a public interest test so that stations that did not initially qualify, would have a future opportunity to file a petition with the Commission and become a Class A station.

In its March 28, 2000, Class A Report and Order, the Commission determined mistakenly that the purpose of the legislation was to provide a single window of opportunity to existing LPTV stations. On that basis the Commission decided not to grant additional Class A licenses beyond those who qualified during the 90 days prior to enactment of the CBPA.

CBA believes that decision was wrong. With this misinterpretation of S.1547, this legislation now creates the circumstances where a LPTV licensee can gain Class A status if it is

Prepared Testimony of Larry Morton

Mr. Chairman, my name is Larry Morton. I am a member of the board of directors of the Community Broadcasters Association ("CBA") and President of Equity Broadcasting Corporation. I appreciate the opportunity the Committee has given me today to come here and support the passage of S. 2454.

The CBA is the principal trade association of Low Power Television broadcasters. We supported and we appreciated the efforts of members of Congress who enacted the Community Broadcasters Protection Act into law last year. As a result of that Act, LPTV broadcasters with a record of substantial public service now have been given some measure of certainty that the investments they make to provide service to their local communities will not be subject to loss at the whim of the FCC. We thank you for that consideration.

S. 2454 would expand the class of LPTV stations entitled to Class A protection to include those LPTV stations which provide the public digital data services, including wireless Internet access. The CBA enthusiastically supports this legislation; however we believe there are two issues that need to be clarified.

First, on May 1, 2000, the Commission announced an auction filing window for new LPTV and translator station applications. The filing period is July 30-August 4 of this year. Although this filing opportunity was intended principally to allow for new applications in rural areas that have limited television service, this legislation could change the dynamics of this filing period. The result could be the filing of speculative applications which would ultimately compete and conflict with those who are trying to provide a few more basic channels of broadcast television in highly rural areas.

There is a solution to this problem. CBA proposes a modification to Sec. (h)(1) of this