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## REMARKS BY GOVERNOR JOHN ENGLER TO THE FEDERALIST SOCIETY

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**T**hank you for the invitation to join this Federalist Society conference on telecommunications. This is an area of vital interest to manufacturers, profoundly affecting their ability to compete in the dynamic global market—a marketplace in which U.S. capacities have been slipping. I welcome the opportunity to outline the National Association of Manufacturers’ perspective on these issues.

First, let me congratulate the Federalist Society for promoting vigorous, honest and fair-minded debate on the prominent legal and policy issues that shape our nation. Speaking as a Federalist Society member and former Governor, who appointed people to the state courts, I know the Federalist Society works with little public or media attention until it comes time to make judicial appointments. Then the shouting starts. I have never worried all too much about the shouting. However, it is unfortunate that the political eruptions overshadow the rest of the work the Federalist Society does in promoting a deeper, more balanced understanding of important legal and policy issues... issues like telecommunications.

For example, the Society has organized a “Back to Basics” conference later this month on intellectual property. The NAM follows this issue with great interest. Our research arm, The Manufacturing Institute, just released a study, “Intellectual Property for the Technological Age,” whose author, University of Chicago’s Richard Epstein, is a member of the Society, of course. We believe protecting intellectual property is essential to encouraging innovation in manufacturing and other realms. As Epstein says, “No one can assume that valuable innovations will pop up magically in the public domain if their inventors received no reward for their labor and capital.” For that reason, at the National Association of Manufacturers, we support policies that encourage innovation and rewards in the telecommunications sector, an area where the United States has not kept pace with the rest of the world.

How can the U.S. do better? Competition. The NAM is working on behalf of policies that foster competition in telecommunications, particularly in the area of broadband—the high-speed transmission of data, voice and video, a topic I will focus on today. End-customers—including manufacturers—will benefit from a vigorous battle in the marketplace among wire, wireless, cable and satellite providers—those who can offer on-demand TV programming, very high speed Internet access, telephone and a host of other digital services.

Lack of investment is a major reason the United States, historically a leader in telecommunications, has fallen behind. We now stand sixteenth in the world in per capita subscribers to broadband, down from fifth place in 2000. Other countries are moving ahead at a rapid pace, while the U.S. trudges ahead, slowly.

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According to an annual report released just last week by *The Economist* and IBM, the “digital divide” between developed and developing countries has narrowed. Within China and India, some regions (Shanghai and Bangalore) have almost the same level of Internet and mobile phone connections as developed countries. These countries already benefit from low labor costs, and their advances in telecommunications will make them even more competitive.

A lagging United States carries far-reaching implications for manufacturing. NAM’s membership includes several major carriers, as well as hundreds of members who make telecommunications equipment. Every single one of these members depend upon telecommunications services, which have become an integral part of all stages of manufacturing, from design and production to shipping and marketing. There can be no “just-in-time” manufacturing, with invoices and inventory systems spread across six continents, unless companies can communicate to one another immediately... without interruption.

Geography and population densities play a part in our trailing status in broadband penetration; it is obviously easier to connect South Korea or Hong Kong than a country that spans a continent. But there are government barriers, too, which have hindered development, access and affordability for these telecommunication services. I am speaking specifically of local franchising laws, which have walled off tens of thousands of communities and companies from effective competition for broadband services. To enter a market served by a local cable provider under a municipal franchise, a new provider must engage in unique, costly and time-consuming negotiations. To achieve any level of economies of scale, it must then do so again, and again. And again. Talk about a barrier to competition! One carrier has had a team of 100 lawyers working on local video franchises for the last several years. But by the end of 2005, it had won approval to serve only forty of its 10,000 service areas.

As a former legislator, I am sensitive to the value of local control, the ability of communities to determine local matters, especially in such things as digging trenches and laying lines. I understand a town’s intense interest in preserving its franchise fees. But telecommunication services are national, international, global! And so is competition in manufacturing.

Born of 1960s and ‘70s technology and contemporaneous governing practices, municipal franchising does not take into account the technological advances that power our economy. Lily Tomlin sitting at a switchboard, plugging in this call or that while she eavesdrops on conversations? That day is long gone. Today, telecommunications means four engineering offices in four different states, connecting in real time to one another as they design their latest product. It means students in six different classrooms in rural Montana studying science or downloading the latest tutorial to work on at home. It means manufacturers managing a supply chain with scores of companies, or catching up on the latest news from NAM’s blog at [www.shopfloor.org](http://www.shopfloor.org).

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The current arrangement no longer works. It cannot accommodate the global marketplace. Several states have passed legislation to create statewide video franchising, so companies can negotiate each and every municipal agreement. The results are extremely promising, demonstrating the potential for rapid progress if Congress passes a national franchising law. Texas enacted its law in 2005, and the incumbent cable company dropped its prices for expanded video and Internet services in every community where a new competitor entered the market. Studies show that consumers quickly became aware of their expanded options and benefited from the lower cost. Consumers can handle the challenge of informing themselves and making a decision in the marketplace.

In March, Governor Mitch Daniels of Indiana signed a major telecommunications law, including a statewide franchise process for video telecommunications. The measure also got the Indiana Utility Regulatory Commission out of the business of regulating broadband and commercial mobile services. Indiana is the most manufacturing-intensive state in the country, and Governor Daniels argued for the legislation on competitive grounds. The interesting thing is that in contrast to previous years, the bill passed both houses of the state legislature by large margins. The political landscape is shifting toward telecommunications reform as more people realize how critical it is for American competitiveness. Support is bipartisan, and growing, in states and in Congress.

A week ago, the House Energy and Commerce Committee passed out its bill with nationwide video franchise language on a 41-12 vote. Some jurisdictional issues with the Judiciary Committee have arisen, but Chairman Barton said yesterday he still expects the bill to come to a full vote by next week. The NAM strongly supports this legislation (the Communications Opportunity, Promotions and Enhancements Act of 2006) and we are pushing for its enactment this year. We were also pleased to see that Committee rejected amendments that would have institutionalized a vague concept known as “net neutrality.” Senator Stevens also thankfully steered clear of “net neutrality” when he introduced his broad telecommunications bill on Monday.

“Net neutrality” is a smart public-relations term; what it really means is the regulation of traffic flow, service and pricing structures offered by broadband carriers—the kind of services that broadband companies should be able to package together and offer to a willing buyer. We need to lift the barriers to competition—not impose new rules and guidelines in an effort to mandate an ill-defined “fairness.” Once established, a regulatory regime tends to grow in scope and interference. Or tries to get rid of it all together! The better approach is to let the consumer decide. Investment will follow. According to a 2004 study, deregulatory policy measures (the FCC has already enacted many) could increase telecommunications investment by up to \$60 billion over five years, create several hundred thousand new U.S. jobs and add up to \$634 billion to the national GDP.

I have focused today on broadband and the need for national video franchising because that is the place where we can make a big difference, right away, with Congressional

action. But there are other issues and venues where the NAM is active. At the Federal Communications Commission, we have consistently urged the commissioners to remove excessive regulations that hinder broadband deployment. The NAM also supports keeping Internet-based services unregulated. The U.S. telecommunications network now carries more data than voice traffic, and the transition to what will ultimately be an all-Internet Protocol network is well underway. Minnesota’s Public Utilities Commission has sought to regulate Voice Over Internet Protocol (VOIP) services like traditional telephony. The FCC has taken the opposite approach, ruling that the services are interstate and not subject to state regulation. The NAM has joined other members of the High-Tech Broadband Coalition in defending the FCC’s ruling against Minnesota’s challenge.

I still believe that the American people would be ill-served by allowing the separate states to over-regulate the telecommunications system. Today, an across-town call in Chicago may be routed through California or Florida, or even leave the country, before reaching its ultimate destination. Imagine a fifty-state regulatory system trying to handle that!

The states do have a useful role to play. Through their public utilities commissioners or through other agencies, they are responsible for enforcing commissioner protections. With local authorities, they can manage emergency response services. States can also help by removing regulatory barriers. During my tenure as governor, Michigan adopted the first state law establishing uniform process and free structure for companies needing to dig trenches to lay Internet cable. We also provided for tax-exempt bonds and a new broadband development authority to encourage small telecommunications companies to offer high-speed access to rural areas. The state did the right thing by eliminating red tape, and the result was more access to broad-band: improved distance-learning for rural residents, improved supply-chain management for small business, and powerful efficiency gains in the healthcare sector that lowered costs.

My first speech as the NAM’s new President and CEO was in October 2004 out in Las Vegas, given to the United States Telecom Association. The country was just coming out of a recession that had hit telecommunication manufacturers especially hard, and I wanted to make sure the telecom sector knew that NAM was intent on working on these issues. And we have. The NAM remains committed to achieving a competitive environment that fosters innovation and investment. Telecommunications provides the conduit for information that must be kept free and open—as the foundation for a healthy manufacturing sector, a strong economy, and a vital public sphere of ideas... a sphere of ideas the Federalist Society fosters through its work and dedicated membership.

Thank you and my thanks for inviting me to speak today.