



**Testimony of Adam Falk and Elizabeth Murray on Behalf of the
New Jersey Cable Telecommunications Association
March 23, 2010**

**Before the Red Tape Review Group
Honorable Lt. Governor Kim Guadagno, Chair**

Good afternoon Lt. Governor and distinguished members of the Red Tape Review Group. My name is Adam Falk and I am joined by Elizabeth Murray. We are representatives of Cablevision and Comcast, respectively, and testify today on behalf of the New Jersey Cable Telecommunications Association (NJCTA).

NJCTA is a voluntary trade organization representing the three major cable operators in the State: Comcast, Cablevision and Time Warner. Together, our companies provide cable television service to approximately 2.3 million of the State's 2.6 million cable homes in New Jersey. Comcast and Cablevision are the largest members of the Association, serving approximately 1.3 million and 940,000 cable customers, respectively. In addition to our testimony today, we are submitting detailed written comments for the Review Group that we hope you will carefully consider.

Our industry is grateful to Governor Christie for creating the Review Group and we strongly support the goal of Executive Order No. 2 to amend or rescind rules that are unnecessary, ineffective and that impede economic growth. To that end, we ask you to do the following three things:

1) Modify the Board of Public Utilities' rules applicable to the cable industry in light of the highly competitive landscape that exists for video services by a) eliminating outdated

regulations that exceed explicit state and federal requirements or, b) removing rules in communities that are subject to the federal effective competition standard;

2) Adjust present enforcement practices and policies to align them with the goals of Executive Order No. 2 to cultivate an approach that values performance based outcomes and compliance over the punitive imposition of penalties for technical violations that do not result in negative impacts to the public health, safety and welfare and to do this by a) exempting “good faith,” and minor, technical rule violations, and b) establishing notice and opportunity to cure procedures prior to commencing enforcement, and

3) Revise the rulemaking process itself by inviting more stakeholder participation, releasing rules in draft form prior to moving them through the formal administrative review process, and reopening the current Chapter 18 (operational cable rules) for review now, instead of waiting for the five-year sunset to occur in 2012.

Cable companies are important contributors to the State’s economy. Our three companies alone employ over 10,000 people in New Jersey. We generate over \$60 million in fees and taxes and invest approximately \$11 million annually in charitable activities and free service to schools, libraries and municipalities. Cable companies have invested more than \$3.5 billion in New Jersey’s broadband infrastructure over the last decade alone, offering the countries’ most sophisticated, state-of-the-art services to cable customers here in New Jersey.

Cable companies have done this in the face of stiff competition. Direct Broadcast Satellite offers statewide service and phone companies now have video available in 350 New Jersey towns. Video programming content over the Internet, on cell phones and through other mobile devices have also become far more prevalent.

Despite vast changes in the competitive landscape during the past decade, the industry remains largely regulated as it has been for the past 30 years. This leaves cable companies to operate under the weight of outdated rules, even as its principal competitor – the satellite industry - remain completely unregulated.

Rules created in an era with limited (or no) competition do not make sense in today's marketplace. With competition, customers have the opportunity to "vote with their feet." If they are unhappy with one operator's service, they can simply pick up and move to a new provider. Operators' behaviors are therefore constrained by the potential economic impact of customer defections, rather than the fear of regulation or enforcement.

But the current administrative processes designed to ensure that rules remain up to date have not produced adequate results. At least five times since 2002, our industry has sought a more balanced regulatory approach and offered specific recommendations to change the cable rules, but none of these efforts led to meaningful reform.

While the State's stated policies favor competition over regulation, harmonizing the rules with the competitive realities has not occurred. The Board has said, for example, that in the face of competition, "[i]f cable television operators do not provide the services and information consumers need and want, they will lose the customers to competition" and that removing certain "rules in a competitive situation helps level the playing field, since, for example, direct broadcast satellite providers are not subject to [such] requirements."

Perpetuating unnecessary and outdated regulations in a competitive market harms consumers and the State's economy in several ways.

First, unnecessary regulation diverts the real mission of cable companies - delivering value and first rate service to consumers. For example, in complying with

existing rules, cable companies spend hundreds of people hours each year filing thousands of pages of notices and reports to meet regulatory obligations – one company alone filed over 35,000 pages of data in a single year. Second, uneven application – such as regulating cable companies while leaving DBS unregulated – distorts the market in favor of one type of provider over another. Third, over regulation discourages new providers from entering the State creating a disincentive to competition. Finally, impractical and outdated regulation forces the State to unnecessarily spend taxpayer resources without producing meaningful results.

A prime example of outdated regulation is the obligation of operators to obtain BPU approval to close or relocate a customer walk-in center. Under existing rules, cable operators confronted with an expiring lease or the desire to consolidate operations for efficiencies must first obtain BPU approval. This often involves a lengthy review process, which can become even lengthier if a local community objects to the relocation, often taking a year or more to complete.

This rule dates back to a time when customer reliance on local offices was high – before operators had 24-hour phone service or other electronic alternatives for paying bills and exchanging equipment by mail. In 2010, however, the rule saddles operators with costs – such as the expense of maintaining two leases while the BPU request for relocation is pending – and leads to expensive legal and administrative expenses and delay. More importantly, it diverts operator resources from creating new and innovative mechanisms to meet customer service demands.

It's these types of rules that operators seek to curtail in the red tape review process. Our written submission contains several approaches to eliminate this rule and others like it that exceed the obligations explicitly imposed under federal and state law.

Modifying enforcement practices is another area for the Group to pursue to eliminate "red tape." Current enforcement practices fail to adequately mitigate minor, technical rule violations and do not offer cable operators adequate notice and opportunity to cure alleged violations prior to the assessment of fines.

Although utility services such as phone, water, gas and electric are considered "lifeline" services, the bulk of the State's enforcement activities center on cable television practices. Approximately seven cable operators have, in the past decade alone paid more than \$2.5 million in fines, which are substantially disproportionate to the type of non-customer facing impacts that were allegedly violated. While breach of child labor laws in New Jersey carries a maximum penalty of \$2500, filing a report a few days late for a cable television company can translate to a \$10,000 fine.

In deciding whether to pursue enforcement, the BPU should consider the magnitude of the alleged violation, the relative harm to the public health, safety and welfare, the size of the threat to the agency's ability to meet its charge and whether the activity is within the operator's control. Too often, however, strict interpretation of rules and unyielding enforcement - even for matters outside the operator's control or done unintentionally - result in protracted regulatory proceedings and expensive settlements. These could be avoided if the agency modernized its rules and put operators on notice - or asked the operator to modify its practices - prior to assessing penalties.

As an example, recently, one operator faced enforcement for failing to provide 30-days notice to customers, municipalities and the BPU when a programmer abruptly removed its programming at the expiration of a carriage agreement, rather than following the customary practice of offering an extension to the operator while the contract talks progressed. Despite having gone through an average of about 82 per year (and approximately 410 negotiations with programmers in the last five years) – all of which were settled or extended in the last moments prior to the contract expiration – the operator is facing enforcement for the action of this particular programmer, who removed the programming totally outside the cable operator’s control. It is these types of enforcement practices that the Red Tape Group should ameliorate.

Finally, we note that the BPU has more recently begun to hold more regular stakeholder meetings prior to proposing new rules. The process of releasing draft rules and engaging in dialogue with the industry prior to proceeding to the formal administrative process warrants praise and further expansion. By creating a dialogue with the industry, the agency and the operators can better understand the others objectives and hopefully find more common ground before the more rigid Administrative Procedures Act rulemaking process begins. In the case of the Chapter 18 rules, we request that the Group move to reopen the rulemaking process again expeditiously. The BPU is not scheduled to commence a major review of the operational cable rules until the current sunset in rules in April 2012. Instead, the Group should adopt the policy recommendations in our testimony and move to have these rules reopened at once to formalize the changes recommended in our written and oral presentation today.

Thank you for the opportunity to testify before the Red Tape Review Group. We look forward to your report and are willing to answer any questions you may have now or in the future regarding our recommendations.