STATEMENT ON BEHALF OF THE

NATIONAL ASSOCIATION OF COUNTIES,
NATIONAL LEAGUE OF CITIES,
U.S. CONFERENCE OF MAYORS, AND
NATIONAL ASSOCIATION OF TELECOMMUNICATIONS
OFFICERS AND ADVISORS
GOVERNMENT FINANCE OFFICERS ASSOCIATION

ON

H.R. 3679

State Video Tax Fairness Act of 2007

Members of the subcommittee, the national associations representing elected and appointed officials[1] want to take the opportunity to share our thoughts on H.R. 3679, the “State Video Tax Fairness Act of 2007”. It is ironic that this is the title to the bill because it would possibly exacerbate the competitive differences between multichannel video service providers.

Local governments oppose H.R. 3679 because decisions about state and local taxes must be made by state and local elected officials, not Congress. Services provided to our common constituents have to be funded by the range of taxes and fees available to state and local governments. Note that we speak of “common constituents” because our associations represent *your* constituents, not the special interests of the DBS industry. All of our associations vehemently oppose federal preemption of our taxing authorities. The ability of states and localities to structure their revenue systems is a core element of sovereignty that must be respected.

If H.R. 3679 were to become law, it would effectively remove the authority of states and local governments to craft common-sense solutions that modernize existing state and local tax and fee systems. If Congress is truly interested in encouraging states and localities to reform taxes on multichannel video services, it should remove federal barriers to reform rather than imposing new restrictions.

Although the U.S. Constitution grants Congress broad authority to regulate interstate commerce, the federal government, historically, has been reluctant to interfere with states’ and local governments’ ability to raise and regulate their own revenues. State and local tax sovereignty is a basic tenet of our federalist system and is fundamental to the inherent political independence and viability of states. For this reason our associations, and the officials we represent, oppose any federal legislation that would interfere with the sovereign ability to craft and manage our own revenue systems.

[1] The National Association of Counties, the National League of Cities, the United States Conference of Mayors and the National Association of Telecommunications Officers and Advisors.

The mythical problem H.R. 3679 purportedly seeks to address is the perceived inequality in the taxation of multichannel video services. Historically, cable services have been required to obtain franchises from local governments to operate and provide multichannel video services in specific franchise areas. Franchise fees, which cover the costs of using local rights-of-way and provide compensation for the franchise, are capped by the federal government at 5 percent of gross receipts. Revenues from franchise agreements typically flow into the general funds of local governments and support a wide range of government operations and services. In addition to franchise fees, cable companies are often required by their franchise agreements, pursuant to federal law, to provide and support public, educational, and government channels that assist in the public understanding of and participation in government, as well as provide support for institutional networks. DBS providers have no such obligations.

In contrast, federal law prohibits local governments from imposing taxes or fees on multichannel video services delivered by direct broadcast satellite (DBS) providers. Federal law does, however, allow states to tax such services and distribute a portion of the proceeds to local governments if they so choose. This prohibition on local government taxation was enacted as part of several 1996 telecommunications reforms to spur growth of DBS services and increase competition for incumbent cable service providers. Today DirecTV and Echostar, the two predominate providers of DBS services, serve more than 30 million subscribers and earn $25 billion in annual revenue.

It is the long-held view of our associations that "like services" should be treated alike in terms of taxes and fees. State and local tax and fee policy should not be a determining factor in a consumer's choice of a multichannel video provider. Indeed, the DBS companies compete in the marketplace as a direct alternative to cable, but seek a competitive advantage by not having to pay state taxes. Yet, they claim they are being discriminated against by the states.

As you heard from the National Governors Association, the differing federal treatment of cable and satellite services has resulted in a variety of state and local tax scenarios: 47 states authorize local governments to impose franchise fees on cable services; 29 states tax DBS services; 24 states impose a sales tax on video services provided by cable companies; and 18 states allow local governments to impose sales taxes on cable video services.

Recently, several states worked within the framework of unnecessary existing federal restrictions to modernize their tax systems and create parity in the tax treatment of multichannel video providers. They have worked with local governments to assure that local revenues are largely protected. Specifically, some states have used their authority to impose taxes on satellite services to craft a new tax that applies equally to both DBS and cable services. Again, like services being treated alike. The tax replaces traditional local franchise fees in return for the states redistributing a portion of the taxes to local governments to compensate for lost local revenues.

This is the case in North Carolina where in 2006 the state legislature replaced the authority of local governments to charge franchise taxes on cable service providers with a 7 percent state sales tax on gross receipts of both cable and DBS providers. The state uses a portion of the proceeds to compensate local governments that formerly collected franchise fees and provides revenues on a formula basis to non-franchise localities.

Alternatively, some states have chosen to retain the local franchise system, while imposing a new tax on all multichannel video providers. To help equalize the payments of satellite and cable providers, the state allows a cable provider to credit a portion of the franchise fees it pays against the state tax. This is the system in Utah, where the state imposes a 6.25 percent sales tax on all multichannel video services, but allows cable providers to credit 50 percent of their franchise fees against the tax.

These different approaches to taxing multichannel video services reflect the fiscal and political realities of individual states and their local governments and have withstood constitutional challenges in both state and federal court. (See *DirecTV, inc, et al. v. Treesh*, No. 3:05-CV-00024 (2007), and *DirecTV, inc, et al. v. Treesh*, No. 05-CI-01623 (2007) ; and *DirecTV, Inc. v. Tolson*, No. 07-1250 (4th Cir., Jan. 10, 2008)).

H.R. 3697 would unnecessarily disrupt state and local efforts to streamline and modernize their tax systems by imposing yet another preemption on the authority of states and local governments to develop and manage their own systems of taxation. H.R. 3697 would prohibit a state from imposing

a “discriminatory tax” on any provider multichannel video service regardless of the technology used to provide the service. The bill defines a “discriminatory tax” as “any form of direct or indirect tax that results in different net State charges being imposed on substantially equivalent multichannel video programming services.” The terms “net State charge” and “substantially equivalent” are not defined. It is unclear how the net charge would be calculated or what type of taxes, fees and charges it would include. And who would decide? This uncertainty would generate increased litigation, discourage state efforts to create tax parity, and together with the existing federal prohibition on local taxation of satellite services, further thetax disparities between multichannel video providers.

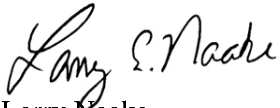
Conclusion:
Our associations continue our strong view that decisions regarding state and local taxation should remain with state and local officials, not Congress. The independent and sovereign authority of states and local governments to develop their own revenue systems is a basic tenet of self government and our federal system. We represent *your* constituents, not the special interests of profitable corporations. Local governments have consistently supported and promoted competition in our communities and our associations have encouraged our members to develop tax and regulatory frameworks that are technology neutral, level the playing field for all competitors and provide necessary revenues to promote the public interest and support government services.

Our associations oppose H.R. 3697 because it unnecessarily interferes with state and local efforts to craft reasonable and constitutional tax systems that reflect market realities and serve the interests of state and local governments and consumers - your constituents.

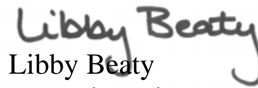
Sincerely,

Tom Cochran
Executive Director
The U.S. Conference of Mayors

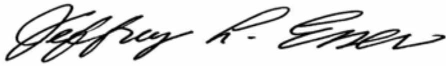
Donald Borut
Executive Director
National League of Cities



Larry Naake
Executive Director
National Association of Counties



Libby Beaty
Executive Director
National Association of
Telecommunications
Officers and Advisors



Jeffrey R. Esser
Executive Director
Government Finance Officers Association