Testimony of the Honorable Philip Jones
Commissioner, Washington Utilities and Transportation Commission

before the

Committee on Commerce, Science and Transportation of the United States Senate

on behalf of

National Association of Regulatory Utility Commissioners (NARUC)

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Mr. Chairman, Co-chairman Inouye and members of the Committee, thank you for the opportunity to testify today on S. 2686, the Communications, Consumers' Choice and Broadband Deployment Act of 2006.

I am Philip Jones, commissioner with the Washington Utilities and Transportation Commission (WUTC) and a member of the National Association of Regulatory Utility Commissioners (NARUC). I serve as chairman of NARUC's Federal Legislative Subcommittee on Telecommunications and as a member of the Association's Intercarrier Compensation Task Force. NARUC represents State public utility commissions in all 50 States, the District of Columbia and US territories, with jurisdiction over telecommunications, electricity, natural gas, water and other utilities.

We commend you and your staff, as well as Co-Chairman Inouye and other committee members, for getting us to where we are today. While there is still much to be done, we appreciate your hard work and especially your responsiveness to the specific concerns we have raised along the way.

NARUC's approach to federalism:

NARUC's analysis of the recently released Manager's Amendment to S. 2686 and the other bills before this Committee is guided by our "Federalism and Telecom" white paper that we approved in July 2005 after an extensive dialogue among ourselves and with stakeholders, examining every federal policy position we had taken since the passage of the Telecommunications Act of 1996.

We undertook this dialogue to be sure that, as Congress reexamined the Act, our policy positions reflected the impact of all the new technologies and market developments in recent years, including the emergence of Voice-Over-Internet-Protocol (VoIP), triple-play broadband bundles, mega-mergers and the tremendous growth of wireless telephony – and all the associated challenges to traditional federal and State oversight roles. In the end, we came to two important conclusions.

The first was that, with the pace of innovation accelerating, any major bill must strive to be as technology neutral as possible. Whenever technological change and restructuring sweeps through an industry, there is pressure to give new technologies special status under the law because they don't appear to fit the "old" regulations. The problem with this approach is that the new services compete directly with traditional services, and by creating brand new regulatory silos, you distort the market, encouraging regulatory arbitrage instead of true innovation. The better approach, in our view, is to ask

how these new technologies change the environment for *all* players, and reexamine the first principles behind the regulations that are on the books for everyone.

The second conclusion was the development of our "functional federalism" concept, which is the idea that if Congress is going to rewrite the Telecommunications Act, it doesn't have to be bound by traditional distinctions of "interstate" and "intrastate," or figure out a way to isolate the intrastate components of each service. Instead, a federal framework should look to the core competencies of agencies at each level of government – State, federal and local – and allow for regulatory functions on the basis of who is properly situated to perform each function most effectively.

In that model, States excel at responsive consumer protection, efficiently resolving intercarrier disputes, ensuring public safety, assessing the level of competition in local markets and tailoring national universal service and other goals to the fact-specific circumstances of each State.

This is not actually a new model. For the past several years, wireless carriers have been governed under Section 332 of the Act, which does ***not*** declare wireless to be interstate or intrastate, but rather assigns appropriate functions to State and federal authorities. It assigns spectrum management functions to federal authorities, includes a rebuttable presumption of competitiveness for wireless carriers, and allows States to handle consumer protection and other terms and conditions of service. Wireless carriers are also able to avail themselves of State arbitration procedures for interconnection to the wireline phone network. Under this model, the wireless industry has already eclipsed the traditional phone business in total number of subscribers and now has over 200 million subscribers and $118 billion in annual revenues – a model of successful federalism at work.

Consumer protection:

Neither the Manager's Amendment nor the Inouye draft seeks to pare back the role of State commissions in consumer protection, and we think this is appropriate. Under current law, State commissions handle hundreds of thousands of consumer complaints every year, and generally provide individual relief to each complaint, often resolving complaints in a matter of weeks or even days through informal processes. In addition, we are able to address new and novel concerns as they arise, whether they are the result of new fraudulent schemes or unfair terms in boilerplate service contracts.

We are concerned and raise the issue today because the wireless industry in particular has launched an aggressive lobbying effort to create a technology-specific preemption standard for their telecommunications services. From our point of view, it makes little sense to eliminate scores of consumer protections at the State level solely on the basis of the particular technology used. In the case of wireless, it makes even less sense because the industry has prospered so well under the division of authority that now exists. And while some have argued that wireless is "too interstate" to face telecom-based State consumer protections, our experience is that the carriers have little trouble

finding their way to Olympia or Sacramento or Anchorage when they are asking for something, such as certification to receive universal service dollars or interconnection to the wireline networks.

Most importantly for an industry that is quickly replacing traditional landline phone service in many people's lives, there are legitimate consumer protection issues, often associated with selling service via long boilerplate contracts with terms of a year or more. Now is probably a good time to let those concerns shake out instead of cutting off avenues of relief for consumers.

Interconnection:

We appreciate the specific recognition in both the Manager's Amendment and the Inouye draft of State commission expertise and effectiveness when it comes to mediating, arbitrating and enforcing interconnection agreements between carriers. In a networked industry like telecom, fierce competitors will always have to cooperate to operate a seamless network of networks, but there are frequent incentives for one carrier or another to frustrate interconnection for anti-competitive reasons. State commissions are generally recognized as the fastest, most effective forum for resolving interconnection disputes.

It makes particular sense to extend the right of interconnection to VoIP providers so long as they are willing to undertake the responsibilities of providing a telecommunications service, such as paying appropriate intercarrier compensation and making equitable contributions to universal service. By the same token, we support the provisions in the Inouye staff draft clarifying that deployment of IP infrastructure does not free a provider of the duty to interconnect.

Going forward, it is our hope that the stakeholders participating in NARUC's Intercarrier Compensation Task Force will make a recommendation to the FCC soon about particular ways to rationalize the intercarrier compensation payment structure and clarify the obligations of all providers in a way that eliminates distortions and incentives for arbitrage.

Universal service:

One of the most important things the new legislation would do is stabilize the contribution base for the federal Universal Service Fund. Spreading the base broadly to all those services that utilize and benefit from a ubiquitous communications infrastructure is a simple question of fairness, and will reduce the opportunities for regulatory arbitrage that distort the market.

We are also pleased that both the Stevens bill and the Inouye staff draft recognize the importance of State universal service programs. Universal service is a jointly shared responsibility between the States and the federal government, with 26 State programs distributing over $1.3 billion – nearly 20% of the overall national commitment to universal service. This joint approach benefits both "net donor" and "net recipient" states

because it lessens the burden on an already sizable federal program and permits another option when federal disbursement formulas do not adequately serve a particular state or community.

State universal service funds face the same structural funding challenges as the federal program, with many new services that rely on a ubiquitous network (and exchange traffic with the PSTN) failing to contribute equitably to either one. That's why it is good that both Manager's Amendment and the Inouye staff draft would allow State funds to broaden their contribution bases to include total revenues and Voice-Over-Internet-Protocol (VoIP) services. Ultimately, we'd encourage you to make the assessment authority for both State and federal programs co-extensive.

Committee members should also know that the NARUC Intercarrier Compensation Task Force, on which I serve, is close to winding up its work. At a previous hearing before this committee, my colleague Ray Baum of the Oregon Public Utilities Commission testified that the impact of intercarrier compensation on the revenue streams of carriers is more than $10 billion. I would only caution you that every previous plan to substantially lower access charges, including both the "CALLS" plans and the "MAG" plan, has involved a combination of retail rate changes and increased universal service support. So as difficult as it is to address funding and distribution issues with USF today, we need to remember that there are additional implicit subsidies in the system that will turn into additional stresses on the fund if and when they are made explicit.

Video franchising:

While NARUC does not take a formal position on the video franchising provisions in the Manager's Amendment and other proposals before the committee, a number of State legislatures and commissions have acted under current law to reform and streamline their processes. In Texas, Indiana, South Carolina and Kansas, this has meant the creation of statewide franchises awarded by the State commission or another agency. In Virginia and Arizona, it meant a streamlining of the local franchise process.

As a general matter, we want to encourage vigorous competition in the video market and also recognize the important roles that State and local governments should play in any framework. To that end, we are currently engaged in a dialogue with a number of stakeholders through a Working Group chaired by Commissioner Daryl Bassett of Arkansas, and will soon issue a white paper detailing the particular roles that NARUC's members are playing in this area.

While the Manager's Amendment no longer delegates a specific role to State commissions for consumer complaints and calculations of gross revenues, it does designate both State commissions and attorneys general to handle income-based redlining complaints. We are surveying the NARUC members to find out which State enabling statutes would allow their commissions to play this role, although at first blush it appears that role would be most feasible in the 12 or so States that have already vested some level of franchising authority in the State commission.

E-911 and emergency communications:

While it is not addressed in S. 2686, another important component of a technology neutral policy is ensuring that VoIP providers are meeting their duty to provide 911 and E-911 functionality to consumers. States were first to raise this issue back in 2004 when the New York and Minnesota commissions ordered Vonage Holdings to provide emergency dialing services to its customers. While both orders were the subjects of legal challenge, we are pleased to see that in the intervening two years, the FCC has acted to require the same functionality, and Congress is not far behind.

This is also an area where the same State commissions have worked through informal avenues to help VoIP companies gain access to the 911 call center infrastructure so they could make those capabilities available as early as possible. We are continuing to refine our federal policy positions under the guidance of a Working Group chaired by Commissioner Connie Hughes of New Jersey.

Conclusion:

We look forward to working with Chairman Stevens, Co-Chairman Inouye and all the members of the committee as you consider additional refinements and amendments to S. 2686 and move toward consideration by the full Senate and final enactment. Our goal at all times has been to offer ourselves not as traditional advocates with a bottom line to defend but as resources in each State and partners in seeking the best deal for our mutual constituents.