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# THE INTERNET FREEDOM AND BROADBAND DEPLOYMENT ACT OF 2001

## HEARING

BEFORE THE

## COMMITTEE ON ENERGY AND COMMERCE
## HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

ON

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# THE INTERNET FREEDOM AND BROADBAND DEPLOYMENT ACT OF 2001

**WEDNESDAY, APRIL 25, 2001**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
*Washington, DC.*

The committee met, pursuant to notice, at 10:08 a.m., in room 2123, Rayburn House Office Building, Hon. W.J. "Billy" Tauzin, (chairman) presiding.

Members present: Representatives Tauzin, Bilirakis, Upton, Stearns, Gilmor, Cox, Deal, Largent, Ganske, Norwood, Cubin, Shimkus, Wilson, Shadegg, Pickering, Fossella, Blunt, Davis, Bryant, Ehrlich, Buyer, Radanovich, Pitts, Walden, Terry, Bass, Dingell, Waxman, Markey, Hall, Boucher, Brown, Gordon, Deutsch, Rush, Eshoo, Stupak, Engel, Sawyer, Wynn, Green, McCarthy, Strickland, DeGette, Barrett, Luther, Doyle, John, and Harman.

Staff present: Howard Waltzman, majority counsel; Brendan Kelsay, professional staff member; Hollyn Kidd, legislative clerk; and Andrew W. Levin, minority counsel.

Chairman TAUZIN. The committee will please come to order. This will be a very crowded session today, and so I would ask our guests to take their seats and get comfortable. We have a very large and illustrious panel of witnesses, and this obviously is going to be a long day of hearing, and the sooner we can get settle down and get started the better.

Good morning. I would first like to welcome our guests this morning and thank the members for attending this important hearing. Today the committee will hear testimony regarding the Internet Freedom and Broadband Deployment Act, legislation that I introduced yesterday, along with my colleague, the ranking member of this committee, Mr. Dingell, and many of our colleagues.

I am delighted that we are conducting this hearing today so that all of the members of the committee may participate in the discussion again of the bill's merit. I am also delighted that Chairman Upton will mark this bill up in his subcommittee tomorrow, and I want to thank the chairman for his expeditious consideration of the measure.

Mr. Dingell and I worked with many of our colleagues for the past 2 years attempting to finish the deregulation begun by the Telecommunications Act of 1996. In 1999, we introduced H.R. 2420, which was the identical bill that we refiled again yesterday, a bill to deregulate the provisions of high speed data and Internet access services.

That bill in the last Congress gathered nearly 240 co-sponsors, indicating very broad and very deep support among the members, our colleagues, of the House. Yesterday, we reintroduced the bill and the hearing will mark the beginning of the process to which the 107th Congress will consider the legislation.

Broadband services offer consumers new ways to communicate, to learn, to do business, and to entertain themselves. I am often asked at home to explain broadband, and I like to use the refrigerator and beer analogy.

Today if we want to use the Internet, and we have got to dial it up, and wait for it to warm up, and depending upon the speed of our PC, and the speed of our connections, it may take a while for us to chill the beer down.

It is like going to the refrigerator and finding the darn gone thing shut down and having to turn it on and wait for it to chill the beer. Broadband is where you turn up in the kitchen and find a refrigerator that is always on, and when you open the door not only is the beer chilled, but there are 20,000 varieties of beer in that refrigerator with rich content.

For television consumers who may not be as keenly aware of Internet services yet, as we move television into the age of digital communications, television will be the broadband portal by which many Americans will experience Internet services. Rich content, that refrigerator full of 20,000 varieties of communications.

The broadband services are not nearly as available as their slower dial up counterparts. While broadband deployment has begun to speed up in urban and densely populated suburban areas, broadband deployment is almost nonexistent in most of the rural areas of our country.

Many of the reasons for the disparity in the deployment of broadband services are economic. Broadband is a capital intensive investment, the cost of which can be recovered more rapidly if it is being spread over more and more lucrative customers.

But that does not mean that Congress should not be concerned about the disparity in deployment. Areas in which broadband services are not available are in jeopardy. They are in jeopardy of being left out of the new information age.

And Internet dependent businesses simply will not locate in rural areas if broadband is unavailable, and those that are there may find themselves required to move to go to those parts of the country where in fact these services are abundantly available.

To give carriers a greater economic incentive to deploy broadband services more rapidly everywhere and anywhere in the United States, Congress needs to complete the deregulation begin by the Telecom Act by deregulating broadband services.

Currently, there are regulations imposed upon broadband services and facilities provided by the incumbent local exchange carrier that are not imposed upon any of the broadband carriers. ILECs must provide their facilities, even brand new facilities, on an unbundled basis to competitors at regulated prices.

ILECs must resell their broadband services to competitors at wholesale rates, which no other carrier is required to do. In addition, the ILECs, and the Bells, are prohibited from offering long

distance data services, which then deprives them of the efficiencies that can be gained from offering end-to-end services.

These restrictions give the ILECs little incentive to deploy new services or facilities. Why spend the money to roll out broadband when your competitors can then use your network to take away your broadband customers. Even worse, to take away your old customers, your telephone customers, while they are doing it.

These types of rules might have made sense for basic telephone service, but cable companies now control 75 percent of the broadband market, and so the ILECs cannot be considered dominant by any stretch of the imagination.

In fact, the fact that cable is deregulated says a lot about deployment. The fact that cable is so actively deploying broadband in a deregulated governmental relationship says a lot about the need for this bill.

And I am not suggesting that we rather subject the cable companies to the same rules that are currently applied to the ILECs. To the contrary, I applaud the cable companies for aggressively rolling out broadband services and frankly I hope the government continues to stay out of the way so that cable companies can continue to do so.

But what it means is that ILECs should have the deregulatory parity with cable companies in the broadband market. Those that are worried about cable rates for television services ought to think about cable rates for broadband services if there are no real competitors out there contesting for those same customers.

Broadband is a national market that does not need regulation. What it needs is the ability to thrive, similarly to what happened when the wireless industry was given its chance and government stayed out of the way. Wireless thrived in the absence of regulation, and broadband will just as well.

But broadband needs to be deregulated, and we have introduced a bill to accomplish that goal. The bill provides a right amount of deregulation for broadband services, and rejects the application of antiquated telephone rules to the new market like broadband, and it seeks to maximize investment and innovation of new facilities.

After many strong years of growth the tech sector is experiencing some very difficult times. How can we stimulate the high tech sector of our economy? If we deregulate the broadband market, we will witness indeed the acceleration of broadband deployment.

As we will hear today from witnesses like Peter Pitsch of Intel, and Tim Regan of Corning, an acceleration of broadband deployment is exactly what the tech sector needs to get back on its feet, and get the dot.com companies coming again, functioning again, surviving and growing.

And broadband services will bring new opportunities for many of our constituents. It will bring them choice, and it will bring them new services, and it will bring them all those products of all those high tech companies. And the deployment of broadband facilities will hopefully restore what has become one of the most important sectors of our economy.

I look forward to the witnesses today, and I certainly look forward to my colleagues' participation in this extremely important debate, and the Chair now yields to the ranking minor member of

the committee, my friend and co-sponsor of this legislation from Michigan, Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman, and I commend you for holding this hearing today, which I note is our fifth hearing on this matter. And I am pleased to joined you in co-sponsorship of the reintroduced Internet Freedom and Broadband Deployment Act.

I am happy to have worked with you on the drafting of this legislation, because I believe that the legislation is right, and I believe it is fair, and I believe it will provide great benefits to the public and to the American economy as a whole. The bill will make sure that competition for broadband and Internet services is strong, and that high speed Internet connections are delivered quickly, something not happening now.

And above all else that no single sector of the industry is given de facto monopoly when it comes to providing consumers with broadband Internet access as is now the case. Today's hearing marks the fifth time that we have held hearings on this broadband development in less than 2 years.

The first four hearings were heard in the Telecommunications Subcommittee on legislation substantially identical to that upon which we proceed today. It has been before this committee in at least two Congresses, and I want to comment you for calling today's session before the full committee.

This is an important legislative issue which for many reasons demands the addressing of the committee, and it is crucial that all members have the opportunity to learn firsthand about the strong need for regulatory reform in this area.

Five years ago you will recall, Mr. Chairman, the Congress passed the most substantial rewrite of the nation's telecommunications laws since 1934. The Act was an extraordinary achievement. Unfortunately, not all of our hopes have been materialized.

Like all legislation the Telecom Act simply reflected the Congress' best policy judgment based on the facts as we knew them at that time or anticipated they might change. But now in this information age facts change more rapidly than ever before and those who operate on Internet time the last 5 years seems to be an eternity.

For the benefit of 20-20 hindsight, perhaps the most glaring oversight of the Telecom Act was the failure to create with certainty a proper regulatory environment for Internet. As a result, with its explosive growth, the Internet is still in many ways grinding along in low gear.

While we hear a great deal about the benefits of the information super highway, the truth is that most Americans are relegated to the slow lane and the expensive lane. It is astounding to me that only 5 percent of Americans today have broadband.

Only 5 percent for high speed Internet service today, and 95 percent of our people's Internet users are stuck with low speed dial up service. The Internet users are not being permitted to participate in the progress made in this area.

If there is any realistic hope that the new economy will be resuscitated, these numbers must change dramatically and fast and I believe that the legislation before us will make that possible. What is even more astounding is how the 5 percent number breaks down.

Let's look at what you have to do to get in under the benefits of getting these kinds of new services. First, you have to live in an area where broadband service is offered, and that is a matter of pure luck.

Second, you must be fortunate enough to be able to afford it. Third, if you surmount these hurdles, you are three times more likely to subscribe to cable modem service than to DSL. The troubling fact is that cable companies now have a fine monopoly of their own.

They control more than 70 percent of the broadband Internet market, and we will be asking some questions about this this morning, Mr. Chairman. One must also ask why there is a major discrepancy in market shares. Is it because the cable companies provide vastly superior service?

That is the most unlikely question since most technical reports say that service qualities of modern cable modems versus DSL are largely comparable. It is much more likely that the discrepancy in market share is due to the tremendous competitive advantage that cable companies enjoy in the broadband marketplace.

Since the Telecom Act removed virtually all Federal regulation of cable companies, these companies are not free to invest in advanced broadband services without any requirement whatsoever that new broadband facilities be shared with competitors. They also have no constraints going from regulation.

When it comes to cable the law contains no interconnection requirements, no resale requirements, no requirements to lease proprietary network facilities to competitors at cost based rates. I am quite certain that if in fact cable companies are required to share their property with competitors that AT&T would not have spent more than $100 billion to require broadband facilities.

No bank would have lent them the money, and their shareholders would have staged a revolt, and the investment simply would not have and could not have been recovered. However, that is precisely the situation that the nation's local telephone service companies find themselves confronting.

I would note that they are best positioned and most likely competitors to cable, willing and able to provide effective competition for broadband Internet services, and in so doing they will stimulate the cable people to provide better service at lower costs.

But they remain saddled with common carrier regulations designed for another time and quite different purposes. While these regulations continue to be necessary to open telephone networks to competition, there are an absolute impediment to realizing healthy competition in the broadband Internet market.

The simple truth is that the Tauzin-Dingell bill will do nothing—and I repeat—will do nothing to roll back market opening provisions contained now in the law. What the bill will do is simply to remove regulatory obstacles that substantially hinder investment in broadband technologies.

It my view that is the single best way to get the new economy back on track and to give the American public a real choice when it comes to faster and better, and cheaper Internet access. Mr. Chairman, I would urge my colleagues to support this legislation and I thank you for this hearing.

Chairman TAUZIN. Thank you, my friend, and the Chair is now pleased to recognize the chairman of the Telecommunications and Internet Subcommittee of this fine committee, Mr. Fred Upton of Michigan.

Mr. UPTON. Well, thank you, Mr. Chairman, and as the subcommittee chairman, I am pleased that we are able to open up this hearing to all full committee members to ensure that everyone has the opportunity to participate, and I commend both you and Ranking Member Dingell for helping to hold it this morning.

This hearing will compliment the four hearings held in the subcommittee last Congress, including the legislative hearing on an identical bill last July. Last month, I had the opportunity to chat with the head of the Southwestern Michigan Association of Realtors.

The No. 1 question on the minds of prospective buyers in Baring County these days is not about property taxes or local schools, or hospitals, but whether or not there is high speed Internet access in the neighborhoods.

I am told that the potential buyers are willing to commute more than 30 minutes, and sometimes even across State lines, just to live in communities which have this services.

Our businesses report similar competitive disadvantages. Regrettably, high speed Internet access is not available to most consumers in Southwest Michigan like it is in more populated areas of the country, and it is having a negative impact on economic growth and the quality of life.

I compared high speed Internet access to the interstate highway system and the railroads from days ago, and as I crisscross my district I can see the population's economic growth which has occurred in those communities along the interstate highways, and some would say that the towns which don't have access have remained in a time capsule; nice towns, nice people, but they virtually stood still in terms of economic growth.

That is what I fear will happen in Southwest Michigan if we fail to move to get these communities connected to the high speed Internet highway. That's why we need to provide deregulatory parity for high speed Internet access, regardless of the platform by which it is delivered, be it by telephone wires, cable, wireless, or satellite.

By doing this we can undo the enormous regulatory shackles which prevent telephone companies from providing DSL the last mile. That said, as Chairman of the Telecommunications and Internet Subcommittee, I have done a lot of thinking about this bill lately.

Since becoming Chairman several months ago, my door has been open to virtually all comers, whether they be ILEC, CLEC, DLEC, IXCs, PUCs, and yes, MCs, Members of Congress, to discuss their support or opposition, whatever the case may be.

It is a matter of public record that I was not a co-sponsor of H.R. 2420 last Congress, and I am not a co-sponsor of H.R. 1542, the bill before us today. I have always stated that I would seek to make some constructive and positive changes to the bill, and this will happen.

I listened intently to Chairman Powell when he testified before our subcommittee on March 29, and in his testimony he said this. "You have to have a response to consumer harm and dangers of marketplace failure. I believe that response is enforcement. I might give you the benefit of the doubt, but you cheat, and I am going to hurt you, and hurt you bad, hard, and that is what enforcement means. And I think to do this seriously, we will need the help of Congress. I believe the enforcement tools made available to us are inadequate, with billion dollar industries. Our fines are trivial, and they are the cost of doing business to many of the companies."

I would note that the FCC's fines for phone companies' violations of the law are up to $100,000 per violation, and capped at a million. I think that this is what Chairman Powell was referring to, was inadequate, trivial, and the cost of doing business to many companies.

As H.R. 1542 moves through the legislative process I will seek to significantly increase those fines and enhance other FCC enforcement tools to make sure that Chairman Powell and his colleagues at the FCC will be able to hurt, and hurt hard those who violate the law.

It is my hope that the threat of such fines would compel companies to make sure that they are doing right by the Telecom Act of 1996, and by the consumers who the law seeks to benefit through robust competition in the marketplace for local telephone service.

Moreover, I believe that there are ways that we can improve the State PUCs process of resolving disputes over terms contained in interconnection agreements. Mr. Chairman, I look forward to working with you to move this bill along the way. Thank you.

Chairman TAUZIN. I thank my friend, and the Chair is now pleased to welcome and recognize the gentleman from California, Mr. Waxman, for an opening statement.

Mr. WAXMAN. Well, thank you very much, Mr. Chairman. I am committed to a policy that leads to more competition, lower prices, better service, and marketplace conditions that encourage the greatest possible technological advancements.

As the debate on this issue has developed, I have been careful not to rush to judgment on how we can best achieve that goal. I have tried the best I can to keep an open mind on legislative proposals, including the Internet Freedom and Broadband Deployment Act.

Depending on who you talk to, the Tauzin-Dingell bill is either going to speed broadband deployment throughout the country, and allow competition to flourish, or it is going to destroy the very life blood of competition, ruin competitive carriers, and hurt residential and business consumers.

At this point, my view is that H.R. 1542 will do more harm than good, and I want to raise some specific competitive concerns that I have about this legislation. First, I believe that there is some confusion about the role of DSL in this debate.

DSL is a high speed broadband service that is being deployed today. It is a local service that the incumbent ILECs can offer anywhere they choose under current law and in competition with other DSL providers. And they do offer it. In short, the ILECs do not need long distance relief to offer DSL.

The CLECs currently serve only about 3 percent of the local lines that go to residences and small businesses, and about 17 percent of the local lines that go to big businesses. Facilities-based competition is currently limited to about 2 percent of the market. I believe that the dominant position the ILECs hold in their service areas is a critical part of this debate.

Under the requirements of the 1996 Telecommunications Act, ILECs must meet a 14 point competitive checklist before they can gain entry into the long distance markets in their service areas. They have gained entry in five States, and a number of other 271 petitions are pending, including one before the California PUC, which is expected to be considered in June.

I am concerned, however, that the Tauzin-Dingell bill would allow the ILECs into long distance data service, without having to meet the checklist requirements, or make any demonstration that their own markets are open to competition. I urge today's witnesses to specifically address this point so that the committee can evaluate this concern.

According to the bill's proponents, data and traditional voice services are different forms of communication, and so it only makes sense that they be regulated differently. That sidesteps what I believe to be the core issue. Both forms of communication are transmitted on the same wire and the final mile of that wire for almost every residential and business customer is still under the control of the ILECs.

At the same time the legislation would eliminate the competitive checklist requirements on ILECs, it would make it more difficult for CLECs to compete against them in their service areas. The 1996 Act required the ILECs to offer unbundled access network elements and resale to their competitors.

But the Tauzin-Dingell bill would eliminate these competitive requirements for high speed data service. We learned firsthand with the divestiture of AT&T how effectively strong market opening requirements work to bring competition and huge savings to customers.

Finally, this legislation gives the ILECs unregulated entry into long distance data service without including a performance standard or any other provision to make sure that they actually deploy broadband service in undeserved areas. So the ILECs get their reward up front, but there is no guarantee they will ever provide the public policy service that Congress is expecting.

The communications industry is now about one-seventh of our economy. Any legislative changes that we make that could lead to less competition would reverberate throughout our economy for years to come.

It is imperative that we move deliberately and wisely, and I look forward to hearing from our witnesses on these and other important issues today. Thank you, Mr. Chairman.

Chairman TAUZIN. The Chair thanks the gentleman. The Chair is now pleased to recognize the chairman of the Commerce Consumer Trade Protection Subcommittee, Mr. Cliff Stearns.

Mr. STEARNS. Good morning, and thank you, Mr. Chairman. I look out in the audience and see these 11 distinguished senior vice

presidents or CEOs, and so I welcome this hearing. This is, as many of us know, is not the first introduction of your bill.

Last year it had a number of co-sponsors that made it appear that it would pass the House easily. However, I think as you move forward there is going to be quite a bit of concern, and I think having this hearing this morning is the right step forward.

The bill is centered upon the belief that present regulatory conditions of both interLATA prohibitions and network unbundling, and resale requirements imposed on the RBOCs adversely affects an RBOC's ability to offer high speed data service.

In other words, Mr. Chairman, is the present environment for RBOCs an incentive for them to participate, and they don't think so, and your bill is giving or lining up the incentives.

They are pressing for this legislation because the unbundling and resale requirements they argue, when applied to advance services, provide a disincentive for them to upgrade their networks.

Furthermore, by lifting the interLATA restrictions, the Bells claim they still have an incentive for seeking relief for interLATA voice services due to the demand for bundle services, including long distance voice.

Now, conversely, those opposing the legislation do so because they believe that such relief would undermine the unbundling and resale safeguards for competitors and their ability to compete with the incumbent phone company for customers.

Additionally, they claim the means for such regulatory relief is spelled out simply in Section 271 of the Telecom Act, and granting regulatory relief to the RBOCs prior to such clearance would result in financial ruin for competitors.

I would add, Mr. Chairman, in Congress Daily this morning that we had four distinguished key Senators have written to the FCC, and speaking against the bill, and they have one sentence in their letter which says, "If present trends continue, local markets will not be open to competition and incumbent companies will leverage their monopolies as they enter new service areas."

So we see both sides of the argument. And while I generally support increased competition and less regulation, there is a lot of complexities in this. I am not a co-sponsor, Mr. Chairman, as you know of your bill, but I am sympathetic to the fact that we need something to jump start this whole area of bringing broadband to this country.

And so I am very interested in a thorough examination of the facts, having an exchange of ideas with these 11 distinguished witnesses, and hearing public debate. So I commend you for having this hearing. I would follow up on the chairman of the Subcommittee on Telecommunications, Mr. Upton, when he had talked about enforcement.

Chairman Powell has called for increased enforcement through the FCC, and he wants those powers to do so, and I intend to work with Mr. Upton and the chairman, and my colleagues in crafting language that will deter companies from simply saying, okay, we will just pay these fines when we have violations, and just consider that as a cost of doing business.

Only when we have the fines that are strong enough so that the industry does not think, well, it is just a cost of doing business, will

we have real enforcement by the FCC, and I would like to give them that power. So I look forward to the mark-up tomorrow, and Mr. Chairman, I again commend you for this hearing today.

Chairman TAUZIN. I thank my friend, and assure him that I intend to work with him on exactly that type of strategy. The Chair now recognizes the gentleman from Massachusetts, the ranking minority member of the Telecommunications and Internet Subcommittee, Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman. Mr. Chairman, the legislation that we are now considering is highly flawed for three reasons. It is undigital, and it is unnecessary, and it is unfair.

It is undigital because it fails to recognize the fundamental truth about going digital. By converging all information into a series of zeros and ones, digital helps to create a technological esperanto.

All media can speak all forms of information; videos, photos, e-mail, faxes, music, everything can be expressed technologically as zeros and ones. Conversely, this legislation creates a technological land of make believe, where bips traveling through networks can be magically separated into voice and data, and rather than learning what technology teaches us and getting in sync with convergence, this bill represents a digital divergence.

Ripping certain bips out of the network to be treated by regulators differently turns back the clock, and presents once again the problem of trying to force certain services into particular regulatory boxes even as technology renders such classification antiquated and meaningless.

This bill is also unnecessary. The Bells don't need legislation in order to provide digital services. They can and do offer DSL services today. The Bells don't need legislation to offer Internet access. Again, they offer such services today.

Moreover, the Telecom Act allows the Bells into long distance after they have met the requirements of a competitive checklist in a State. They have done this in five States, including Massachusetts. We are the beneficiaries of all of that additional competition.

In other words, the key to entering the long distance market is in their own hands. In addition to being undigital and unnecessary, this bill is also unfair. In the aftermath of the enactment of the Telecommunications Act of 1996, several new commercial enterprises were launched, and they began to win customers, and provide new services, and invest in infrastructure.

In fact, they poured about $60 billion into new infrastructure. They delivered on the promise of the Act by deploying new digital services, prompting the Bells to finally get around to offering such services themselves, and finally spending 10's of billions of dollars to go digital, that they should have been spending all along.

And this is the thanks that new companies get. They get a bill that drops a boulder of uncertainty into the marketplace and in a proposal that eliminates market opening provisions of the Telecom Act and frees the Bells into the long distance marketplace before they have met the competitive checklist in a State. It is a Bell protection program, plain and simple.

It shields the Bell companies, while emptying a six-shooter into the heart of the new economy companies, the NASDAQ, and that is what the NASDAQ is. It is what happened to the information

economy after 1996, and this bill shoots right at the heart of that revolution.

That's because in order to benefit these four corporate behemoths thousands of companies will suffer the consequences. Beyond raising the specter of monopoly providers in certain regions and markets throughout the country, the bill accelerates the trend toward monopsony, where there will be only one buyer the way it was until 1984.

And rather than dozens of companies building networks, and buying equipment, we will have one major purchaser of manufactured goods and software for the network over vast regions of the country and that will stultify economic growth and innovation.

Our national economic interests is furthered by a policy that reinvigorates telecommunications competition, and encourages America's hi-tech equipment manufacturers to become the worldwide arms merchants of the information revolution.

Consumers benefit when warring parties fight for their loyalty in the telecom marketplace. They lose when the government blesses detente for the Bells. Now, a word about the process by which we are considering this legislation.

Going right from a full committee hearing today into a subcommittee mark-up is a disservice, not only to the members of the subcommittee who will have little time to reflect and benefit from today's proceedings, but also to our witnesses who are talking time out of their lives to inform and educate us.

Given the importance of the bill to our economy, it is unfortunate that more time was not allocated at this particularly precarious time in the capital markets, and in our national economy to better examine the proposal in that light.

Moreover, while many of us on the committee have spent years working on these issues, many members are new to the committee, our new members of the Telecommunications Subcommittee this session. I think it is disrespectful to the issues at stake not to afford members a full set of hearings this year, and to engage in discussions with the conditions of this year with information that comes to light.

It is only April 25. What is the rush. The announced scheduled is for a mark-up tomorrow. I would have preferred additional hearings or at least moving the mark-up back until last week.

If we proceed tomorrow, then I will offer amendments tomorrow and we will have votes on amendments. I thank you, and I yield back the balance of my time.

Chairman TAUZIN. The gentleman looks forward to the gentleman's amendments tomorrow. And the Chair recognizes the gentleman from California, Mr. Cox, for an opening statement.

Mr. COX. Thank you, Mr. Chairman, I actually want to commend Mr. Markey for his statement, inasmuch as much of what he said is what I was going to say, although I am not sure that the hearing today or the mark-up tomorrow should necessarily require us to pick sides the way seemingly we are about to do.

A thoughtful process ought to permit us to reconcile the views that are being expressed, the competitive claims that are being made in a policy that doesn't necessarily shortchange the local exchange carriers, or chill their willingness to invest—but at the

same time does not put the thumb on the scale in favor of the local exchange carriers over cable providers, or satellite providers, or fixed-wireless providers, or any other potential competitors.

It is for that reason that I do agree with Mr. Markey that we are being deprived by the process of the opportunity to think about what we are going to hear from 11 distinguished panelists today in a process that requires us to submit amendments today on a bill that we have just received for a mark-up tomorrow.

In order to not just listen and pick sides, but to try and listen, and rationalize, and harmonize, and synthesize what we are hearing, I think at least 24 hours might be necessary. I support the goal of this legislation to jump start the deployment of broadband access.

And I also think that Mr. Markey hit the nail on the head when he focused on the fact that in a technological world there simply is no distinction worth making between voice and data. I don't think any of the local exchange carriers in their competitive plans sees a real distinction between voice and data.

Hopefully they want to get into all of these markets, and I am concerned that the legislation before this committee might unintentionally provide an incentive for competitors to create and maintain that distinction, simply because the regulatory model requires it.

There is nothing in the technological world that requires it, and there really is a convergence that if it is not already fully under way, it is surely possible if regulation doesn't get in the way of it, convergence between the Internet services, telephony, broadcast video, and just about everything else that you can think of that is transportable in digital form.

So the challenge to this committee is to look beyond the urgent competitive pressures of the moment to the marketplace that can be in the not too distant future, if distorting government regulations don't prevent it from materializing.

And I hope, Mr. Chairman, that we do give every consideration to the thoughtful presentations that we are about to hear from these 11 distinguished panelists, who undoubtedly spent a good deal of time, energy, and intellectual effort in formalizing their comments for us today, and I yield back.

Chairman TAUZIN. The Chair thanks the gentleman, and would assure him that that is the reason that we are having a hearing today, is that we want to inform the whole committee, as well as the subcommittee, on various view points on the legislation. The Chair recognizes the gentleman from Virginia, Mr. Boucher, for an opening statement.

Mr. BOUCHER. Thank you very much, Mr. Chairman, and I want to commend you for the leadership that you have taken in the effort to stimulate broadband deployment, which is currently the greatest challenge that confronts the continued growth and development of the Internet.

I am pleased, Mr. Chairman, to be listed among the co-sponsors of the legislation that is the subject of the hearing this morning, and I will use my time to make three brief points in support of the need for its approval by this committee.

First, the legislation accomplishes a long needed deregulation of DSL services, which will dramatically strengthen the financial case

for the deployment of this broadband offering to homes and to businesses.

The major reason that the cable industry has captured more than 70 percent of the last mile of broadband market is that cable is essentially unregulated, while DSL services are burdened with extensive regulations that dampen the willingness of telephone companies to invest in their deployment.

The legislation that is before this committee largely resolves that regulatory disparity. Second, the measure will ensure greater competition and greater investment in the offering of Internet backbone services by permitting Bell operating companies to offer data across LATA boundaries, while reserving to the Section 271 process the permission for the Bell companies to offer voice-based long distance on a nationwide basis.

This provision is essential to ensure adequate Internet backbone services in many rural areas of the Nation, to promote competition and backbone service offerings with consequence benefits for end-user pricing, and to ensure an adequate level of investment in the Internet backbone in order to handle the ever growing volume of Internet traffic.

Third, the freedom to become Internet backbone providers will further incent the Bell companies to deploy DSL services over the last mile, since they will be able to maximize the return on their DSL investment, when they can carry the traffic from the originating user through the Internet backbone, and perhaps even to the user on the terminating side.

For all of these reasons, Mr. Chairman, the legislation makes much needed reforms. I am pleased to be serving as one of the co-sponsors and to encourage the approval of the legislation by the subcommittee tomorrow as an essential step in the promotion of the greater growth and development of the Internet. Thank you, Mr. Chairman. I yield back.

Chairman TAUZIN. The Chair thanks the gentleman particularly for his co-sponsorship and support, and I wish to inform the members that Mr. Goodlatte, who has introduced several legislation which Mr. Boucher has also joined as an original co-sponsor of the bill. The Chair is now pleased to welcome for an opening statement the gentleman from Oklahoma, Mr. Largent.

Mr. LARGENT. Thank you, Mr. Chairman. In the interest of time, I want to submit my entire statement for the record. I have served on this subcommittee now for over 4 years, and during this time I have learned that regarding this particular piece of legislation that we are having a hearing on today that members are characterized as either pro-Bell, pro-long distance, or pro-CLEC.

And I have tried to have my position in the record reflect that I am none of those. I am pro-competition. I voted for the 1996 Act because I thought that it would enhance competition in all sectors of the telecommunications industry, and I am proud of the vote that I cast in support of the 1996 Act.

Mr. Chairman, I would also like to submit for the record an article that was published on April 23, just 2 days ago, in Business Week, and read the opening paragraph. The title says, "Don't Let Telecom Competition Vanish." "And the winner in this great telecom consolidation sweepstakes is monopoly. That appears to be

the most likely outcome as the giant telecommunications industry works its way through the current meltdown. The promise of competition and lower prices provided by the entry of new players is quickly fading. With hundreds of new telecom startups hugely in debt, and facing bankruptcy, only those companies with deep pockets will survive to pick up the remaining assets on the cheek. These appear to be none other than the old baby Bells, which may well wind up controlling not only the telephone and data services, but also the all important broadband market. Newly appointed Federal Communications Commissioner Chairman Michael Powell should take note. Competition is being threatened more than ever in telecom." Mr. Chairman, I know that when the debate was raging in 1996 before the Telecommunications Act was passed that the mantra that was sounded by all players at the table was create a level playing field.

We heard it over, and over, and over again. Mr. Chairman, I would just tell you that the bill that we are considering and about to hear testimony, I believe, tips that level playing field in a way that may be irreversible, and is why I am deeply concerned and very interested to hear the testimony of the witnesses that we have at the table today, because as I said, I am pro-competition, and my fear is that the bill that we are considering and will mark up tomorrow tips that level playing field in a way that will damage the competitive nature of the telecommunications industry in a way that will be irreversible. I yield back the balance of my time.

Chairman TAUZIN. I thank the gentleman, and by unanimous consent the gentleman's full statement is a part of the record, along with the attached article, and by unanimous consent, all members written statements with attachments are made part of the written record of this proceeding without objection, and it is so ordered.

The Chair now recognizes the gentleman from Tennessee, Mr. Gordon. Let me announce for the record that the Chair has asked the staff to prepare a list of the members present at the dropping of the gavel and under our rules, members are called in order of their appearance at the drop of the gavel, and then other members as they have appeared at the hearing.

So that is the reason that we are going to depart from the normal seniority line in some cases. The gentleman from Tennessee, Mr. Gordon, is recognized.

Mr. GORDON. Thank you, Mr. Chairman, and I, too, would like for my full statement to be placed in the record, and I want to add my welcome to this distinguished panel today. You bring a lot of expertise and we appreciate your time for us.

I, too, was one that voted for the 1996 Telecommunications Act, and hoping that it would bring us more investment, more competition, and in turn more services and lower prices for consumers.

And I think in some areas that we were successful with competition, and in some other areas I think we have seen more consolidation. And I hope that we can use some of the lessons from that 1996 Act as we proceed today.

Also let me say that although the essence of this bill has been before us since the last Congress, and we should be up to speed on it, the fact of the matter is that because of the competition for our

time, and energy, and interest here, I think that many of us do have more questions and more to learn.

But it is upon us, and so let's try to learn all that we can today, and I hope that we will have a little time to discuss this balance as we go forward. As I can see, a part of the purpose of the bill is to allow the Bells, and to interLATA, or long distance data transmission, to bring additional investment and competition into that area.

And one of the things that I want to learn more about is how this bill is going to impact additional competition and investment into the DSL area, and I hope that we can learn more about that today, and I want to hear from that from you. Thank you very much.

Chairman TAUZIN. The Chair thanks the gentleman, and the Chair now recognizes Mr. Ganske for an opening statement.

Mr. GANSKE. Thank you, Mr. Chairman. The decision that we are confronted with is how to best create an environment where Internet service will rapidly expand. There are diverse opinions as to how we can accomplish that goal.

Do we need to open electronic data transfer markets, or will opening these markets without first requiring the Bells to meet the Section 271 requirements reverse the accomplishments of the Telecom Act of 1996. I am looking forward to receiving the advice and suggestions of the distinguished panel.

I am pleased that two of those testifying are Iowans; former Congressman and member of this committee, Tom Tauke, who now represents Verizon; and Clark McLeod, the founder and CEO of McLeodUSA, one of America's most successful competitive global exchange companies.

Mr. Tauke and Mr. McLeod possess a tremendous wealth of knowledge and experience in the telecommunications field, and I believe that they will offer some very different visions of the future for this essential industry, and I look forward to their testimony, and thank you, Mr. Chairman.

Chairman TAUZIN. I thank the gentleman, and by the way, I want to thank the cooperation of the minority in assembling such a distinguished panel. We are going to get to you as far as I can, I promise you. The Chair now recognizes the gentleman, Mr. Sawyer, for an opening statement.

Mr. SAWYER. Thank you, Mr. Chairman. With your permission, I will include my full text in the record, but let me just simply make four fundamental points. I am less interested in the great turf wars among competitors than I am in how their fair competition benefits consumers.

I am interested in whether it will ensure broadband to those who do not have it now, and will it encourage carriers to build out their infrastructure to the undeserved. Finally, I hope that we will be able to heed the wishes of Chairman Powell, who asked us so eloquently to give him the means to enforce laws, and to bring meaningful sanctions to those who violate Section 251 and Section 271.

There are a lot of consumer angles to this bill that I am not sure that we have sufficiently explored, and I am hopeful that we will be able to do so today. Thank you, and I yield back.

Chairman TAUZIN. I thank the gentleman, and the Chair recognizes Mr. Shimkus for an opening statement.

Mr. SHIMKUS. Thank you, Mr. Chairman. I initially thought that we would get to multiple pipes and multiple choices in the competitive scheme. I do not think that consumers are going to have multiple choices, but I do believe that they are going to be by set deliverable methods; by cable, direct satellite, basic telephone lines.

I think we need to move to competition and DSL. I applaud the chairman, and this is a similar bill that a lot of us co-sponsored last year. I am not a co-sponsor this year, but it is a method to get to a means, which is Internet DSL service to our citizens who really don't have it right now.

So I applaud the chairman, and I look forward to the hearing, and I yield back my time.

Chairman TAUZIN. Thank you, my friend, and the Chair recognizes the gentleman from Louisiana, Mr. John, for an opening statement.

Mr. JOHN. I will be very brief, Mr. Chairman. I really believe that the economic future and educational future of America rests upon our ability and corporate America's ability to deliver high speed broadband access not only to corporate America, but to all residents, rural, urban, and suburban.

And I think the question before us today is what has happened since 1996 with the deregulation of the telecom industry. I think that started the ball rolling toward broadband development, but how fast do we get there?

I have heard arguments the whole way, and being a new member of the Energy and Commerce Committee, I have had to educate myself very quickly on this issue. But I have heard many comments that we need to, at all costs, get this broadband deployed into all sectors so that everyone will have access.

But I also believe that there is a balance and a risk that we take if we go into it at all costs. So I am anxious to hear from the witnesses about the move toward deployment, because I think it is very, very important, and there must be a balance that we reach, and it must be deployed as soon as possible.

But at the risk of what? And that is what I am interested in hearing today from some of the panelists. So, I thank the chairman.

Chairman TAUZIN. I think the gentleman, and the Chair recognizes the gentlelady, Ms. Wilson, for an opening statement.

Mrs. WILSON. Thank you, Mr. Chairman, and thank you for holding this hearing, particular as so much has changed since last year when we were looking at this before. I believe that the sponsors of this bill have been straightforward, and very persuasive, and passionate, and believe very much that this is the right thing to do.

And I am convinced that your support for this bill is very straightforward and honest, but I am still unsure about whether you are right, and whether this is the right way to go, particularly in the state of very rapid change in the telecommunications industry.

And in just looking back over the last year since we considered this bill before, so much has changed, and I do believe that com-

petition, whether it is long distance, or data, or local service, improves service and improves options for consumers.

And it pushes innovation and without the 1996 Act, many of the innovations and the services, and the companies that we are talking about today would not even exist. In New Mexico just in the last year, U.S. West was acquired by a competitive telecommunications company, Qwest, that came into the business as a high speed, broadband, network, and they now own our local telephone company.

They are rapidly moving toward 271 application, which we hope will happen this summer or fall, and they agreed to make huge investments in the State of New Mexico, and service quality is beginning to improve. All of those were very good signs, and they wouldn't have happened if it weren't for the competition in the 1996 Act.

But we have also seen other things happen over the last year. We have seen since the 1996 Act the consolidation of the Bells from 8 to 4, and we have seen fierce regional and national backbone competition with 40 providers, and about 17 long distance players, and the Bells now wanting to get in to compete in that market as well.

But what we haven't seen is the independent or the incumbent local telephone companies competing against each other, and we haven't see competitive local service. The CLECs are in trouble across the country. Northpoint went dark on April 2, and Advanced Radio Telecom, Winstar, Espire, go down the list.

All of the CLECs in general are in trouble. So the real fundamental question for me is how do we promote local competition, and how do we prevent the remonopolization of the industry, not horizontally, but vertically, so that in the end what we don't end up with is a very small number of companies serving me from my home in Albuquerque through all of the long distance and international calling, and I only have one choice.

That to me is the fundamental question of how do we promote local competition. Thank you, Mr. Chairman.

Chairman TAUZIN. I thank the gentlelady, and the Chair now recognizes Ms. Harman for an opening statement.

Ms. HARMAN. Thank you, Mr. Chairman. This subject is of intense interest to my constituents who occupy what is called the digital cost of Southern California. I voted for the 1996 Telecom Act, and I believe that it was Congress' intent then that the Act apply to voice and data services.

On the House floor the chairman of this committee said, quote, today in a bipartisan way, we unleashed the spirit of competition in all forms of communication services, from telephones to computers, to services dealing with video programming and data services.

That was February 1, 1996, and it took us many, many months to carefully balance the interests at stake in that Act, and I think we realigned the forces of that act 5 years later at our peril. So it would be my preference to let that Act stand, and even if it does not directly cover everything in this bill, I think to use a Supreme Court term, the penumbra of that Act does cover everything in this bill.

I would leave my remarks at this point and ask for unanimous consent to insert a more complete version of them in the record, and yield back the balance of my time.

Chairman TAUZIN. Unanimous consent has been granted.

The gentleman from Virginia, Mr. Davis, is recognized for an opening statement.

Mr. DAVIS. Thank you, Mr. Chairman. We are now at a critical juncture in our economy. New technologies and innovation in services and service delivery are promising to improve telecommunications for individuals and small businesses alike.

Consumer expectations are evolving with the anticipation of widespread broadband deployment, and thousands of high skilled, high paying jobs have been created nationwide. Yet the telecom industry, which has fueled our Nation's economic expansion, is struggling to maintain its momentum.

Competitive carriers following the promises of the 1996 Telecommunications Act invested over $50 billion in new telecom networks. For the past 2 years, they have committed over a billion dollars per month for DSL-type broadband connectivity alone.

But we have all witnessed over the past 6 to 9 months the rapid downturn in the economic viability of the competitive industry and the impact it has had on our economy, particularly in terms of consumer confidence and employment.

Mr. Chairman, this hearing today serves an important objective for our committee. Our discussion gives us an opportunity to measure the extent to which the Telecommunications Act of 1996 has achieved its ultimate purpose, to unleash competition in all forms of telecommunications services in order to increase the quality and lower the prices of those services for American consumers.

While judicial action brought competition in the long distance market, the passage of the 1996 Act hailed Congress' recognition that to achieve network wide competition, we had to prescribe a recipe that would similarly bring competition to the local telecom market.

Like in any market only then would consumers benefit from lower prices, advanced services, technological innovation, and increased investment in information infrastructure.

The strategy is simple. Offer the RBOCs an incentive to open their local monopolies so that conditions for market competition in the local loop will flourish. I commend you, Mr. Chairman, and the ranking member for your commitment to consumers. But I strongly disagree with the path taken in H.R. 1542.

I think it would irrevocably defeat the purpose of the Act by destroying the efforts made over the last 5 years to bring competition to the local loop. By eliminating the applicability of Section 271 to in region interLATA data and eliminating the requirement that the ILECs provide their network elements to competitors on an unbundled basis, this legislation will destroy any incentive for the ILECs to open up their local loop to competition. At this time the ILECs possess monopolistic control over 90 percent of their markets nationwide.

In my home State of Virginia, Verizon controls 96 percent of the phone lines. Clearly competition in the local markets targeted by the 1996 Act has not yet arrived. Furthermore, this bill would ulti-

mately retard speedy deployment of broadband technologies to consumers.

With little competition in a State that brings wired digital services into homes and businesses, there will be no competitors or market forces to push their wide spread provision of broadband markets.

Indeed, I disagree with the notion that broadband deployment is not moving at a market induced pace, and as a result the RBOCs are the only entities capable of delivering the service in the wire market. Statistics show that broadband deployment is indeed moving forward.

At the end of 2000 the DSL market had 2,429,000 lines in service, a 389 percent increase from year end 1999. ILECs accounted for 78 percent of the total, followed by the CLECs with 21 percent.

SBC had almost 10 times as many subscribers as of March 2001 as in the fourth quarter of 1999, increasing from 115,000 subscribers to 954,000 subscribers, and at the same time raising the price of that service by 25 percent.

Over the same period, SBC's DSL availability has doubled from 10.2 million customer locations to 21.7 million customer locations. Furthermore, the Act in no way prohibits the ILECs from offering interLATA voice over data service in out of region areas. But to date no RBOC has invested in the infrastructure to move in those areas.

Finally, the proposition that the RBOCs are the only entities capable of bringing broadband to the rural corners of America is seriously undermined by the fact that rural interregion access lines are being sold by the millions. The RBOCs have already divested 10 million rural lines.

As well, Qwest CEO Joe Nacchio has publicly discussed the idea of selling off rural in-region access lines, including possibly the operation of some entire States, leaving Qwest free to focus on the 8 to 12 metropolitan areas that it considers strategically important.

GTE, now part of Horizon, has sold 393,000 rural lines since last summer. I want to note that several large employers in my district have had enormous problems with special access provisions by the ILECs that have significant impact on the businesses, and I would like to include the statements of one of them in record.

I agree that deregulation is always preferable for encouraging market forces, but the 1996 Act also provides for deregulation so long as there is competition. A monopoly will never voluntarily welcome competition, and of course it makes rational business sense that they would not.

Deregulation for deregulation's sake is bad for consumers, and it is bad for our economy, and to remove the carrot that is embodied in Section 271 would allow ILECs to close off access to the local loop and simply obliterate the Act's ultimate goal to foster competition in the local telecom markets. I look forward to hearing our witnesses perspective on this complex issue.

Chairman TAUZIN. Thank you, gentleman. The Chair now recognizes the gentlelady from California, Ms. Eshoo, for an opening statement.

Mr. ESHOO. Thank you, Mr. Chairman. The issue of waiving the important competition and enhancing requirements of the Telecom

Act has been brought before this committee on numerous occasions since the Act's passage in 1996, and in my view it has never been less necessary than it is today.

CLECs have lost 90 percent of their stock values in the past year. Some have filed for bankruptcy. Conversely, the Bells are having more Section 271 applications granted by the FCC and still own more than 90 percent of the market.

And the Bells continue to have fines levied against them repeatedly for violating their contractual and statutory obligations to allow for interconnection to their networks. And yet instead of finding ways to protect competition by assuring that some of the CLECs survive, this bill in my view drives the last nail into their coffins.

Many CLECs rely heavily on line sharing to improve DSL service delivery, and bring broadband service to more American consumers. This bill again in my view eliminates that practice and effectively eliminates those competitors.

Those companies who are born out of the Act and who have solid business plans are likely to struggle through this downturn, but are also more likely to survive the end. Failure appears inevitable for those who base their strategies on less sturdy ground, and those companies who have the benefit of the historical monopoly position have steadily moved forward and are far more likely to not only survive, but also to acquire some of the weakened players.

This, I suppose, is competition at work. Finally, this bill has the one hook that I think will get its undeserved support, and that hook is the promise that rural areas will magically receive access to advanced data services if we pass the bill. No one that I know of is against upgrading service to rural areas.

But where is the evidence that the Bells have any desire and demonstrated ability to do that. The evidence suggests otherwise. U.S. West has sold off many of its rural exchanges, and I would be curious to know of Verizon's efforts to bring service to upstate New York since the FCC's approval of its New York application.

Moreover, the smaller independent companies seem to be doing far more in getting broadband to undeserved areas. I fully appreciate that less revenue can be derived from rural areas, and that it is more economical to serve business customers, but that's exactly the point.

An important part of the public policy that we have tried to create in the Act was to provide residential competition for our constituents. This bill removes valuable incentives that we crafted to bring that service to them. Without the protections of the Act, and the enhanced enforcement provisions, I fear that we are going to fail in that objective.

So thank you, Mr. Chairman, for holding the hearing, and I look forward to what our witnesses will provide, in terms of information to us on that, and I look forward to hearing from them.

Chairman TAUZIN. I thank the gentlelady, and the Chair now recognizes Mr. Bryant for an opening statement.

Mr. BRYANT. Thank you, Mr. Chairman. I also would like to thank you for holding this important hearing today, and for your leadership on this issue of broadband deployment. The dial up Internet service is operating at a maximum speed of 56 kilobytes

per second, and with the high speed data services having the capacity to transmit the information at the rate of no less than 384 kilobytes per second, the benefits of broadband technology are numerous and undeniable.

However, with the creation of this technology, we have seen the deployment of broadband, and it has been slow to say the least. Our Telecommunications Act of 1996 was a good bill, and I voted for it, but when this bill passed the house on August 4, 1995, I don't believe we foresaw the role that the Internet was going to have in our Nation and in our world's economy.

When considering this bill in 1995, our concern was voice service and not data. The 1996 Act dealt with opening the local telephone market to competition under the Act, and the FCC must agree that the incumbent local exchange carrier has opened the local telephone market to competition.

I believe that the intent of the 1996 Act was misunderstood when the FCC concluded from the Act that the ILECs could not provide broadband Internet access because the services are long distance.

As a result of this ruling the deployment of broadband services has been stifled. The 1996 Act dealt with opening the local telephone market to competition, and this legislation leaves the rule relating to local telephone service intact.

Despite the benefits of high speed Internet access, 88 percent of all Internet connections in the United States are dial up. I realize that broadband deployment is expensive and it makes sense that companies would deploy broadband where the majority of customers live, which is in the urban and densely populated suburban areas.

This business practice really excludes the more rural areas, and I am afraid that as a result the Internet revolution could pass by rural America, and rural America includes a large part of my district and other parts of Tennessee.

The ILECs have the capacity and capability to provide the broadband technology to rural and urban areas alike, and I don't think it is right for the government to hamstring these companies with regulations or red tape.

Other high speed Internet providers like cable, wireless, and satellite companies, have been able to operate in this market uninhibited by FCC regulations, and I believe that broadband companies should also be allowed to operate without government interference.

I would like to thank the witnesses today for coming, and for your patience with all of us in making these statements. I look forward to hearing from you on the details of broadband deployment, and the importance of speeding timely deployment, and ubiquitous performance of broadband services, and the details as to how this bill would help achieve this goal.

I am particularly interested to hear from what the witnesses have to say about rural areas, and how they will be better served under this legislation. Last, I would also like to—I think it is important that we hear about what is going to be done or what is being done currently to deploy broad band services by businesses, and the extent to which in providing these services are hindered by government regulation. Thank you, Mr. Chairman.

Chairman TAUZIN. I thank the gentleman. The Chair will now recognize the gentleman from Minnesota, Mr. Luther, for an opening statement.

Mr. LUTHER. Thank you, Mr. Chairman. I will be brief, and I will submit my entire opening statement for the record. But just one concern that I did want to touch on, and that is a concern that I have with the bill, and that the bill would eliminate the line sharing requirement that has been in place for a little over a year now.

My home State of Minnesota was the first State in the Nation to require its incumbent dominant carrier to lease its existing loop line to competitors providing broadband DSL service.

This is simply common sense. Why would one require customers to pay for an extra loop line. I am interested to hear the rationale for the elimination of the line sharing requirement, and in particular how it would affect consumers if this bill were to pass.

So that is the one point that I wanted to particularly raise and certainly would welcome input from members of the panel. And thank you, Mr. Chairman, and I will yield back the balance of my time.

Chairman TAUZIN. I thank the gentleman, and the Chair recognizes Mr. Walden for an opening statement.

Mr. WALDEN. Thank you, Mr. Chairman. I have an opening statement that I will submit for the record, and the biggest issue I have is how you are going to get down in rural areas with broadband.

And I wish there were actually some requirement in this legislation or some other that would in effect mandate that, and I am not talking about rural areas and communities of 30- or 40,000. I am talking down to the small communities like in the district of my own.

So, Mr. Chairman, I will submit my testimony for the record and look forward to the witnesses' comments.

[The prepared statement of Hon. Greg Walden follows:]

PREPARED STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. Chairman, thank you for your and the Committee's attention to the need to improve broadband access in America.

The issue of high-speed Internet access is an important one to my constituents in central, eastern and southern Oregon. Our congressional district, the most rural district on this Committee, is geographically larger than 33 states. In the extremely rural parts of the district, unemployment is as high as 19 percent, property values are low and many young folks leave as soon as they can for jobs in Portland, Seattle or Boise.

In these areas that have been hit hard by reduced timber harvests, a depressed agriculture economy and limited transportation infrastructure, the Internet holds great promise. The Internet eliminates that great enemy of rural economies everywhere—distance from urban commercial centers—and provides a pipeline of prosperity and learning to far-flung areas. It also allows companies to locate in rural areas to take advantage of the outstanding quality of life there.

This is the potential of the Internet.

But while the Internet itself makes distance irrelevant, the cost and practicality of providing high-speed Internet has everything to do with distance. It costs a great deal of money to string wires between households miles apart. And, not surprisingly, high-speed Internet has not found its way into many parts of rural Oregon. The resulting situation is troubling: those Americans who could most benefit from the distance-eliminating effects of the Internet, i.e. those who live in rural areas, are perhaps least likely to have reliable, high-speed access.

While the federal government cannot completely eliminate this problem—the laws of economics will always apply, after all—Congress must make certain that everything is being done to give rural Americans the best chance possible to receive high-speed Internet access. If there are regulations that stand in the way, we should change them. If there are tax incentives that would spur real investment in rural telecommunications, we should consider enacting them. And if rural loan programs through the U.S. Department of Agriculture and other agencies need additional funding, we should look at that too.

We simply cannot stand by while the Internet passes by rural Americans.

Mr. Chairman, I appreciate the opportunity today to examine the regulatory factors affecting Internet communications. I look forward to hearing our witnesses explain what changes could be made to the regulatory framework to give my constituents and other Americans the best possible opportunity to gain access to the "information superhighway."

Thank you again, Mr. Chairman.

Chairman TAUZIN. I thank the gentleman, and the Chair recognizes the gentleman from Wisconsin, Mr. Barrett, for an opening statement.

Mr. BARRETT. Thank you, Mr. Chairman. I will be brief as well. My perception in this area is that people love competition when they are going into someone else's back yard to compete. They are not so keen about competition when someone is coming into their back yard to compete.

And what concerns me about this legislation is not that we would be opening new areas for the Bells to have broadband. I think that competition is good. What concerns me is that I am still waiting. After 5 years, I am still waiting for local competition.

And during the course of this hearing I will be asking witnesses and listening to testimony, because I think that the promise that everybody here heard in 1996 that there would be competition, that promise is still in my mind not met, and for me that is a very, very important concern.

So I appreciate you having the hearing, Mr. Chairman. I think this is a very, very important issue, and I do have some serious questions, and hope that they can be answered through the course of this hearing. I would yield back the balance of my time.

Chairman TAUZIN. Thank you, Mr. Barrett. The Chair now recognizes Mr. Terry for an opening statement.

Mr. TERRY. When we start rearranging ourselves in our chairs, I yield back my time.

Chairman TAUZIN. I thank you, my friend. We will be doing a lot of rearranging I think over the next few hours. The Chair recognizes Mr. Stupak for an opening statement. He is now there. So the Chair recognizes Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman, and I won't be as brief as Mr. Terry, but I will not give my full opening statement. I have had the opportunity during our recess periods to see the competition that we have in Houston, Texas, in our local phone service, and it is very aggressive campaign.

So that's why I am glad to be a co-sponsor of this bill. I think that we can provide additional avenues for high speed Internet connections, with the example of the competition at least in Houston, and I am sure in other parts of the country we will see competition between both our Internet providers, but also between our RBOCs. And that's why, Mr. Chairman, that I'm glad that we are moving this bill. I will yield back my time.

Chairman TAUZIN. Thank you, my friend.

I recognize my friend from New Hampshire, Mr. Bass, who is recognized.

Mr. BASS. Thank you very much, Mr. Chairman. I also want to commend you for your willingness to have a really thorough examination and exchange of ideas before the full committee on this very important issue. You know, my district is a microcosm of probably the whole country.

There is fairly good broadband service in some of the more populated areas, but virtually nothing in the more rural areas, and I hope that this discussion and further action that the subcommittee and the full committee, and the Congress take on this issue will move to bridge that huge disparity that exists, and continues to exist, across this country. And with that, I will yield back to the chairman.

Chairman TAUZIN. I thank the gentleman. The Chair recognizes Mr. Brown for an opening statement. He is not here. So, Ms. DeGette for an opening statement.

Ms. DEGETTE. Thank you, Mr. Chairman. Colorado, and in particular the area around Denver, is one of the fastest growing areas in telecommunications in the country. In fact, I think we are now the fourth largest area.

This is 100 percent due to the 1996 Act. Not only is Qwest, which Congresswoman Wilson mentioned, based in my district in Denver, but also the vast number of CLECs that have grown up in the area are completely due to the 1996 Act.

And I am a strong supporter of competition, and I always have been, and so I am concerned about how this bill will affect competition and I am eager to hear from the witnesses. One thing that I would interject that I haven't heard folks talking about, during the recess, in a great act of luck, I actually had a telecommunications roundtable, not knowing that this hearing would be scheduled.

One of the people who came to the roundtable was a representative from a group called Wild Blue, and Wild Blue is developing satellite transmissions for high speed data to rural areas.

And I will submit to many of my colleagues from rural areas, particularly very small towns, that the only practical way we will be able to do high speed data transmission in the future is not through laying cable, not through laying high speed lines, but through other technologies that have been developed completely as a result of the Act.

And that's why I want to make sure that anything that we do in this committee does not undermine the fundamental purpose of the 1996 Act, which is to foster competition in all areas of technology as we move forward in telecommunications, and I will yield back. Thank you, Mr. Chairman.

Chairman TAUZIN. I thank the gentlelady. The Chair recognizes Mr. Radanovich for an opening statement.

Mr. RADANOVICH. Thank you, Mr. Chairman. I welcome the members of the panel and look forward to your testimony. I have a statement in the record and yield back. Thanks.

Chairman TAUZIN. The Chair thanks the gentleman, and recognizes Ms. McCarthy for an opening statement.

Mr. McCARTHY. Thank you, Mr. Chairman, and I will put my remarks in the record and just make a few comments, because I want to get to the panel of experts who are here today.

Since the enactment of the Telecommunication Act, the deployment of broadband services has increased rapidly. Incumbent local exchange carriers, cable companies, competitive local exchange carriers, and wireless companies, are all offering broadband services. The second report of the FCC on Advanced Service Capability concluded that, "advanced telecommunications capability is being deployed in a reasonable and timely fashion overall." The report states that in late 1998 there were roughly 375,000 subscribers to advanced services. By the end of 1999, there were 2.8 million subscribers. That is an increase of 300 percent.

The proponents of H.R. 1542 tout the bill as a means to spur broadband deployment more rapidly. Broadband service is becoming more available throughout much of the country thanks to the aggressive roll of services by the CLECs and the cable industry.

This competition forced local phone companies to deploy digital subscriber lines, a technology they had for some time, but were slow to offer. Now all of the regional Bells are deploying broadband services, particularly DSL, in their home regions.

Opening the Telecommunications Act to provide interLATA relief for data is not needed. If the ILECs meet the requirements of Section 271 of the Telecommunications Act, they can offer long distance service for voice and data. Verizon and SBC have met the requirements and now offer such services in New York and Massachusetts, and Texas, Oklahoma, and Kansas, respectively. SBC just recently filed a Section 271 application with the FCC to enter the long distance market in my home State of Missouri. Clearly the Act is working. In addition, in a statement to the Subcommittee on Telecommunications and the Internet this past March, FCC Chairman Powell stated that the FCC would speed the review of Section 271 applications. If the ILECs want interLATA relief, they just need to meet the fair and reasonable requirements set under Section 271.

I understand my colleagues desire to spur deployment, but I do not agree that this legislation will do so. If enacted, it will likely have the consequence of reducing competition, increasing costs, and stifling innovation. Without access to incumbent facilities, competitors, such as Birch Telecom, based in my congressional district in Kansas City, would not be able to offer DSL service to its residential and small businesses.

Last July, then FCC Chairman William Kennard in his testimony before the House Judiciary Committee, stated that, "eliminating data from Section 271 would eliminate a crucial incentive for incumbent BOCs to open their local monopoly markets. The opening of local markets is absolutely critical for accelerating broadband deployment." I agree with that assessment and I do hope that Congress allows the Act to work. Thank you, Mr. Chairman. I yield back the balance of my time.

Chairman TAUZIN. Thank you, gentlelady.

The Chair recognizes the gentleman from Mississippi, Mr. Pickering, for an opening statement.

Mr. PICKERING. Thank you, Mr. Chairman. Let me begin with the words of Chairman Powell in the hearing that we had right before the recess in response to a question that I asked.

Is now the time in a period of economic uncertainty, especially in the tech sector, where we are seeing the bankruptcies, the loss of capital, the devaluations, the emerging competitors, and critical condition, is now the time to reopen the Act and have dramatic change?

Chairman Powell responded that "I think that my advice, such that it is worth anything, is that any sort of wholesale rewriting of the Act to my mind is ill-advised." I went on to ask one further question.

Given the context of the market and the capital flows right now in the tech and telecom sectors, and especially with the emerging competitors, would a dramatic policy change further destablize and possibly harm emerging competition.

Chairman Powell responded that if you focus particularly on capital markets, you would have to say it could. Now is not the time given the economic conditions of the tech and telecom sectors to be dramatically reopening the Act.

Moreover, the Act in the name of deployment violates the principles of the 1996 Act of competition, convergence, and for capital right now the need for certainly. In the name of deployment, it would kill competition, kill convergence, and create uncertainty.

For those reasons, this bill should not be passed or signed into the law, and the reality is that in its current form it cannot be passed to both bodies of Congress or signed into law. It is fundamentally flawed, and it cannot be fixed.

The foundation is not repairable.

Now, if we desire to find competitive common ground, if we want to look at the 1996 Act, for both sides have legitimate concerns, and we have lessons learned over the last 5 years of not only how to increase deployment, increase competition in local and data, and cable, and in local competition, I do think there is another way and a better way to find that competitive common ground.

Unfortunately, as I look at the bill, I have to conclude that it is a sham. You cannot separate digital, and you cannot separate voice from data. If you cannot separate voice from data, how can you have data relief.

If we talk about enforcement, how can we enforce the opening requirements when the Act eliminates the opening requirements of interconnection and the unbundling once a network offers advanced services.

The combination of the technological reality of not being able to separate voice from data, and the bill's elimination of interconnection and unbundling requirements to offer advanced services makes this a fundamentally flawed, and a bill that cannot be fixed or repaired, or amended with enforcements or any other types of amendments.

It cannot pass the other body, and it violates the principles of competition, convergence, and certainty. Chairman Powell said it was ill-advised during a period of economic uncertainty, and all of these are articles in the tech sector of bankruptcies and devaluations, and critical conditions of the emerging competitors.

I urge the committee to step back. I urge the industries that want to see advanced deployment into all areas of my home State and rural areas, and undeserved markets, to come back to a table that is fair and balanced, inclusive, and open just as we tried to do in the 1996 Act.

There are things that we can improve in the Act. There are ways that we can come together and find the principled approach of advancing deployment, but at the same time not harming competition not harming convergence, and not creating uncertainty during a critical economic period of time. With that, I yield back.

Chairman TAUZIN. The Chair thanks the gentleman.

The Chair recognizes Mr. Rush for an opening statement.

Mr. RUSH. Thank you, Mr. Chairman. I, too, join in with my colleagues in commending you for this indeed very, very important hearing. The RBOCs contend that if we give them interLATA relief that consumers will have more prices and more choices for advanced broadband services.

On the other hand, the CLECs contend that in lifting the interLATA restrictions will undermine the Telecom Act, and mean higher prices and less choices for the consumers. They contend that this is true especially if RBOCs do not have to open their markets to competition.

As we move forward with this legislation, I believe that we must tread carefully so that we do not run afoul of the fundamental principle of the Telecom Act, which is indeed as has been stated before many, many times, which is competition.

I believe that the Telecom Act is working because of the competition, and we have seen real commitments by the competitors and incumbents alike to deploy broadband services.

With that said, I am cognizant of the limitations that the RBOCs face in deploying broadband services under the current regulatory scheme. For the past few years, they have repeatedly argued that cable, satellite, and wireless providers do not have such regulatory burdens.

And this, Mr. Chairman, this inequitable treatment has hindered them from effectively competing in this market. One area of concern to me, and an important area of concern to me, is the lack of deployment of advanced services in undeserved areas, such as urban and rural poor areas.

According to the proponents of this build, if they are given interLATA relief, they will deploy broadband services in undeserved areas. I remain skeptical, for many inadequate and unsound reasons, these areas have been neglected by CLECs and incumbents alike.

And, Mr. Chairman, I look forward to today's hearing, and the testimonies regarding these particular issues. Thank you and I yield back the balance of my time.

Chairman TAUZIN. The Chair thanks the gentleman, and the Chair recognizes the gentleman from Pennsylvania, Mr. Pitts, for an opening statement.

Mr. PITTS. Thank you, Mr. Chairman, and thank you for holding this important hearing. It is 11:30, and I have enjoyed the members' comments, and I am looking forward to hearing the testimony

of the distinguished panel, and so I will submit my opening statement for the record and yield back.

Chairman TAUZIN. The Chair thanks the gentleman.

The Chair recognizes Mr. Hall for an opening statement.

Mr. HALL. Mr. Chairman, I thank you, and I, too, will be very, very brief. I certainly want to welcome my colleague, Tom Tauke, who is a long time member of this committee and this Congress, and the very distinguished panelists here.

I think that people want to hear them and not us, and I just want to very briefly say that I represent a district that has some rural areas in it; part of Dallas, and then it goes on up to the Red River and back down through the oil patch.

We recently held a forum on the campus of Austin College in Sherman, Texas, and the topic of the forum was workforce development, and with the Internet having provided new mediums in communication, education, commerce, and entertainment, there was considerable interest in how educators, businesses, and government can work together in training tomorrow's workforce.

I guess my question would be—and the gentleman from Mississippi succinctly set it out when he says in its current form he is not happy with the bill, and that is what subcommittees and hearings are all about—that I want to see what is in this bill.

I held off as the chairman knows last year until you had 218 or 219 signatures, because there are good people on both sides of this issue, and people that really made great contributions to the economy of this country, and people with whom I had voted for years and years. We came to the crossroads, and can't agree with both sides but hoping both sides will continue to negotiate, and to probe, and to try and work something out.

Ms. Eshoo set it out very well when she said that we want to upgrade the service to rural areas, and I want to see how this works out in my district. I yield back my time. I thank you for introducing the bill, and I thank you for having this hearing, and we will be listening very closely as we progress.

Chairman TAUZIN. Thank you, my friend.

The Chair now yields to Mr. Shadegg for an opening statement.

Mr. SHADEGG. Thank you, Mr. Chairman, and I will be brief. Let me commend you for holding a committee hearing, a full committee hearing on this extremely important topic, and for bringing this legislation before us.

I think it is timely and important. In the interest of our witnesses and being able to hear them, I will take advantage of the unanimous consent and insert my full opening statement in the record. I do want to associate myself with the remarks of Mr. Cox, Mr. Davis, and Mrs. Wilson.

I share a great deal of concern about this legislation, and particularly about competition at the local level, the local service level. And I think that before we move on legislation of this great significance that we ought to do so cautiously, and we ought to understand what we are doing, and we ought to understand its implications.

I am going to be looking carefully at that issue, and specifically at the question of whether we have done enough to open up competition at the local service level, and whether or not this legisla-

tion advances that cause or does not do so, and I thank you, Mr. Chairman, and yield back the balance of my time.

Chairman TAUZIN. The Chair thanks the gentleman, and the Chair recognizes Mr. Wynn for an opening statement.

Mr. WYNN. Thank you, Mr. Chairman. I appreciate you bringing this matter before the committee and convening this hearing. I will submit for the record, and I will note that this is not just a battle between LECs. There are actually consumers out there that are interested in this, and we clearly have a conflict between the advantages of deployment, versus the advantages of competition.

Ultimately hopefully we will be able to decide which of these two approaches best benefits the consumer and make rational decisions with respect to legislation that will help, quote, the folks back home in the most efficient way. I yield the balance of my time.

Chairman TAUZIN. The Chair thanks the gentleman, and the Chair recognizes Mr. Norwood for an opening statement.

Ms. Cubin.

Mr. Buyer.

Mr. BUYER. Thank you, Mr. Chairman. I want to thank you for introducing this legislation. The deployment of broadband goes beyond just my congressional district, and it is more than just about greater, faster, more efficient access to the Internet.

It is about increasing the quality of life. Right now in America, we have what has been coined the digital divide. Those who have access to quality Internet service, and those who do not.

For example, right now my congressional staff who work here in Washington, DC have greater access and more choices in Internet service providers than do my staff in Kokomo and in Monticello, Indiana. In fact, my Washington staff has perhaps a half-a-dozen quality providers of broadband services, and in Indiana, they only have one.

My goal in supporting this bill is to provide the access and choice to all Americans, regardless of where they live, to have the same access in rural areas as they do or as those who live in large metropolitan areas.

If we do not do something now to increase the competition, then those living in rural America will be left behind, economically, socially, educationally, and in so many other ways, not to mention the negative effect it is having on small businesses trying to compete in the marketplace.

Expanding broadband to libraries, schools, and to students at home would be among the most important effects of our efforts. As I meet with students and teachers, I am constantly reminded of the importance of broadband improving student's educational experiences.

This is true for students of all ages, including adults. Distance learning is a common way of life in rural communities, and broadband only increases the level of learning and the educational environment.

Broadband, both fixed and wireless, has the ability to transform the way teachers teach, and the way our students learn. I believe that Congress has a role in making sure that Americans can equally participate in the digital world.

The legislation being addressed today appears to be one of the better vehicles to encourage deployment of broadband, because it also appears that the FCC, while it has the ability, will not act.

As a strong supporter of this legislation in the last Congress, I am still not convinced that we should limit our efforts to deploy broadband to this bill alone, especially with the reluctance of the Senate to act.

While many in the industry have be coming in to see me about this legislation, I have yet to have anyone tell me that they will deploy broadband services in my rural communities if the business model does not allow it.

Therefore, I believe that the House should also pursue other ways to encourage the installation of the infrastructure in rural and less developed communities, and therefore, I am open and ready to listen.

The deployment of broadband and increasing competition has real effects on the quality of life of Hoosiers that I represent. The lack of broadband hurts our students' educational opportunities, hurts our businesses' ability to compete, and discriminates against willing participants in the digital age.

Some may see the lack of services as only hurting rural Americans, but I submit that it hurts all of America. America has been great and a leader in technology because we are a melting pot of ideas, of goals, and of dreams. Yet, when we do not allow a particular sector to participate equally, then we lose the ingenuity of so many.

So my goal is to erase the digital divide so that so many Americans can be active participants, and if I can be frank, the last time I was really involved in these issues was back in the Judiciary Committee back in 1996 and 1996. Then I sort of left those issues.

So now I come back to the Commerce Committee, having left Armed Services, and Judiciary, and so if you have left something and you come back 5 years later, it is like going and seeing your cousins, or your are seeing your niece and nephew that you hadn't see for a while.

You see, I have it all locked in my mind the way it was when I was a conferee back in 1995 and 1996. Over the last 3 months, the more I am beginning to see, I don't recognize it. I am supposed to say how much you have grown, and how excited I am to see what you have become, but I can't say that.

I am beginning to say how disappointed I am, and it is not looking as the way that Congress intended it, nor envisioned it. So I want to compliment you, Mr. Chairman, for the legislation, and I yield back my time. Thank you.

Chairman TAUZIN. Thanks, Steve. The Chair is now pleased to recognize Mr. Engel for an opening statement.

Mr. ENGEL. Well, thank you, Mr. Chairman, and I, too, will want to compliment you for having this hearing, and I want to compliment the distinguished panel for having to endure all these opening statements.

I am going to be brief, because a lot of good points have already been addressed, but I am a strong supporter of H.R. 1542. I represent an urban district, and I am, too, very concerned about the

digital divide in my district. And I believe that this legislation will help close that digital divide.

And I am also concerned with the fact that small businesses having difficulties affording high speed Internet access and I believe that this legislation will help in allowing small business to afford this access.

I also think that it is equitable that the wiring of high speed Internet access by cable companies is not regulated. And if that is not regulated, then we could have an approach to try to regulate cable companies in the wiring of high speed Internet access. I don't think that is the approach that we should take.

I think that this approach is far preferable to regulation and to allow the baby Bells to have the regulations that the cable companies have as well. So I think that this legislation moves in the right direction.

In negotiations, yes, I am always for it, and I think that the process works that there will be negotiations. But I think that it is important to move this bill forward and important to pass this bill, and I think that this bill will be good not only in urban districts, such as mine, or in rural districts such as Mr. Buyer said.

But I think it will be good for all Americans, because again I think it will bridge or help bridge the digital divide, and will help make this technology more accessible to our constituents. I thank you, Mr. Chairman, and I yield back the balance of my time.

Chairman TAUZIN. I thank my friend, and the Chair yields to Mr. Strickland for an opening statement.

Mr. STRICKLAND. Mr. Chairman, I am looking forward to hearing from our witnesses, and so I will forego an opening statement. Thank you.

Chairman TAUZIN. I thank the gentleman, and I think that concludes the opening statements. Is there anyone who has not yet made an opening statement who would like to? I think we have got it covered.

[Additional statement submitted for the record follows:]

PREPARED STATEMENT OF HON. MICHAEL BILIRAKIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Thank you, Mr. Chairman.

I want to commend you for scheduling today's hearing on the Internet Freedom Broadband Deployment Act. The Internet has grown dramatically during the 1990s. According to the Department of Commerce, over 40 percent of American households now have access to the Internet, while about 45 percent of all Americans have Internet access at home and/or outside the home.

Today, the majority of residential Internet users access the Internet through the same telephone line that can be used for traditional voice communication. The highest speed modem used with a traditional line is 56 kilobits per second, which makes sending or receiving large data, video or graphics files difficult and time consuming.

As the content on the Internet and Wold Wide Web has become more sophisticated, consumers have been clamoring for faster Internet connections. Broadband services provide consumers with the ability to send and receive information at much faster speeds. However, not all Americans have access to the faster services provided by broadband technologies.

Consequently, there have been many proposals to speed up the deployment of broadband services. Today's hearing focuses on the Internet Freedom and Deployment Act, which would amend the Communications Act of 1934 to prohibit states or the Federal Communications Commission from regulating the provision of high speed data services. I have heard from parties on both sides of the debate on this legislation.

Yesterday, I received a letter from the Florida Public Service Commission which raises a number of concerns about the Internet Freedom Broadband Development Act. First, the Commission is concerned that the legislation could grant a monopoly carrier the ability to enter the long distance data markets without any of the safeguards provided for in the 1996 Telecommunications Act.

The Commission is also concerned that the bill may diminish local oversight of telecommunications companies and eliminate the federal provision which currently permits state commissions to enhance competition for local telephone services by requiring additional points of interconnection with the incumbent's local telephone company network. The Commission questioned whether or not the bill would reduce incentives for incumbent local exchange companies (ILECs) to open local markets to competition.

I am hopeful that the issues raised by the Florida Commission will be discussed during today's hearing, and I look forward to hearing from our witnesses.

Thank you, Mr. Chairman.

Chairman TAUZIN. Then the Chair is very pleased to recognize a very distinguished panel of witnesses today. Let me introduce all of you first, and then I will begin with Mr. Ashton as our first contributor. You know that under our rules we have a 5-minute rule.

If you have not testified before the committee before, the little units that are sitting on the desk give you a warning, and when the yellow light goes on, you have got about a minute to wrap up. We have your written statements in our packets, and we can refer to them as we listen to you.

So kindly try not to read your written statement. Just sort of summarize and have a conversational dialog with us about what you think about the status of competition in this bill.

We will begin by introducing all of you first. Mr. Douglas Ashton, Managing Director, Communications Technologies Equity Research, Bear Stearns and Company, in Boston, Massachusetts. We are pleased to welcome you, Mr. Ashton.

Mr. Jim Cicconi, the General Counsel and Executive Vice President of AT&T, here in Washington, DC, and, Jim, it is always a pleasure to see you again.

Mr. Joseph Gregori, the CEO of InfoHighway Communications, on Broadway Street, in New York. Welcome, sir.

Mr. James Henry, the Managing General Partner of Greenfield Hill Capital LLP, Fairfield, Connecticut. Welcome, sir.

And also Mr. Gordon Hills, Executive Director of the Economic Opportunity Program of Elmira, New York, who is testifying on behalf of the National Association of Community Action Agencies, of which I was a former officer in my home community.

Mr. Paul Mancini, the Vice President and Assistant General Counsel of SBC Management Services, Incorporated, of San Antonio, Texas. Mr. Mancini, welcome.

Mr. Clark McLeod, Chairman and Co-CEO of McLeodUSA, Cedar Rapids, Iowa.

Mr. Charles J. McMinn, Chairman of the Board, of Covad Communications, Santa Clara, California. Again, welcome, sir.

Mr. Peter Pitsch, Communications Policy Director, Intel Government Affairs, here in Washington, DC. Peter, welcome.

Mr. Timothy J. Regan, a Senior Vice President, Government Affairs, of Corning, Incorporated. Welcome, Tim, again.

And the Honorable Tom Tauke, a former member of this committee, whom we are always delighted to welcome back, the Senior Vice President for Public Policy and External Affairs, of Verizon Communications, here in Washington, DC.

Gentleman, thank you all for coming, and we will begin with the testimony of Mr. Ashton.

**STATEMENT OF DOUGLAS C. ASHTON, MANAGING DIRECTOR, COMMUNICATIONS TECHNOLOGIES EQUITY RESEARCH, BEAR STEARNS AND COMPANY**

Mr. ASHTON. Good morning, Mr. Chairman, and other distinguished members of the House Committee on Energy and Commerce. Thank you very much for inviting me here to discuss the Internet Freedom and Broadband Deployment Act of 2001.

I am going to speak today from the perspective of the technology analyst, more so than a telecom analyst. I cover telecommunications technology vendors. But I can say in a recent report that we submitted to our constituencies, which was primarily money managers and the companies in the industry, we recognize that the only catalyst for a better technology in a telecom environment is regulatory reform.

We called our report, "Saving Telecommunications," because we think that that kind of dramatic title is relevant to the conditions that the industry is in today. I am going to try and limit my comments to just giving a framework, and I want you to think about the industry, because there are certain things that we would all like to see.

But there are certain realities in the way the business has evolved since 1996, and really looking back even further than that. But in essence the word that I would like to use when I am speaking with investors is the word transition.

This industry just happens to be transitioning in many different ways at the same time, and it has been very destructive to the status quo, and it has been very destablizing for both service providers and vendors. When you think about these transitions, think about them in three ways.

We are trying to transition from a narrow band networking environment to a broad band networking environment, and that is a momentous change for this industry. Up until this point, we have largely been about narrow band services and primarily voice.

The second, which is a microcosm of the first, because we have already started down the modernization path, is the idea of moving from core network modernization or long haul, which is where you here a lot about optical technology and the like, to access modernization, which seems to be the focus of this bill.

The third transition is probably the most self-evident, but what I find is that people missed the importance of it, and that is that this industry is trying to transition from a voice dominated business to a data dominated business, and that is a very difficult transition to make.

The risks in this business are now higher because the path to those services is not clear for any of the carriers or the vendors. Think about it this way. I always tell my investment clients that if I give you a company and said that 80 percent of your revenues come from a business that is slowing, and it now has more substitutes than it ever has—and the pricing of it is going to change because we used to do it based on distance, and now that is seemingly going away.

It is priced interlastic, and so the more that we lower prices, we don't generate the growth that we used to when we lowered prices. It is not the kind of stock that you would want to buy. Well, that is basically our industry and getting past that point is going to be very difficult.

So if we take these in turn, and I will go through them very quickly, think about the core access shift, because that is what is going on right now, and we are stopped at the door of access to modernization.

And this is very problematic for all the core long haul players, and all the core optics vendors. Think of level three Williams and AT&T in Sprint, and MCI World.com and a host of others. They have modernized and they made one fatal mistake, which was that they bet on an orderly development of access modernization.

Without it, and it is not here, and it doesn't look like it is going anywhere, those investments are kind of twisting in the wind. So this sector as a whole has now reached from that core to access modernization stage, kick starting or jump starting that stage of the process is really the only way to get us out of what I am starting to call technology malaise and telecom malaise, but in a different order, which is I believe that telecom—and particularly access—is this sphere of influence on which all the other technology markets will rest.

If we don't get modernization there, we are telling investors that you cannot expect to see a return of the technology markets in general.

We think that it is nice to think about competition, and see CLECs, and others, but when you think about access, think about it in three ways. There is three types of access networks, because there are three types of end-user groups.

There is large businesses, small businesses, and residential or consumer customers. Our modernization and access is largely evolved around the large business market, but is not moving down. It is not moving down into the small business and residential markets, which you can consider the same, because largely the network on which they are serviced is the same if you think about any suburban town and all the businesses that lie at the end of the street.

In getting to the access modernization path that we would like to see in the technology markets, we see one primary problem that has two subproblems, which his the companies that need to do this investment are having a hard time identifying the services that can pay for it.

And so they are hesitant to take the risk, and they are looking for ways to bring that rate of return up. And clearly one of those ways is regulatory reform in the bill that has been talked about today.

If this bill can move forward, I think it will substantially enhance the rate of return picture that the access providers can attempt and set up a competitive environment that is largely based on cable and the RBOCs, which I think will be enough to get the benefits of that.

Thank you.

[The prepared statement of Douglas C. Ashton follows.]

PREPARED STATEMENT OF DOUGLAS C. ASHTON, MANAGING DIRECTOR, BEAR STEARNS & CO. INC.

INTRODUCTION

Good morning, Mr. Chairman and other distinguished members of the House Committee on Energy and Commerce. Thank you for inviting me here to discuss "The Internet Freedom and Broadband Deployment Act of 2001." I am appearing today as an industry analyst whose focus is on telecommunications, in general and telecommunications technology, in particular. My views should not be attributed to Bear Stearns & Co., my employer, as they have not taken an institutional position on the legislation being introduced today.

My views on today's topic are shaped by my experience as a equity analyst, since 1994 to the present time, my work experience at the American Enterprise Institute and specifically research conducted while writing a recent Bear Stearns publication, *Saving Telecommunications: The Next Generation Access and Services Evolution.* I believe that copies of this publication have been sent to the Chairman and other distinguished members of the Committee.

I would like to offer a financial analyst's perspective on the topic of today's hearing. I will make my comments as general as possible and in doing so will seek to address just a small number of the many important issues the telecommunications industry is facing today. However, before we get into those issues, I would like to make a few comments on how integral I view the health of the telecommunications sector is to the health of the US economy, US competitiveness, and to technology in general.

Over the past decade, a diverse set of advanced and widely available telecommunications services have become ubiquitous enough to become an integral part of our national fabric. They have infiltrated our daily lives in ways that were not so long ago unimaginable. The benefits are largely self-evident (through all income and age classes) and have been a major contributor to what economists commonly refer to now as a period of historic productivity gains. We do not believe it a stretch to say that the process, for a time, made our telecommunications infrastructure one of our most important and differentiating national assets. In fact, it has been the focal point of what is arguably our most important asset: our technology-based human capital.

As the telecommunications sector advanced it also broadened its sphere of influence. Today, I believe these advances have reached the point where it can be accurately said that telecommunications is the center around which the greater technology sector revolves around, the straw that stirs the drink, if you will. This relationship is not only found here in the US. It is a global phenomenon. As such, all citizens now have a stake in the ongoing development of our communications infrastructure: those who use it, develop it and invest in it, which means more of us than it used to. In essence, telecommunications has a global constituency.

To date, the sector's development has largely been a race to the top, and the end result has been a more efficient system for gathering, processing and disseminating information. Better yet, it has not all been work related: the communications revolution has changed the way we entertain ourselves, yet another example of its reach.

Unfortunately, we are only part of the way there and it is clear that all is not well. Conditions in the sector have rapidly deteriorated and an industry once thought to hold so much promise now appears to have relatively little. The same can be said for many of its participants, which just a short time ago were thought to have bright futures, but now are considered to have little to none. These statements ring true for both carriers and vendors and its effect is destabilizing for everyone. As an analyst, it is clear that we have now entered into a period where bankruptcies and layoffs are as much or more frequently part of the news than new product and service initiatives. This will likely be followed by a period of restructuring which will then give way to a new investment cycle. The latter stages will be a healthy development but can only be done when the rules of the game are set. Because that is a prerequisite, it is imperative that these rules be set soon.

I. THE INDUSTRY'S THREE CHALLENGES

Why are we here? We believe it is the result of the sector having reached a number of important cross-roads at roughly the same time, all of which participants are having trouble navigating through. In essence, today's difficulties are the result of the industry collectively confronting three important challenges. The first is the move from narrowband to broadband networking, the largest, riskiest and most expensive undertaking the industry could ever attempt to accomplish and a necessary precursor towards next generation services. The second is a microcosm of the first,

a move from core (or long-haul) network modernization to access modernization, something that is well underway, but which has stalled due to over-investment in the core and lack of follow-through from the access network on which the core so desperately depends. The third and most important issue represents a shift from an industry business model historically driven by voice revenues and profits to one that will be more data and voice and data driven.

While all are obviously secular issues, current economic conditions are making a bad situation worse. As such, almost all stocks associated with communications and technology have either been in a freefall or are sputtering around with little direction. This is what happens when visibility into future revenue and profit growth is near zero. Moreover, telecommunications is a capital intensive business and because few service providers appear to be attracting capital, moving forward is problematic. Yet the capital issue is not the problem, but a symptom of it. In essence, the market no longer wants to own the arms suppliers nor those who make use of their technology.

In such conditions, the sectors' participants as well as those with a stake in things (basically, all of us) are largely in search of a catalyst. Rate cuts do not seem to have helped and neither has the prospect of a tax cut. In our belief, investors have made the correct conclusion, for the industry's problems are as much about regulation and new service identification and how these issues affect the all-important rate of return equation as they are about anything else. In other words, the problems are secular and need, for starters, secular attention. Without it, the communications malaise that has quickly turned into technology malaise will not be a short-term problem. Thankfully, it does not have to be this way.

To put it simply, the communications industry is rapidly coming to grips with the fact that its workhorse (voice) is getting old. Voice revenue growth, wireless subscriber growth, and many other voice metrics are indicative of slower growth. This is not a good thing: voice services constitute well over 80% of industry revenues and thus an even higher percentage of its profits. Moreover, voice services are no longer thought to be price elastic (i.e. lower prices do not stimulate more usage), voice has more, not less profitable substitutes than ever before (i.e. short messaging and e-mail) and in the end, it primary method of pricing (distance) is thought to be going away.

Early forays into the proposed answer (advanced data services) have not been encouraging. Simple data transport (Internet access) and flat rate pricing have instead proven to be a lethal combination to the industry's bottom line. The most popular data service, dial-up Internet access, is something we prefer to categorize as communications' third rail, not its savior, yet it was the last great growth driver for technology markets in general. While a form of data access, it is preclusive to broadband services development because it is not fast enough to deliver the kind of services that could provide an answer to the maturity of voice revenues and the recent demise of most Internet mass market applications. In fact, it is these services that will be required to pay for it in the first place.

Think of it this way. The networks that connect customers to the public switched telephone network (PSTN) and the Internet itself were designed to support a product catalog consisting of voice services. The same can be said for wireless. To extend this catalog, we thus have to rebuild the network. We have done so in part, but the parts in which this have been done are largely where it was easiest and least expensive. The big build is ahead of us. As our friend Tom Nolle of CIMI Corporation recently noted, "while there is no consensus on what the future revenue engine of the market will be, there is general agreement that whatever it is, it will require broadband customer connections. Thus, the highest priority in networking is to modernize the access network to support broadband."

## II. THE WRONG ORDER

It does not help that, in running in the direction of network modernization, we have gone about the task in the wrong order. We started the modernization process in the core of the network and are now only beginning to think about how it might happen at the edge (access). Simply put, we have modernized our highways but not our local roads, making it difficult to get on, go fast and go to the places we might want to go. Access is the platform on which broadband services have to ride and today it is the bottleneck. Without change here, we will not get much change anywhere.

There are a number of reasons for this reverse order, although by now it is something more than just coincidence that capital was largely directed to the part of the network deregulated first (long-haul transport). Deregulation spurred investment, as it usually does, yet the investment was made based on one fatal assumption: that

access modernization and ultimately the new services revolution would follow. When we had the Bell System, that would have been a natural conclusion to make for we would have regulated modernization in. Under the current framework, this has not occurred and now the core has a problem. Why? Because access markets are governed by a regulatory scheme that has served to dis-incentivize those who own and control it.

The reason for this is simple. Our networks are a network of networks and the services equation means that whatever service is offered is done so at the lowest common denominator of the network. Today, that is access usually at dial-up modem speeds. Even the Internet itself is a best efforts network and thus cannot generally deliver any kind of quality of service, yet another necessity for the introduction of a variety of advanced services and in particular, video. Without access modernization, the core is helpless to get out of its current predicament (less spending will help), and core optics and transport cannot recover. The idea here being that traffic is more easily created from broadband customers than from dial-up customers. With it, things are only a little less bleak in the core, for access modernization will be a time consuming process under the best circumstances. Breaking up the RBOCs or what is sometimes called "structural separation," in our belief, would be worse, not better, at least from a timing perspective. This would take a long time and would delay spending and thus modernization and would also facilitate a delay in the restructuring of the industry. At least from a technical and global competitiveness basis, we need to take action that is more time sensitive.

End to end broadband networking is a place that only the local exchange carriers (LECs), particularly the Regional Bell Operating Companies (RBOCs), the cable television multiple systems operators (MSOs) and wireless service providers can take us to. It is a place that will require an extraordinary amount of investment made on riskier presumptions than any of these service providers are used to. The first go round was about voice, which was more or less a known commodity. Networks could be ratcheted up to deal with the volume. It was more incremental anyway you look at the services equation. Modernizing access is much more complex and costly: we would estimate that modernizing our wireline access infrastructure will likely cost over $200 billion from start to finish. Moreover, it will be done without a firm grasp of what services will be demanded and at what price they will be purchased.

## III. PROBLEMS AND SOLUTIONS

The question for the industry is how to make that happen. If the past is any lesson, the answer is to incentivize those that can initiate change. In particular, we need regulation that will reward risk taking, e.g. one that gives those who do the risk-taking the incentive to garner its rewards. The three groups mentioned above are the only ones that can realistically be said to have such an opportunity and it is important that a reasonable profit picture can develop.

Yet, today, two of the three major access segments are required to share access to their networks (in different ways), which means they currently have little incentive to spend because some of the potential benefits will go to others. In essence, they know that their own capital investment cannot be optimized when the benefits of investment potentially will flow to competitors while the risks are solely theirs. And as we noted earlier, we just have happened to reach a point in the industry's cycle where the investment to be made is a little bit more risky than usual. This is mainly because we are talking about designing a new network for services of a different type than today's network was designed for.

This is true for, as we noted, the telecommunications industry is at a services cross-roads. Voice revenues will continue to decline under technological and competitive pressure, destabilizing the major service providers that rely on it as a source of cash flow. To offset this loss, we need non-voice public services. Yet, as we have noted, such services will require broadband access. All things narrowband have largely been attempted. There is no way around this reality. Think of it as a prebuild.

The Telecom Act of 1996, by accident or design, had the result of focusing new investment on the access modernization task. Unfortunately, its rules set up a structure that never lent itself to the kind of investment that consumer broadband empowerment embodies. Think of it this way. The end user market can be segmented in three ways: multi-site businesses, single-site businesses, and residential. The single site market is usually thought to house either small businesses or mid-size businesses. The multi-site market can be divided into principal sites and satellite sites of large businesses. The multi-site market is where the focus of competitive carriers has been and the former two are not, for a reason. Big businesses are easier to target: they are a smaller in number, are located in areas that tend to have

a high concentration, and they tend to have the highest willingness to pay. Conversely, the single site, small business and residential markets do not have these metrics, yet are virtually linked together based on where they are located and how they are serviced. In large part, it became a game of one or the other and we know what happened.

In hindsight two things are apparent. First, that the changing nature of voice and simple data transport services in a competitive market ended up yielding a much lower return on capital than initially expected. Second, because of this, massive economies of scale became paramount. As this was borne out and some would argue was present since inception, participants were forced to focus on low-risk builds, which equated to a replication of the services and networks already in place geared towards those who would pay the most: large businesses. The mantra was: it's better to offer services that are known quantities than to offer something new and untried. The result: we now have an overabundance of capacity in many areas of the network, with the exception of access, particularly for small to medium size businesses and residences.

More technically, what is needed are new rules and we are supportive of those proposed. With them the winners will be two-fold. End users would be the recipients of the benefits that come from advanced services offered through a modernized network. Industry shareholders would benefit through a revitalized technology market that depends on a revitalized communications network platform and broadband networks. The idea here: jumpstarting broadband access will jumpstart technology, from PCs to software to servers to storage. Finally, the US economy would benefit for we would have a network that is the competitive equal to one that will be built abroad that in many cases, can be done more efficiently based on better consumer densities and more facilitative topologies.

We can get our telecommunications and our technology markets back if we take the right action on a timely basis. The alternative is a long-running period of technology malaise. This is a result that neither the global telecommunications consumer, those employed by the technology sector and of course, those who have a stake in technological advancement want to see.

Chairman TAUZIN. Mr. UPTON. Thank you.

Mr. Cicconi, welcome.

**STATEMENT OF JAMES W. CICCONI, GENERAL COUNSEL AND EXECUTIVE VICE PRESIDENT, AT&T CORPORATION**

Mr. CICCONI. Thank you, Mr. Chairman. I want to thank you and Chairman Tauzin for inviting me here today to share AT&T's views. We oppose this bill because it places at risk the goal of the 1996 Telecom Act, bringing competition to local phone service in America.

Let me make four points. First, this bill represents a serious threat to local competition at a time when it is already under severe stress. The 271 process in the 1996 Act allows the Bells to enter the long distance market for voice and data, provided they open their local monopolies.

The Bells have been cleared to do so in five States, and two are pending now. They themselves predict accelerated 271 approvals this year and next. This process provides the data relief they seek in this bill, but only after they meet the law's requirements to open their markets.

What the Bells want though is to avoid the actual requirements for data, which is the bulk of the traffic on their networks. This bill would grant their wish, but it would leave little incentive for them to open their monopolies.

Moreover, this bill would go beyond data. It will deprive competitors of the ability to purchase access to crucial parts of the monopolies network, access that is essential for competitors to have any chance to succeed.

Make no mistake. This bill would undercut the most important provisions of the 1996 Telecom Act, and would preserve monopoly power over local phone service.

Second. There is no real regulatory barrier to the bill's deployment of DSL. It is occurring today, and it is occurring faster than the deployment of any new technology in memory. The Bells are spending billions to deploy DSL for one reason. Competition.

DSL is not a new technology. It sat on the Bell shelf for years. They had no incentive to roll it out until competitors showed up as a result of the 1996 Act. In fact, they didn't even face any market opening restrictions before the 1996 Act, and so there was actually no impediment to their deployment of this technology.

The first places they deployed it is where competitors were most active. They are not deploying DSL because they are public spirited folks, though I am sure that they are. They are deploying it because competition forced them to do so.

And if a big part of that competition is removed, as this bill would clearly do, the likelihood is that the Bells will slow broadband deployment and raise prices. In fact, that has already happened.

You also heard that this bill will bring broadband to rural areas. With respect, this is a transparent effort to exploit digital divide concerns. There is nothing in this bill that would ensure that. All we get are vague promises that if monopolies are allowed to keep the CLECs out of their facilities, they would be more inclined to bring DSL to rural areas.

By the time, at the same time, as it has been pointed out here, they are selling off rural exchanges. Which is the better way to get DSL to rural areas and inner cities? I would bet on the presence of competitors before I would bet on mere promises.

Third, the monopolies argue for major changes to the Telecom Act in the name of regulatory parity. They say cable operates free of regulation. This is simply untrue. Cable faces significant regulatory requirements the Bells don't face.

Cables is licensed by over 30,000 local franchising authorities across the Nation, and we pay them over $2 billion in franchise fees annually, and often most provide free service to local governments and schools as a condition. Bells face nothing similar.

There is also a statutory limit on the number of subscribers that any cable operator can serve. If the Bells had faced a similar limit, it is possible that none of their mergers with each other would have been allowed.

There are other compelling reasons why Congress regulates these two industries differently. The local telephone companies have not faced any competition to their core or local exchange business. Only a tiny percentage of Americans actually have a choice for local phone service today.

Cable on the other hand faces ubiquitous and fast growing competition. Nearly everyone in America, including everyone in this room, has a choice if they want cable's core product, which is multichannel video.

The Bells are regulated differently precisely because Congress concluded correctly that their local markets are still closed. Finally, this hearing poses a fundamental question. What is the best way

to accelerate the deployment of broadband or indeed any new technology.

The Bells say relieve them of competitive pressures and they will roll out new services faster. We say competition is the better guarantor that new technology will reach all Americans.

Theirs is a trust me approach, with all the dangers that entails. The other approach says to trust market forces, and trust competition, because time and again that has proven the correct course. The government trusted competition when it broke up the Bell system in 1984. The result is vibrant competition and long distance and dramatic drops in prices.

The opposite has happened in local service. In 1996, Congress again decided to trust competition and it was right. This bill would undo that decision and would trust monopolies, and that is why it is wrong.

The hope of competition in local phone services is at a critical juncture today. CLECs have invested heavily to compete in reliance on the law that Congress wrote. All of us are having a tough enough time getting the monopolies to do what the law requires.

Billions have already been wagered and billions have been lost. Many CLECs have gone under and many are on the ropes. Simple fairness argues against Congress changing the rules it wrote in the middle of the game, and especially now.

If you do, who will ever again invest to bring choices to consumers in the face of monopoly power. Thank you again for the chance to present AT&T's views.

[The prepared statement of James W. Cicconi follows.]

PREPARED STATEMENT OF JAMES W. CICCONI, GENERAL COUNSEL AND EXECUTIVE VICE PRESIDENT, AT&T CORP.

Thank you, Mr. Chairman and Members of the Committee, for inviting me here today to share AT&T's views on the Internet Freedom and Broadband Deployment Act of 2001. We believe that the bill places at risk all of the hard work of this body to bring consumers the benefits of a competitive marketplace, and the private investment made by new entrants to bring broadband services to the American people. With the Bell companies gaining permission to offer long distance services pursuant to Section 271 of the Telecommunications Act of 1996, the main effect of this bill would be to protect the Bell companies from advanced services competition. There is no justification for doing so.

Five years ago, this Committee crafted landmark legislation that was intended to end almost a century of monopoly control over the local telecommunications market and bring the benefits of competition to consumers. Foremost among the market-opening tools of the 1996 Act was the obligation imposed on incumbent local exchange carriers ("ILECs") under Section 251(c) to share their networks with competitors. In return for opening their markets to competition, the Bell companies would be allowed into the long distance market.

In response to the passage of the Act, AT&T and dozens of companies invested tens of billions of dollars in new telecommunications facilities and services. These companies took substantial risks in reliance on the regulatory framework created by the 1996 Act, under which they should have had a fair chance to compete with the established incumbents. Unfortunately, the ILECs have resisted and challenged nearly every attempt to implement the pro-competitive provisions of the Act. This strategy of resistance, delay, and litigation has enabled the ILECs to maintain their dominance of the local telephone market, while dozens of their competitors are forced to scale back service plans, and many others go out of business entirely.

We are deeply concerned that the legislation before you today would subvert the incentive-based framework of the 1996 Act, further undermine competition in the provision of telecommunications services, and slow the deployment of advanced services. Far from promoting broadband deployment or bridging the "digital divide," this bill would deprive competitors of the ability to purchase access to the incumbents'

network in order to provide competitive advanced services and gain a foothold in the marketplace. Faced with even less competition, the incumbents will slow—and indeed have slowed—the pace of broadband deployment.

The unbundling requirements in the 1996 Act were imposed because Congress recognized that the incumbent LECs had bottleneck control of local telecommunications networks and the economic incentive to use those networks to deter competition. The ILECs' dominant market position and their economic incentives to use that position to undermine competition have not changed in the last five years. By cementing the dominant position of the incumbent carriers, the bill will frustrate the prospects for competition in an industry already destabilized by the recent market downturn. Indeed, the mere consideration of the measure by this body would lessen the incentive of the Bell monopolies to comply with the market-opening requirements of the Act, and could deter Wall Street from providing the needed funding for carriers struggling to provide consumers with a meaningful alternative to the incumbent monopolists.

There is simply no need to abort the promise of competition in exchange for broadband deployment by the incumbents. We have heard the incumbents complain before that overregulation was deterring them from rolling out advanced services and facilities. Specifically, in 1998, they demanded that the FCC give them the right to offer advanced services largely free of the requirements of Sections 251 and 271 of the 1996 Act, much as this legislation would shield them from those requirements. But before they gained the relief they sought, competitors began to deploy broadband services, and the incumbents responded with vigorous deployment of their own. Now, with the competitors seriously weakened and their deployment plans curtailed, the incumbents are back with the same untenable claims of overregulation. They are as unjustified now as they were two or three years ago. Now, as then, the incumbents' threat that they will cancel deployment unless the rules are changed is nothing more than a ploy to retain and strengthen their monopoly position.

Indeed, despite the market-opening principles embodied in the 1996 Act, the ILECs' market position is even more entrenched than it was only a year ago. The Bell companies have added almost five times the total number of access lines of all the competitive providers combined, and today they provide more than 90 percent of residential DSL services. Experience shows that the ILECs have deployed advanced services under the existing rules when faced with competition, and absent competition did not deploy them, even when the technology existed and the market-opening requirements of the 1996 Act had not yet been enacted. Remove the possibility of DSL competition—as this bill would—and the prospects for ILEC deployment of advanced services will be substantially reduced. And where competition to the ILECs has declined, the price they charge for DSL rises significantly.

There is likewise no case for modifying the existing 271 process. Five years after enactment of the 1996 Act, the incumbents have been able to persuade the regulators to grant their requests to enter the long distance business without any change in the law. In five states—including two of the largest—the Bell companies now offer interexchange services. There will certainly be more this year. In the meantime, several large companies, including several owned by the Bells or in which they have significant investments, are providing significant Internet backbone capacity to all regions of the Nation. The public need not be forced to pay the high cost of enacting the bill before you.

I will address each of these concerns in turn.

BROAD EXEMPTIONS FROM THE UNBUNDLING AND WHOLESALE RESALE REQUIREMENTS WILL DETER BROADBAND DEPLOYMENT AND COMPETITION

In what has been described as an attempt to speed the deployment of high-speed Internet access services to consumers, this bill creates broad exemptions from the ILECs' unbundling and resale obligations for high speed data facilities and services. But relieving the ILECs of these obligations will only delay the deployment of high-speed Internet access by undermining the ability of competitors to offer DSL and other advanced services. AT&T has made a substantial commitment to providing competitive DSL service to residential and business customers. Earlier this year, AT&T committed more than $130 million to acquire the assets of the now-defunct NorthPoint Communications. The assets include collocations in 1920 locations, 3000 DSLAMs and other DSL networking equipment, 153 ATM switches, and the associated systems (hardware and software) that support provisioning, engineering, testing and maintenance functions. Without access to the ILECs' facilities, as contemplated by the 1996 Act, AT&T's ability to put these assets to use for consumers will be substantially diminished. Other competitive DSL providers would likewise

see a substantial dimunition in the value and use of their facilities and investments if this bill were to become law. Worst of all, the bill would deny customers the lower prices, greater innovation, and broader deployment of advanced services that only competition can deliver.

Specifically, this bill would deny CLECs the access to facilities they need to compete. Under the FCC's existing rules, ILECs already are generally not obligated to offer unbundled access to packet switching and advanced services equipment. But this bill would end access to those facilities under all circumstances, even when necessary to permit competition, and would extend this exemption even to facilities that are used to provide basic telecommunications services, as long as they are also used for the provision of advanced services. As the ILECs update their networks and replace more and more of their copper facilities with fiber optics to deliver high speed services as well as basic voice, an increasing portion of those networks will become inaccessible to competitors. Ultimately, there could be little, if anything, left of the statutory mandate for ILECs to give competitors access to unbundled network elements—even loops, which are the critical "last mile" that competitors simply cannot do without. This would effectively close the most significant door to competition under the Act, by enabling incumbent carriers to avoid the fundamental obligation to open up their networks to new entrants.

The manner in which ILECs upgrade their networks exacerbates this problem. The copper portion of the ILECs' networks—the only portion that seemingly would remain accessible to competitors—more and more frequently does not run all the way from a subscriber's premises to the central office. Instead, as the incumbents push fiber further out into the network, copper loops terminate at so-called "remote terminals" that house the equipment for DSL service. Under the bill, however, an incumbent would not be required to give a competitor access to the equipment at the remote terminal (even for the provision of basic voice service) or to the customers' data communications signals at the central office. It leaves competitors no practical alternative for providing advanced services using the incumbent's loop facilities. In effect, in a direct reversal of the requirements of the 1996 Act, the bill would preserve, exclusively for the incumbent carriers, the economies of scale, scope and density that they have built on the backs of the ratepayers as the sanctioned monopoly providers of local services for nearly a century.

It is clear that this price need not—and should not—be paid in order to encourage ILEC investment in broadband facilities. After sitting on DSL technology for ten years, ILECs finally deployed it only in response to competitive offerings of CLECs and cable companies (and specifically to AT&T). Verizon, for instance, will spend $18 billion this year on capital investment.[1] SBC is spending more than $6 billion on its heavily-promoted "Project Pronto,"[2] and Qwest will spend $9.5 billion this year to build out its facilities.[3] BellSouth's Duane Ackerman has stated that BellSouth "invested over $33 billion . . . during the 1990's," and that BellSouth expects "total DSL revenue of approximately $225 million this year and $500 million in 2002."[4] Further, Mr. Ackerman acknowledged that the regulatory challenges BellSouth is facing "are unlikely to slow down the momentum of the marketplace."[5] Contrary to the incumbents' complaints, the facts demonstrate that application of the 1996 Act's unbundling requirements has not been a deterrent to this extraordinary level of investment.

Further, these investments are producing significant revenue for the ILECs. While SBC threatens to cease deployment of advanced facilities in Illinois after a state regulatory decision allowing competitors access to SBC's fiber optic facilities, it simultaneously boasts to investors that "[t]he network efficiency improvements alone pay for this [Project Pronto] initiative, leaving SBC with a data network that will be second to none."[6] Beyond those savings, of course, SBC and the other ILECs will earn substantial revenues from the new services made possible by the deployment of advanced facilities. And when SBC makes advanced facilities available to competitors as unbundled network elements, they earn yet another revenue stream from competitors who must pay the costs of these elements plus a profit.

The losers in SBC's game of chicken with the Illinois regulators are consumers. As the Illinois Commerce Commissioner, Terry Harvill, aptly observed in his letter last month to Speaker Hastert, "if the market were competitive, SBC/Ameritech would not be able to unilaterally halt the deployment of DSL infrastructure and deny these [Illinois] customers advanced telephony services." AT&T agrees with Commissioner Harvill that "[w]ithout competitive guidelines like those [SBC] objects to, it is unlikely that millions of customers in Illinois will ever see the intended benefits of the Act in the form of lower prices, many choices for broadband services, and better customer service."

Nor is there any assurance that the incumbents would use the regulatory relief in the bill to deploy broadband facilities any faster or to historically underserved

areas like rural communities or inner cities. Their arguments that this bill will give them the incentive to bring high-speed access to rural areas ring hollow when you consider the fact that they are selling off many of their rural exchanges, and there is little evidence that the ILECs have used the last five years to extend broadband to unserved communities. And without the competitive spur of new entrants, the incumbents will slow the pace of deployment and raise prices for advanced services. Analysts at Legg Mason have noted that "with numerous DSL providers exiting the playing field . . . DSL pricing appears to be on the rise." SBC, for example, raised its residential DSL rates in February by approximately 25 percent and Earthlink followed suit.

The impact of this bill on competition would be particularly severe in light of current market conditions. Competitive LECs are suffering heavily because of the difficulties they have encountered entering local markets and the economic downturn. Over the past year, the CLEC industry has virtually collapsed. Numerous competitors, including Winstar, e.spire, Vectris, Jato, Prism, NETtel and many others, have declared bankruptcy or shut down operations. Even NorthPoint, which was widely considered the type of major competitive player created by the Act, is now defunct.

For those that continue to struggle in operation, stock prices have plunged, and the capital market has virtually dried up. While telecommunications companies captured an average of two billion dollars per month in initial public offerings over the last two years, they raised only $76 million in IPOs last month, leading numerous companies to withdraw their IPO plans. [7]

The difficulty in entering local markets has also caused nearly all competitors to scale back their plans to offer service. Covad, originally another success story, is closing down over 250 central offices, and will suspend applications for 500 more facilities. Rhythms has cancelled plans to expand nationwide. Net2000 has put its plans for expansion on hold. Numerous other competitors have resolved to focus on a few core markets. Each of these decisions has been accompanied by hundreds of eliminated jobs. CLECs dismissed over 6000 employees in the last year, attempting to remain in business.

The repercussions of these events on consumers is significant. CLECs reinvested most of their 2000 revenues in local network facilities. CLECs declaring bankruptcy in 2000 had planned to spend over $600 million on capital expenditures in 2001. Those competitive networks will not be available to consumers. Further, as CLECs leave the market, the incumbents raise their prices, and lose incentive to deploy advanced services. Indeed, we could well return to the environment that existed before the 1996 Act, when the Bells kept DSL technology on the shelf, feeling no pressure to deploy it in the marketplace.

Mr. Chairman, as the "father of program access," you are well aware that new entrants need access to the assets of incumbents in order to break into new markets. You took the lead in ensuring that new entrants to the video market would have access to the cable programming they needed to compete with incumbent cable operators. New entrants to the local exchange market need access to the facilities of the incumbent LECs for the same reasons. Depriving them of this access will deprive the public of the competitive telecommunications alternatives envisioned by you and the other authors of the 1996 Act.

### INTERLATA DATA RELIEF IS NOT NECESSARY FOR THE DEPLOYMENT OF BROADBAND FACILITIES AND SERVICES

The second component of the bill, interLATA data relief, also is not necessary to ensure adequate investment in broadband backbone facilities. There are ample backbone facilities throughout the United States from a wide variety of companies, including three—Qwest, Genuity, and Williams—that are affiliated with Bell companies. Other providers, such as Level 3, 360Networks, Global Crossing, and XO Communications, are currently adding fiber and deploying new transmission technologies to expand the capacity of existing networks. Qwest has deployed an 18,500 mile fiber network connecting 150 cities in the United States.[8] Level 3's high-speed network has over 16,000 miles of fiber optic lines and connects 50 U.S. cities.[9] 360Networks recently deployed 21,000 miles of fiber optic networks.[10] In 1999 alone, twelve new companies began providing national Internet backbone services, for a total of 46 providers in the United States.[11] There is no support for the claim that section 271 is somehow depriving the country of needed backbone capacity. If anything, there is now a glut of backbone capacity far exceeding current demand.

In fact, dozens of competitive providers have, in the last four years, blanketed the Nation with over 1,000 high-speed Internet points of presence ("POPs"), and today 95 percent of all Americans live within 50 miles of one of these competitively provided POPs. Each represents a DS-3 POP capable of providing customers with

speeds of 45 Mbps or more. And even this understates the level of access to the Internet backbone, because local ISPs aggregate onto high-speed private lines the demand of local communities for transport to the Internet backbone, regardless of the distance to the Internet POP.

More fundamentally, this legislation is unnecessary because the BOCs themselves hold the key to obtaining the authority to provide any long distance service by opening their local markets to competitors. Earlier this month Verizon was granted permission under Section 271 of the Act to provide interLATA service in Massachusetts, in addition to its existing authority to provide interLATA service in New York. The FCC has also granted SBC approval to provide interLATA service in Texas, Kansas, and Oklahoma. Although AT&T believes that each of these Bell company applications fell short of what the Act requires in particular respects, it is clear that the requirements of Section 271 of the Act are attainable and can be met, *if* a Bell company takes steps to open its local markets to competition.

This is a particularly significant point because granting the Bell companies interLATA data relief would harm the very competition that Congress is seeking to promote. As this Committee is well aware, in order to foster local competition, the 1996 Act permits in-region interLATA authority only after a Bell company has opened its local market to competition. This incentive-based approach takes full advantage of the long distance restriction to provide the Bell companies with a reason to open their local markets for the benefit of all consumers. And the ability to provide high speed data services across LATA boundaries is a powerful incentive: currently, the majority of traffic traveling over long haul networks is data traffic, not voice, and analysts predict that data traffic will make up 90 percent of all traffic within four years.

Nor is there any basis to conclude that, in adopting the Telecommunications Act of 1996, Congress intended to exclude broadband or advanced data services from the interLATA restriction. Even the most cursory review of the 1996 Act and its legislative history belies such an argument. For example, Section 271(g)(2) of the Act, which carves out incidental interLATA services that may be provided by the BOCs without FCC approval, specifically includes "Internet services over dedicated facilities to or for elementary and secondary schools." Other Internet services provided by the Bell companies were therefore deliberately made subject to the interLATA restrictions.

Too much remains to be done for Congress now to reopen the Act and remove or lessen the incentives provided by Section 271. The four Bell companies continue to dominate the local exchange market—CLECs account for only about 6 to 8 percent of the total local telecommunications market[12] and far less of the market for residential local telephone service. By permitting Bell companies to enter the high speed interLATA data market without first opening their local markets, this bill would substantially reduce the likelihood that this dominance will end.

In particular, passage of this legislation would harm consumers in the more than 40 jurisdictions where the Bell companies have not yet sufficiently opened their local markets to obtain interLATA authority. SBC recently filed a Section 271 application to provide interLATA service in Missouri,[13] and press reports indicate that other Section—271 applications may soon be filed.[14] But if this legislation were enacted, the Bell companies would have less of an incentive to take any steps to open their local markets in these states to competition. Companies that lack the Section 271 incentives of the RBOCs have been far slower to comply with the market-opening provisions of the 1996 Act. For example, as the former CEO of Ameritech noted shortly after the Act's passage, GTE (then an independent LEC) has "no incentive" to cooperate to open its markets because it is not subject to Section 271.[15]

Congress understood that if the Bell companies could provide long distance service before there were sufficient local alternatives, they would have the incentive and the ability to use their local networks to favor their long distance affiliate and discriminate against competing long distance providers that needed access to the Bells' local networks to reach consumers. Nothing has changed in the past five years that would alter that conclusion.

The bill's attempt to "limit" interLATA relief to data transmissions would, moreover, be unavailing. With the growth of services like IP telephony, there is no longer a clear or readily identifiable distinction between "voice" and "data" transmissions. SBC, for example, has indicated an intent to move to packetized voice transmissions, which would essentially eliminate any distinction between the two services and allow SBC to characterize all transmissions as "data" transmissions. From a practical standpoint, even if the distinction remained clear, there is no effective way to determine whether the BOCs are only transmitting data services over their interLATA facilities. The "data exception" in the bill would essentially hand ILECs

the tool they need to shut CLECs out from their networks completely, and would quickly and surely swallow the policies and rule embodied by Section 271.

Perhaps most telling is the fact that, if there is a problem here, it can be addressed far more narrowly than by legislation that rejects the incentive-based framework of the 1996 Act. Indeed, the FCC has itself established an expedited process under which it will approve targeted LATA boundary modifications if a Bell company can demonstrate that such a modification is necessary for the deployment of "advanced services." It is notable that the FCC has not received any requests for LATA modifications under this process.

CONCLUSION

With all due deference to you, Mr. Chairman and the other co-sponsors of this bill, there is no need for this legislation. Under the spur of competition—indeed, only under the spur of competition—the Bell companies have invested in broadband facilities and services. Moreover, because the Bell companies continue to dominate the local exchange market, this legislation would harm consumers and set back the cause of competition by undermining the very incentives and policies that Congress intended to foster local exchange competition.

The CLEC industry is at a critical juncture. If we don't succeed now, it will be a long time before others are willing to invest the billions of dollars needed to try again. Rather than eliminate the most important incentive for the Bell companies to open their local markets, Congress should consider ways to make the process that it established in the 1996 Act more—and not less—effective.

Thank you again for the chance to present our views.

**Footnotes**

[1] *Id.*

[2] SBC Investor Briefing, *SBC Announces Sweeping Broadband Initiative,* at 2 (Oct. 18, 1999).

[3] "Running on Empty; Industry Trend or Event," *Communications Week International* (Mar. 5, 2001).

[4] Duane Ackerman, *Talk Notes,* Salomon Smith Barney Conference (Jan. 9, 2001) at 7, 15.

[5] *Id.* at 11.

[6] *Id.* at 2.

[7] *Telecom Meltdown,* Business Week (April 23, 2001).

[8] Qwest News Release, *Qwest Communications Completes 18,500 Mile Nationwide Network and Shifts Construction to 25 Local Fiber Networks,* Sept. 13, 1999.

[9] "Teligent to Buy Network Services from Level 3 Communications," CNETNews.com (May 9, 2000).

[10] "360networks Announces Record Fourth Quarter and 2000 Revenues," PR Newswire (Mar. 1, 2001).

[11] Boardwatch Magazine's Directory of Internet Service Providers (11th ed., 1999).

[12] C.E. Unterberg, Towbin, *Broadband Communications Providers,* June 14, 2000, p. 5.

[13] "SW Bell Seeks To Offer InterLATA Services In Missouri, Says It Followed Texas Model," TR Daily (April 9, 2001).

[14] See "Qwest Takes a Shortcut to Re-Enter Long Distance," Hive4.com (April 15, 2001) (reporting that Qwest plans to file 271 applications for all 14 states in its region in late 2001).

[15] Mike Mills, "Holding the Line on Phone Rivalry; GTE Keeps Potential Competitors, Regulators Price Guidelines at Bay," *Washington Post,* Oct. 23, 1996, at C12.

Mr. UPTON. Thank you.

Mr. Gregori.

## STATEMENT OF JOSEPH GREGORI, CEO, INFOHIGHWAY COMMUNICATIONS CORPORATION

Mr. GREGORI. Good morning, if it is still appropriate. My name is Joseph Gregori, and I am the CEO of InfoHighway Communications Corporation. I would like to thank the chairman and other members of the committee for allowing me the opportunity to speak with you this morning.

First, I would like to just spend a moment or two to tell you about InfoHighway, and what we are doing, and then share with you our view of this bill. InfoHighway is an integrated communications provider serving the needs of small to medium-sized businesses, primarily in the northeast where we have just opened up several new offices in cities, and in Texas.

We provide a full range of communication services, including bundled voice, high speed data through DSL, and other Internet offerings. We provide these services through a combination of our own network facilities, resale and UNIP. That's how we are reaching our customers.

We are utilizing DSL technology because we think it is the right choice, and deploying such through a co-location strategy that includes both deployment in the RBOC central offices, as well as directly in buildings that are not currently being served and may be out of reach of DSL services.

We have chosen DSL and are building our own network to further position ourselves in the future to deploy new technologies, voice-over DSL and voice-over IP. We see the convergence coming, and we are not ready yet to endeavor down that path, but we are positioning ourselves that way.

We have deployed our equipment, primarily Cisco and Access Link communication devices, and DSLAMs in approximately 100 buildings in 10 central offices, the majority of which in the last 6 months, since our recent funding in September 2000.

As a service provider, we differentiate our service by focusing on the needs of the customer, which are primarily small to medium sized businesses. These customers typically don't have data or communications staffs, or the in-house expertise necessary, but rather look to service providers like ourselves, who offer communication solutions to their needs with friendly, responsive, customer service.

Whether it is our high speed Internet access products, our customized voice calling plans, or total bundled communication services, we are delivering new creative valuated solutions to this market segment.

With respect to this bill, I have several views. First, if passed, I believe that it will result in less incentive for the RBOCs to continue to open their local networks and comply with the 14 point checklist requirements of the 1996 Act.

The data services segment is a huge slice of the interLATA traffic, and granting relief as proposed by this bill would be a major concession and relieve the RBOCs of a significant statutory requirement.

The effect of such to me is very clear; less competition and less choice, especially for the small to medium-sized business segment. Today they are undeserved, and if this bill is passed, they will likely have fewer choices.

The checklist works. In several States, 271 approval has been granted. Why would we consider changing that now. Second, I believe the RBOCs are frustrated and will continue to undermine competition at every juncture.

Providing them with access to advanced data services now across LATA boundaries will reinforce such. Our experience is recently demonstrated to us that these practices will continue. One RBOC has recently proposed to raise wholesale rates to competitors that access their network, while also withdrawing access to advanced data services to companies like ours.

We had access to advanced data services very briefly, and we made a significant investment in the product rollout, and then it

was just as quickly withdrawn from us. And last the bill as drafted I believe will be interpreted very negatively by the capital markets.

Wall Street and venture capitalists will perceive this as further support for the RBOCs and rightly so, and to the detriment of competition. An already tight capital market will further constrict. Every competitor will be impacted as additional capital will become scarce.

In closure, although I believe in the intent and the spirit of the bill, the outcome, if passed, will not be the expected one. Competition will suffer. If this bill is passed, the RBOCs will have less incentive to comply with the 14 point checklist, and competition will not be served in the small to medium-sized business segments, and it will be perceived negatively by the capital markets. Thank you.

[The prepared statement of Joseph Gregori follows.]

PREPARED STATEMENT OF JOSEPH GREGORI, CHIEF EXECUTIVE OFFICER, INFOHIGHWAY COMMUNICATIONS CORPORATION

Mr. Chairman and Committee Members, my name is Joseph Gregori and I am chief executive officer of InfoHighway Communications Corporation. InfoHighway is also a member of the Association of Communications Enterprises, better known as ASCENT, which represents entrepreneurial communications firms. I appreciate the opportunity to offer my comments, on behalf of my company as well as ASCENT, on the Internet Freedom and Broadband Deployment Act of 2001.

InfoHighway Communications Corporation is a leading Integrated Communications Provider serving the small to medium-sized business market in New York, New Jersey, Pennsylvania, Massachusetts, Maryland, Washington, D.C., and Texas. The company offers a fully bundled package of services, including voice, data, and Internet offerings. We provide these services—appropriately enough considering the subject for today's hearing—through a combination of the three entry strategies established by the 1996 Telecommunications Act: our own facilities, resale and unbundled network elements. Additionally, InfoHighway is building an advanced data network, deploying DSL technology through both a building-based and central office collocation strategy. To date, we have deployed DSL technology in approximately 100 buildings and have collocated in 10 ILEC central offices.

InfoHighway, which through its subsidiaries has been operating for over five years, has over 150 employees serving customers in 11 markets. In September of 2000 we received a $150 million equity commitment, of which $45 million was initially invested in our first stage of growth and network deployment. Our Network plan calls for us to provide DSL in conjunction with the UNE-Platform [1] in its initial stages, and then converging services utilizing Voice-over-DSL and Voice-over-IP as these technologies mature and are commercially accepted.

InfoHighway serves over 6,000 customers with more than 20,000 access lines. We are adding over 2,000 new access lines per month. Our target market is small to medium-size businesses, a vastly under served audience that, in the past, has not had access to a broad range of services and service providers. Indeed, an important reason that customers do business with us is that we address their specific needs through innovative products and responsive service. Whether it's our high-speed DSL services, local and long distance voice offerings, custom features such as enhanced voice mail that can be accessed from a PC, or conference calling services, our products and services are designed to help small and mid-size firms.

I applaud the efforts made by this panel to ensure that all Americans are given access to the current benefits and future potential of the Internet. Certainly, InfoHighway and other members of the competitive community want broadband services deployed as quickly as is possible. You could almost say that the success of my company depends on it. It is critical to note, in fact, that InfoHighway and other such entrepreneurial firms have been on the forefront of advancing technological change at a rate never before seen. Collectively we have raised billions of dollars in capital to invest in the necessary infrastructure for these new and exciting services. And, on a daily basis, are offering these services to thousands of new customers. This investment in and deployment of advanced services by InfoHighway

[1] The term "UNE-Platform" refers to all unbundled network elements being combined and provisioned as a single entity.

and other competitive carriers simply would not have happened without passage of the 1996 Telecommunications Act. Unfortunately, these significant advances are often overshadowed by the constant criticism leveled at the Act by the Regional Bell Operating Companies and their allies.

While I understand the intent behind the Internet Freedom and Broadband Deployment Act of 2001, I do not believe it would promote either Internet freedom or broadband deployment. Indeed, the only beneficiaries of the legislation's "freedom" would be the remaining Regional Bell Operating Companies, because they would be freed of their statutory obligation, set forth in the 1996 Act, of opening their local markets to competition. Conversely, the legislation provides anything but "freedom" for InfoHighway and other competitive service providers, as well as consumers. In fact, the bill would deny us the freedom to compete for consumers, as promised by the 1996 Act, and consumers the freedom of choice in service providers.

The legislation, if enacted, would do tremendous harm to InfoHighway and our customers. It would seriously impair the ability of our company to effectively execute its business plan, secure additional funding and deliver new services to end users. By giving the RBOCs the ability to transmit data on an interLata basis, the bill would substantially reduce the incentive for the RBOC's to open their networks to competitors, such as InfoHighway, by complying with the process set forth in Section 271 of the 1996 Act. The result would be less competition, which is the exact opposite intent of the 1996 Act. Consumers, especially small to medium-sized businesses would yet again be denied the very benefits anticipated by the opening of local markets to new entrants, including technological innovation and creative service offerings.

If InfoHighway's experience is an accurate reflection of what is occurring throughout the industry, and I believe it is, the RBOCs have frustrated and will continue to undermine competition at every opportunity. Recently, for example, one particular RBOC proposed to reduce by nearly half the wholesale margins for local service in Massachusetts and withdrew advanced data services to companies such as ours after we successfully launched the product in New York. Passage of the legislation before us today would serve only to reinforce this anti-competitive behavior.

Allowing the RBOC's to transmit advanced data services across Lata boundaries also would further tighten the capital markets for entrepreneurial companies like InfoHighway. The capital markets are demanding performance measurements from the new service providers, which is a good, sensible requirement. Until the local markets are completely opened, however, giving the RBOC's interLata data authority would be viewed as support for the incumbents, not for competitors. The legislation, in short, would greatly hinder the ability of competitive service providers to secure much need funding, both today and in the future.

Eliminating the RBOCs unbundling and resale obligations with respect to advanced services, such as DSL services, would be equally as harmful to InfoHighway and other competitive carriers. We believe, as does the U.S. Court of Appeals[2], that there is no distinction between these services and standard voice services. The RBOC's must provide access to these services, through unbundling and resale, as they do their other service offerings. Data, not voice, represents the future of communications. Denying competitors access to such services would set in motion their future obsolescence while, at the same time, handing over even greater monopoly power to the RBOCs.

The fact is Mr. Chairman the legislation before us today would do tremendous harm to competitive carriers while giving the RBOCs relief which they simply do not need. First, in the 271 process, the statutory scheme already exists that would effectively provide the RBOCs with the relief proposed by the new legislation. Verizon, for example, can today offer interLata data services in New York, my home state, because their 271 application, in accordance with the 1996 Act, was approved by the FCC. Second, new emerging competitive service providers already are deploying broadband services and, I submit, would be deploying them substantially faster if the RBOCs were convinced that no exemptions from the 271 process would be forthcoming. Finally, the RBOCs themselves are deploying broadband high speed Internet access to their customers. And they are doing so not because they have been freed from their "regulatory shackles," but because competition is forcing them to.

Even the most cursory analysis of the facts will leads to the conclusion that any new legislation concerning broadband deployment is unnecessary. What is needed is time and patience. The plain fact is the 1996 Act states in unambiguous terms that compliance with the 14-point checklist contained in section 271 will result in

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[2]*Association of Communications Enterprises v. FCC,* 235 F.3d 662 (D.C. Circuit January 9, 2001).

the relief from interLATA restrictions the RBOCs seek. This essential *quid pro quo* process can and will work, and it would be completely counterproductive to override the process in place by enacting the legislation before us today.

I urge the members of this Committee to uphold the 1996 Telecommunications Act and to "stay the course" on behalf of competition and American consumers. By allowing the 1996 Act to continue to deliver the promise of competition, enterprising communications providers like InfoHighway will continue bringing high speed Internet access and choice in service providers to consumers across the country.

This concludes my prepared statement. Thank you again for the opportunity to testify today. I will be happy to answer any questions.

Mr. UPTON. Mr. Henry.

**STATEMENT OF JAMES H. HENRY, MANAGING GENERAL PARTNER, GREENFIELD HILL CAPITAL, LLP**

Mr. HENRY. Good afternoon. I would like to thank the chairman and the members of the committee for inviting me to testify at today's hearing. Just by way of introduction, I manage a company called Greenfield Hill Capital, which is a telecommunications Investment Fund.

Prior to founding Greenfield Hill Capital recently, I acted as a telecommunications research analyst on Wall Street for about 7 years, most recently at Bear Stearns, where I was responsible for following the competitive local exchange carriers among other competitive and resurgent business models across the telecom, and data services space.

My comments today or my testimony today will provide a Wall Street perspective on local competition and what I perceive as potentially adverse implications on this legislation on local competition and broadband deployment.

First, let me just state that I believe that local competition is in the public interest insofar as it accelerates the deployment of advanced broadband networks, technology, and services to both businesses and consumers across the country.

Second, that it drives reduction in the prices of local telecom services, and, three, it creates new jobs and demand for technologically sophisticated networks. So I believe that local competition is in the public interest on that basis.

Competition from a Wall Street perspective has historically been viewed as a very positive opportunity based on large extent on the track record of the long distance industry, the value, wealth, and creation that occurred there.

The size of the local market opportunity, its profitability, and relatively stable growth initially attracted a lot of investors and a lot of capital to the space. I think the evidence is quite clear that in the past year investor sentiment has turned quite to the contrary as a result of a number of factors that include the legislative and regulatory uncertainty that overhangs the industry today.

My second point is that the CLECs are the principal agents of local competition, and broadband deployment in the local telecom market. I would point out that the CLECs, including the CLECs subsidiaries in companies like AT&T and World.com have installed a total of 12.2 million local telephone lines competitively since the passage of the Telecom Act of 1996.

Those lines represent about $7.5 billion of annual recurring revenue which has been generated by these competitive companies. By contrast, I would note that the incumbent local exchange carries,

principally SBC and Verizon, have done very little outside of their respective home territories on the competitive front, and in fact both companies have announced recently pullbacks to their out of region initiatives, despite the commitments made under the merger agreements for Ameritech and GTE.

I would also point out that the ILECs have pulled back to some extent their in-region broadband initiatives, particularly as it relates to DSL, and in fact you have seen them raise prices just as competition has dropped off and the other competitive players have died.

The third point is that access to capital is the lifeblood of telecom in particular, and early stage companies like the CLECs in particular, and therefore access to capital is the lifeblood of competition in the telecommunications industry, particularly local.

As a result of relatively free flowing access to capital from 1996 through 1999, CLECs deployed approximately $55 billion of capital to build alternative local networks, broadband networks, and unfortunately as the capital markets have collapsed beneath the weight of great uncertainty, and concerns surrounding the technology in the telecom sector, CLEC capital spending has slowed dramatically.

I would note in fact that CLEC capital spending in 1999 was $6 billion. It grew dramatically to $10 billion in the year 2000, and is expected to contract to reduce to only $7 billion, and probably less, in 2001, and likely lower than that beyond.

As far as Wall Street concerns and investor sentiment, it is my observation as an industry analyst that the investment community's willingness to fund telecom companies in general, and CLECs in other early stages of businesses in general, or in particular, is adversely impacted by legislative and regulatory uncertainty.

The proposed Act that is in front of the committee is illustrative of that kind of legislative uncertainty that I think will cause investors to move to the sidelines and withhold capital from these companies.

I have had numerous conversations over the past number of quarters with investors—public equity investors, and private equity investors, and high yield investors—across all the capital markets, who have said that they view regulatory uncertainty in telecommunications as a principal reason or one of the principal reasons that they have moved to the sidelines.

As far as the particulars, I am troubled by this Act insofar as it could, one, jeopardize competition for broadband by exempting high speed data and Internet services, as well as the facilities that provide those services from regulation.

Two, it could significantly reduce the incentives for the Bells to comply with 271, and to open their local markets to competition.

And, three, could seriously jeopardize line sharing. So, in summation, I view that this bill would be negative to competition in the local market, and it would be negative to broadband deployment overall, and I would urge the committee to not approve the bill.

[The prepared statement of James H. Henry follows.]

## PREPARED STATEMENT OF JAMES H. HENRY, MANAGING GENERAL PARTNER, GREENFIELD HILL CAPITAL LLP

### INTRODUCTION

Mr. Chairman and Members of the Committee, thank you very much for inviting me to testify at today's hearing on the proposed *Internet Freedom & Broadband Deployment Act of 2001.* My name is James Henry and I am the Managing General Partner of Greenfield Hill Capital LLP, a hedge fund focused on the communications sector. Prior to founding Greenfield Hill Capital I served as a research analyst following the telecommunications industry for approximately 7 years. Most recently, I was a Senior Managing Director at Bear, Stearns & Co. Inc. where I was ranked 2nd in *Institutional Investor Magazine's* All American Research Team survey for the CLEC category in 1999 and 2000. My testimony today will provide a "Wall Street" perspective on local competition and the implications of the proposed legislation.

### LOCAL TELECOM COMPETITION

I believe that competition in the local telecommunications industry is in the public interest insofar as it (1) accelerates the deployment of advanced networks, technology, and services to businesses and consumers, (2) drives reduction in the prices of local telecommunications services, and (3) creates new jobs and employment opportunities for technologically sophisticated workers. Competition in the telecommunications market has historically been viewed as a compelling opportunity by the investment community as a result of the substantial size, growth and profitability of the market coupled with regulatory and legislative initiatives to foster the growth and development of competition in the marketplace. That perception has clearly changed to the negative as a result of a number of factors that include legislative and regulatory uncertainty.

### CLECS=LOCAL COMPETITION

The CLECs and other non-incumbent telecommunications companies are the principal drivers of competition in the local market. The CLECs, including the CLEC subsidiaries of AT&T and WorldCom, have installed a total of approximately 12.2 million local access lines and achieved an annualized local revenue run rate of approximately $7.5 billion since the passage of the Telecommunications Act of 1996. By contrast, the ILECs, principally SBC Communications and Verizon, have done very little outside their respective regions on the competitive front. In fact, both companies announced significant pullbacks of their out-of-region competitive initiatives in the past quarter.

### ACCESS TO CAPITAL

Access to capital is the lifeblood of the telecommunications industry in general and the CLECs in particular, given the high startup costs and the capital intensity of the businesses. Therefore, I submit that access to capital is vital to competition in the local telecom market to the extent that the CLECs offer the only meaningful source of local competition. As a result of the relatively free-flowing access to capital enjoyed between 1996 and 1999, the CLECs deployed approximately $55 billion in capital to build alternative local networks. Regrettably as the capital markets have collapsed beneath the weight of the broader market and the significant uncertainty surrounding the sector, CLEC capital spending has started to slow significantly. For example, CLEC capital spending grew from $6.0 billion in 1999 to $10.2 billion in 2000, but is expected to contract to $7.0 billion or less in 2001.

### WALL STREET CONCERNS

It is my observation as an industry analyst that the investment community's willingness to fund telecom companies in general and CLECs in particular is adversely impacted by legislative and regulatory uncertainty. The proposed *Internet Freedom & Broadband Deployment Act of 2001* is illustrative of the kind of legislative uncertainty that will cause investors to move to the sidelines and withhold capital from the emerging local competitors. I have had a number of conversations with institutional investors, including private equity investors, public equity investors, and high yield investors, that have cited regulatory uncertainty as one of the principal reasons for avoiding the telecommunications sector in general and the CLECs in particular.

The proposed legislation has the potential to create the following issues that would adversely impact the CLECs and therefore the pace of local competition in the United States. The principal issues that concern me about the proposed legislation include, but are not limited to, the potential that it could (1) jeopardize competition for broadband and voice services by exempting high-speed data and internet access services and facilities from regulation, (2) significantly reduce the incentive of the ILECs to open their local markets to competition in order to qualify for entry into long distance, and (3) jeopardize line sharing and eliminate access to unbundled loops, sub loops, and dark fiber on facilities that are used for both voice and data. Furthermore, I would submit that any legislation that views voice and data network facilities as separate is not prepared to follow the telecommunications industry into the inevitable future of unified packet-switched networks that will carry all traffic. In conclusion, I urge the committee to not pass the proposed legislation because I believe it will have an adverse impact on local competition, which would not be in the public interest.

Mr. UPTON. Mr. Hills.

## STATEMENT OF GORDON HILLS, EXECUTIVE DIRECTOR, ECONOMIC OPPORTUNITY PROGRAM OF ELMIRA NEW YORK, ON BEHALF OF THE NATIONAL ASSOCIATION OF COMMUNITY ACTION AGENCIES

Mr. HILLS. Good afternoon. Thank you, Mr. Chairman, for inviting me here, and giving me the opportunity to testify. My name is Gordon Hills, and I am a member of Keep America Connected, and also the executive director of a community action agency in a rural urban environment in upstate New York.

Also, I am different from some of the members here in that I am going to be hopefully an end-user of the product that this bill will provide. So I am speaking on behalf of consumers.

Keep America Connected, formed in February 1997, is a partnership between consumer organizations, labor, and local phone companies. This partnership represents older Americans, people with disabilities, rural and intercity residents, people of color and low income residents.

Keep America Connected works to achieve affordable access to modern telecommunication services by all consumers. A major intent of the organization is to ensure that regulatory changes guiding the transition to a competitive market also preserve affordability and accessibility.

We appreciate you conducting this vital hearing because our service populations will be the beneficiaries of your legislation. I joined Keep America Connected because I wanted to find a way to make a difference and empower many of our communities that are disenfranchised.

I serve on the Keep America Connected Board of Directors, and on the Technology Committee for the National Association of Community Action Agencies or NACAA. The goal of Keep America Connected is to make sure that we all have access to the wonders of telecommunications and that policymakers remember that consumers are concerned with both rates and accessibility.

The Community Action network that I work in operates in 96 percent of the Nation's counties supporting a wide range of programs. Many of those agencies performs services for more than 34.5 million people living in poverty in the United States.

And those programs represent a broad range of services. One of my major responsibilities are to support more than 900 community action agencies and assist them in upgrading their technological capabilities. This includes equipping low income clients with technical skills and facilitating high speed Internet access.

In short, our national network is to Keep America Connected's commitment toward bringing affordable broadband services to all Americans. While building up technology in individual agencies, we are focused on providing cutting edge training to preschoolers, troubled teens, and the elderly.

With the held of broadband technology, we intend to use video and audio strictly to augment our education programs. Broadband access will allow the use of streaming video and audio in teaching and training modules.

However, with more than 60 percent of community action agencies located in rural areas, the only hope of high speed access will be for Congress to allow income in local exchange carriers to build out networks.

For all the stakeholder groups that were involved in affordable access to high speed telecommunications brings the promise of the information age closer to reality for us. Access to broadband means very different things to different groups, but the needs and interests of various stakeholders are not mutually exclusive.

They share common concerns of economic development and quality of life issues and the wide range of benefits as a whole is much greater. For small businesses, greater broadband promotes business development and economic equality. I talk about this because I am also a member of the Workforce Development Board.

A greater deployment of broadband will allow smaller businesses to compete with larger ones. For those living in rural areas, social applications, which includes telemedicine and distance learning, help to bridge the difference and distance of geography.

We strongly support the Internet Freedom and Broadband Deployment Act of 2001. It is an important step to achieve a more rapid deployment of broadband technology to all consumers, and particularly those that right now have very limited access. With that, my time is up, and I will yield.

[The prepared statement of Gordon Hills follows.]

PREPARED STATEMENT OF GORDON HILLS, EXECUTIVE DIRECTOR OF ECONOMIC OPPORTUNITY PROGRAM, MEMBER, KEEP AMERICA CONNECTED

Thank you, Mr. Chairman, for allowing me the opportunity to testify. My name is Gordon Hills and I am a member of Keep America Connected. Keep America Connected, formed in February, 1997, is a partnership between consumer organizations, labor, and local phone companies. This partnership represents older Americans, people with disabilities, rural and inner city residents, people of color, and low-income citizens. Keep America Connected works to achieve affordable access to modern telecommunications services by all consumers. A major tenet of the organization is to ensure that regulatory changes guiding the transition to a competitive market also preserve affordability and accessibility.

We appreciate your conducting this vital hearing because our serviced populations will be the beneficiaries of your legislation.

I joined Keep America Connected because I wanted to make a difference and empower many in our community that are disenfranchised. I serve on the Keep America Connected Board of Directors and on the Technology Committee for the National Association of Community Action Agencies or NACCAA.

Keep America Connected was begun in 1997 to provide a new voice for consumers in the telecommunications arena. Traditionally, organizations that claim to speak for consumers on these issues seemed to have on one main concern: low rates.

Naturally, we do not disagree that consumers should pay only just and reasonable rates. However, we believe that this is not the **only** interest that consumers have with respect to telecommunications. It is equally important that consumers have the option to choose these services. As the current focus on the digital divide demonstrates, without this legislation it is likely that some parts of this country will not see these benefits for some time to come.

The goal of Keep America Connected is to make sure that we all have access to the wonders of modern telecommunications and that policy makers remember that consumers have more than one issue, rates, that they are concerned with. I think that my own experience illustrates the need for this focus.

The Community Action Agencies with which I work were established under the Johnson administration to help fight the war on poverty. These agencies operate in 96% of the nation's counties supporting a wide range of programs. These agencies perform services for more than 34.5 million people who are living in poverty in the United States. Programs include referrals, emergency services, education, and family development, to name a few.

One of my major responsibilities is developing a program that will support more than 900 community action agencies upgrade their technology capabilities. This includes equipping low-income clients with technical skills and facilitating high-speed Internet access. In short, NACCAA shares Keep America Connected's commitment to bring affordable broadband services to all Americans.

NACAA's Board of Directors has approved a strategic plan that will better enable the organization to bring technology to all of its member organizations. This will be a daunting task. We are confronted with traditional and non-traditional problems associated with the Digital Divide.

While building up the technology in the individual agencies, we are focused on providing cutting edge training to pre-schoolers, troubled teens, and the elderly. With the help of broadband technology, we intend to use video and audio streaming to augment our education programs. Broadband access will allow the use of streaming video and audio in teaching and training modules. However, with more than 60 percent of CAA's located in rural areas, the only hope of high speed access will be for Congress to allow Incumbent Local Exchange Carriers to build out networks.

Finally, the work performed by CAA's generates a vast amount of data that is shared between organizations. Because we do not have significant resources, we will need to depend more on high-speed Internet access as the conduit for data sharing and transfer. Data relief will allow the incumbent local exchange carriers to provide high speed access to members of Keep America Connected, thereby allowing our individual organizations to provide our services in an efficient and affordable manner.

For all of the stakeholder groups that I've mentioned, affordable access to high-speed telecommunications—broadband access—brings the promise of the Information Age closer to reality.

Access to broadband means very different things to different groups, but the needs and interests of various stakeholders are not mutually exclusive. They share common concerns of economic development and quality-of-life issues. The wide range of benefit for the whole is very great.

For example, for consumers, data relief leads to reduced costs, greater availability and choice of high-speed Internet service through increased competition. For small businesses, greater broadband promotes business development and economic equality. Greater deployment of broadband will allow smaller businesses to compete with larger ones. For those living in rural areas, social applications, which includes telemedicine and distance learning, help to bridge the distance of geography. For minorities, increased broadband access helps to level the playing field in the New Economy—this means greater educational and economic opportunities. For individuals with disabilities broadband provides an increase in independent living.

It is our belief that the real benefits of competition will not be delivered until it reaches all classes of consumers. Consumers need more choices in local and long distance providers, not the "cherry-picking" marketing strategies currently driving competition. America cannot and should not be divided into a society of the information haves and have-nots. Predictable, sufficient supports are needed to make sure the availability of affordable, universal telephone service.

From my work at the community level I can clearly see the promise that the Internet can bring to consumers. While it can help our centers to manage information, it can also provide the members of these communities with the latest online applications in education, medicine, e-commerce and many other areas. But none of this will be possible without an acceleration of broadband deployment.

We strongly support the Internet Freedom and Broadband Deployment Act of 2001. It is an important step to achieve a more rapid deployment of broadband technology to all consumers. The bill meets the test of a common sense, pro-consumer approach to do two things:

First, it eliminates unnecessary government restrictions on who can offer data services, providing additional consumer choice and benefiting all.

Second, it proposes to eliminate regulations that have discouraged deployment of advanced services to consumers.

We feel that the Tauzin Dingell bill is an essential element in eliminating the digital divide and we urge the Congress to enact it quickly. Those Americans stuck in the digital divide have already lost too much time.

Chairman TAUZIN. Thank you very much, Mr. Hills, and by the way, I want to commend you for your work with Community Action. As a former officer in a local action agency, I know the work that you do, and I thank you for it.

Mr. HILLS. Thank you.

Chairman TAUZIN. Mr. Mancini is recognized.

**STATEMENT OF PAUL K. MANCINI, VICE PRESIDENT AND ASSISTANT GENERAL COUNSEL, SBC MANAGEMENT SERVICES, INCORPORATED**

Mr. MANCINI. Thank you for the opportunity to appear and testify before you this morning. I am Paul Mancini, Vice President and Assistant General Counsel of SBC Communications.

H.R. 1452 will encourage broadband deployment to consumers in all areas of the country. It will balance the regulatory disparity that currently exists between different types of high speed Internet access providers, and it will help close the digital divide, and it will encourage competition by providing more customers with more choices in higher quality services at competitive prices.

I would like to focus my remarks this morning primarily on the market for high speed Internet access services and the situation that we confront in Illinois, because this provides a compelling real life evidence of why this bill should be passed.

There are two fundamental competitive principles that we believe should guide Congress when considering this legislation. First, competitive markets should be free from government regulation.

Second, if there is some sound, public policy reason for regulating a competitive market, all service providers in that market should be subject to symmetrical regulatory requirements.

In other words, the same services in the same competitive markets should be regulated in the same way, regardless of who is providing the services or what technology is used.

By way of background, SBC's high speed Internet access services is called digital subscriber service or DSL. We compete directly against the local cable operator which offers cable modem service, as well as against wireless and satellite based high speed Internet access providers.

The cable operators, including AT&T, have in excess of 75 percent market share in this market. Moreover, you have to keep in mind that all versions of this Internet access are based on new investment, new facilities, new networks, to provide this capabilities. They are not based upon the old Legacy voice network.

I found it very interesting when I was reading AT&T's written statement yesterday and listening to their opening remarks. You

would think from hearing those that AT&T is a simple bi-standard or poor little DSL provider that is being forced out of the high speed Internet market.

Let's be clear about this. AT&T is the Nation's largest cable monopoly, and they are also the Nation's largest provider of high speed Internet access service through a closed network that includes content and is completely unregulated.

And they, along with other cable companies, are now trying to ask Congress to block competition in that market in which they are the dominant provider. I would like to talk about just some facts, and not allegations, and not speculation.

So there are a few undisputed facts that should drive your consideration of this legislation. Notwithstanding what you hear from some components, this bill is not about Bell's company monopolizing the DSL market, because there is no such thing as a separate DSL market.

Rather, the FCC and every independent analyst and economist who have looked at this issue have concluded that the market for high speed Internet access services is a separate, distinct, and competitive market in which there are four different providers using different technologies, competing head to head.

The main providers are cable companies, DSL companies, wireless and satellite companies, all providing their own version of open Internet access. Moreover, it is undisputed there is no bottleneck in this market.

Indeed, each of the four types of providers use their own facilities and do not rely on the facilities of the other three providers. As everyone has mentioned, cable modems clearly dominate the market today, and they serve 3 out of 4 customers.

Finally, it is undisputed that telephone companies are heavily regulated when they provide DSL, but no similar regulatory requirements apply to cable modems or wireless, or satellite providers. Despite the fact that we are the non-dominant player in this competitive market, we are subject to persuasive regulation by the FCC, by the States, and now recently by the Illinois Commission.

For example, when we provide DSL service, we are faced with the following types of obligations. We have to interconnect with data competitors. We have to share the broadband spectrum. We have to connect with ISPs. We have to offer open access.

We have to offer wholesale pricing obligations, and we have to offer resale, and we have to provide the location, and we have to operate through a separate structurally separate subsidiary.

And I would say to Mr. Cicconi that cable companies, including AT&T, do not have any one of those obligations. Not a one. If you compare that to a franchise obligation, you can see the regulatory disparity that exists in this market.

So, in contrast, there is simply no public policy justification for heavily regulated, the non-dominant player, DSL, in a competitive market. Moreover, the disparate regulatory treatment has consequences, and it results in reduced and distorted decisions, delay deployment, higher costs, and fewer choices. Now, let me just give you an example in Illinois.

Chairman TAUZIN. The gentleman's time has expired. So you are going to have to wrap real quick.

Mr. MANCINI. In Illinois, as a result of the decisions by the Illinois Commission which required us to, quote, unbundle our integrated line cards, we have submitted sworn affidavits from AlCatel's chief technology officer, that says that one is technically infeasible.

In addition, it increased our costs over $500 million, and as a result, we had to suspend deployment of DSL in Illinois. This is the type of regulatory decision by State agencies which is going to destroy the potential for DSL to compete against cable modems in the future.

[The prepared statement of Paul K. Mancini follows.]

PREPARED STATEMENT OF PAUL K. MANCINI, VICE PRESIDENT AND ASSISTANT GENERAL COUNSEL, SBC COMMUNICATIONS INC.

Thank you for the opportunity to appear and testify before you this morning. I am Paul K. Mancini, Vice President and Assistant General Counsel of SBC Communications Inc.

HR ____, commonly known as the Internet Freedom and Broadband Deployment Act of 2001 will encourage greater broadband investment and deployment of high-speed Internet access to consumers in all areas of the country. It will balance the unjustified and anticompetitive regulatory disparity that currently exists between different broadband providers, help close the Digital Divide, and encourage competition by providing customers with more choices and higher quality services at competitive prices.

I commend Chairman Tauzin and Ranking Member Dingell for their leadership and for recognizing that the application of rules designed to regulate the legacy voice network has delayed the availability of high-speed Internet access for consumers, has delayed the widespread deployment of broadband services for consumers, and has slowed competition between competing providers in this market.

There are two fundamental competitive principles that should guide Congress. First, competitive markets should be free from governmental regulation of the rates, terms and conditions under which goods and services are provided to the public. Second, if there is some public policy reason for regulating a competitive market, all service providers in that market should be subject to symmetrical regulatory requirements. In other words, the *same* services in the *same* market should be regulated in the *same* way, regardless of who is providing the services or what technology is utilized to deliver those services. Let consumers decide who to select based on competitive markets, and not on the result of regulations that pick winners and losers.

Congress need look no further than to the wireless market for confirmation that these principles will benefit consumers and competition. In the early 1990s, Congress decided that a competition model (rather than a regulatory model) should be used for the wireless market. Hence, neither the FCC nor the states regulated the prices, terms or conditions in that market and there are no requirements for wirelesss providers to unbundle their networks or to assist their competitors entry into the market. As a result, investment in the wireless market has exploded, prices have fallen dramatically, and consumers have benefited from the robust competition in that market by seeing more choices, more innovation and lower prices.

HR ____ is a step in the right direction toward fulfilling these fundamental principles in the market for high-speed Internet access services. Any legislation to promote the delivery of these services to the public should reduce the asymmetric regulation that currently exists between the cable industry, the telephone industry and other providers of these services, and bring about more competition and choices for consumers and to the marketplace. It is only through full and fair competition that consumers in the market for high-speed Internet access services can obtain the benefits of quality, choice and price.

SBC strongly supports HR ____ and encourages this Committee and the Congress to pass this legislation. This bill is procompetitive and it will remove costly and unnecessary barriers to entry by lifting disparate regulation in the competitive high-speed Internet access market and the competitive high-speed data services market.

In considering HR ____, it should be emphasized that in the market for high-speed broadband Internet access—all competitors, including SBC as well as cable,

fixed wireless and satellite providers, started from the same starting block. In the market for high-speed data and Internet access services, there are certain undisputed facts that compel adoption of this legislation:

- First, the market for high-speed Internet access services is a competitive market in which there are *four* different types of providers (using different technologies) competing head-to-head—cable modems, Digital Subscriber Line or DSL, fixed wireless and satellite providers.
- Second, there is no "bottleneck" in obtaining access to the customer—none of the Internet access providers depend on the facilities or networks of their competitors to reach their end user customers.
- Third, all local exchange carriers (LECs) that provide DSL are behind in the provision of high-speed Internet access services—cable modems currently dominate this market and serve three out of four customers who use such services.
- Fourth, the LECs are heavily regulated when they attempt to provide competitive Internet access services (while cable and the other competitors are unregulated) and the LECs (but not their competitors) are required to assist their competitors in entering this market.
- Fifth, SBC and the other Bell companies are at a competitive disadvantage in that they cannot provide competitive high-speed Internet access and data services on an interLATA basis, while their cable, fixed wireless, satellite and other competitors are free to do so and do not face the same restrictions.
- Finally, state regulatory commissions have unwisely asserted jurisdiction over only the DSL providers in the high-speed Internet access market and, to date, at least one commission has required the so-called "unbundling" of the high-speed Internet access and data networks of the incumbent local exchange company (ILEC) (including requiring the mixing and matching of line cards made by different manufacturers located in remote terminals). This so-called "unbundling" is clearly contrary to the intent of this legislation, and, it in fact, would be prohibited if HR ____ is enacted. These types of requirements apply only to the incumbent local exchange company and not to any other high-speed Internet access provider—furthering increasing the regulatory disparity of a competitive service.

The effects of the disparate regulatory treatment that currently exist in the high-speed Internet access market include reduced investment by LECs in this market, the inefficient deployment of new technologies, higher costs, fewer choices for consumers, and continuation of the "digital divide." Hence, elimination of the regulatory disparity between the Bell operating companies (BOCs) and their competitors in the high-speed Internet access and data services markets is essential to fulfilling the fundamental principles outlined above.

In summary, access to high-speed Internet connections is crucial in today's economy. High-speed connections to the Internet mean faster downloads and can provide a lifeline to small businesses, schools and hospitals. Communities that have access to high-speed Internet connections will prosper and grow in the Information Age. Communities that don't will find themselves on the wrong side of a growing digital divide. Consumers with high-speed Internet connections will be able to get on-line with the speed they need to link with far away friends and family members, tap the latest medical or educational resources, or enjoy multimedia entertainment.

However, different rules for competing high-speed Internet companies are not only bad public policy, they are stifling and distorting investment and competition and creating anticompetitive barriers to entry. That slows down choices and new technology for consumers. Without full and unfettered competition in this market, many consumers will never have access to high-speed Internet services or they will only have access to the services provided by the dominant cable modem provider.

There is no downside in passing HR ____. Consumers benefit from the growth of competition and the elimination of costly and anticompetitive barriers to entry in the market for high-speed Internet access services. Equalizing the regulatory treatment of competitors will permit my company (as well as other providers in this market) to compete for customers fairly, resulting in greater choices, lower prices and more rapid technological innovation. By contrast, the failure to enact H.R. ____ will freeze or reduce DSL deployment and investment, and leave the rest of the country with no alternative to the dominant local cable operation and the other providers in this market. Some competitors may want to delay the inevitable competition that will result when all markets are open to competition and to handicap the Bell companies when competing in the Internet access market, but such a policy will harm competition and consumers. The same competitive services should be regulated the same way. One competitor should not have to incur increased costs and operate at a competitive disadvantage simply because of the type of technology that it uses.

Such regulatory disparity is bad public policy, it creates barriers to entry, it distorts investment decisions and the marketplace, and it restricts choices for consumers.

BACKGROUND

Historically, the only telecommunications pathway or wire to nearly every home and business in this country was the local copper loop used to provide voice service. Until recently, the local loop was part of a circuit-switched network which was capable of transmitting only narrow-band analog or digital voice, and slow speed switched data services. The local exchange telephone companies provided these services pursuant to a legally franchised monopoly, and thus were subject to pervasive regulation at both the state and federal level. As competition began to develop in the telecommunications marketplace, the local loop continued to be viewed as the only way for competitors to deliver voice services to the customers. In other words, it was considered a "bottleneck."

However, approximately 25 years ago, there developed another telecommunications pathway or second wire to the home. Cable service began to emerge as an alternative to broadcast television service, through the use of antennas located at the cable provider's head-end that received programming from satellites, which was then transmitted over coaxial cable to homes and businesses. Coaxial cable was different from the LECs' local copper loops, in that it was capable of transmitting broadband video and high-speed data services.

Additional telecommunications pathways to homes and businesses rapidly developed through various wireless technologies, including digital satellite service, cellular and PCS services, as well as fixed wireless.

Meanwhile, as competition was developing in the telephone industry, the Internet began to evolve. When the '96 Act was being debated in Congress, the scope of the Internet and the provision of high-speed Internet access to the public was uncertain. Congress sought to address this new telecommunications phenomena and the promising new advanced services through passage of Section 706 of the '96 Act. Section 706 established a new national telecommunications policy to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans." Specifically, Congress directed the FCC and state commissions to pursue this objective by "utilizing price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulatory methods that remove barriers to infrastructure investment."

Unfortunately, neither the FCC nor the States have eliminated, or even reduced, the regulation of ILECs, particularly when they are trying to compete in the competitive advanced services market.

CABLE MODEM VERSUS DSL SERVICE

With the evolution of the Internet, both the cable and telephone industries had to develop the technologies necessary to provide their customers with high-speed Internet access and data services. The cable industry developed cable modems to be used in conjunction with their broadband coaxial cable networks. The ILECs were at somewhat of a competitive disadvantage because their narrow-band local copper loops were not designed nor were they equipped to provide high-speed service to consumers or businesses. Hence, we had to develop a new technology—DSL service, in order to provide digital information at high bandwidths over copper loops.

While the ILECs were developing DSL service, the cable industry has been rapidly deploying its cable modem technology. The ILECs are now playing catch-up and are scrambling to deploy DSL service as a competitive alternative to cable modem service for residential and small business customers. But, the cable industry is far ahead of the ILECs in terms of actually serving customers. At the end of the first quarter of 2000, there were approximately 2.5 million residential subscribers to high-speed Internet access services in the United States. Of these 1.9 million, 77% were cable modem subscribers. Only 21% were DSL subscribers. It obviously makes no economic or public policy sense, for the FCC and the states to continue to regulate the nondominant player in this competitive market (DSL), when the dominant player (cable companies that provide cable modems) serve three out of four customers in that market and they are completely unregulated.

Thus, the consumer market for the delivery of high-speed broadband Internet access and data services is a highly competitive market served by the cable industry, the ILECs, fixed wireless providers and satellite companies. The FCC has recognized, and it is beyond dispute, that the high-speed Internet access market is a separate and distinct market in which cable modem service, DSL service, fixed wireless service and satellite access service provide the *same* high-speed Internet access and

offer to the *same* residential and business customers the *same* advanced and high-speed data services.

Most importantly, the ILECs had no "head-start" in the deployment of advanced services technologies. The ILECs possess neither *de facto* nor *de jure* monopoly in the provision of broadband Internet access, advanced services, or high-speed data services. And, finally, it is absolutely clear that the LECs' local copper loop is no "bottleneck" in the provision of high-speed Internet access and data services to consumers. None of the four types of providers in this competitive market rely on or use the facilities or networks of their competitors.

ASYMMETRIC REGULATION

Unfortunately, the rules and regulations that apply to the provision of advanced services by the cable industry, ILECs, fixed wireless and satellite companies are entirely different.

The cable industry is essentially unregulated in the provision of cable modem service. Under Title VI of the Communications Act, the cable industry (as well as fixed wireless and satellite access providers) are not required to interconnect with its competitors, *nor* unbundle its facilities and make them available to competitors, *nor* provide collocation space to its competitors, *nor* resell its services to competitors, *nor* provide advanced services through a separate subsidiary. Moreover, the cable industry is not currently required to give its customers a choice of an Internet service provider. This unparalleled ability of the major cable providers to control both the means of access to the Internet, combined with its control of the content that is delivered to consumers provides it with an enormous competitive advantage in the marketplace. For example, AT&T/TCI/Media One and AOL/Time Warner control vast holdings in the access and content market. AT&T/TCI/Media One is the largest cable provider and provides cable modem service to almost 30% of all cable modem customers. AOL/Time Warner, directly and through its ownership of RoadRunner provides cable modem service to approximately 38% of cable modem customers. Together, AOL/Time Warner and AT&T also own 8 of the top 15 video programming services, including 4 of the top 5. As a result, it is more likely that the cable industry and other broadband providers, rather than ILECs, will continue to hold a dominant position in the provision of high-speed Internet access and advanced services.

This is in stark contrast to the telephone industry, where the ILECs remain pervasively regulated *today,* even when they try to provide competitive advanced services that do not use or rely on the legacy voice networks. Under Title II of the Communications Act, the ILECs are subject to common carrier regulation in their provision of broadband Internet access, advanced services, and high-speed data services. In addition, the ILECs are obliged to assist the CLECs in offering competing DSL services through the interconnection, unbundling, and collocation requirements of Section 251(a) and (c) of the Telecommunication Act of 1996. Moreover, SBC's advanced services affiliates, through which SBC provides Internet access and high-speed data services, are required to provide interconnection under Section 251(a) and permit resale under Section 251(b).

Unfortunately, under an asymmetric regulatory scheme, the regulators, not the marketplace, determine the winners or losers. That significantly affects the growth of the services and the availability of choice. Accordingly, any legislation addressing high-speed broadband advanced services should eliminate the regulatory disparity between the cable companies, telephone companies, fixed wireless providers and satellite companies when they provide high Internet access services.

This bill goes a long way toward accomplishing this objective by exempting high-speed data and Internet access services and the facilities used to provide such services from regulation, and by eliminating any further unbundling requirements with respect to high-speed Internet access and data services.

ECONOMIC BENEFITS

The rapid deployment of high-speed services is essential to expanding and reviving the economy. During the last economic boom, the information technology sector generated roughly 30% of the total annual U.S. economic growth and 70% of the total U.S. productivity growth. However, just as it helped revive the economy during the last boom, the present downturn in the Internet and high-speed industry has contributed to a broad downturn in overall growth and investment. The tightening of capital markets before Internet firms could begin booking profits caused this chain reaction. In part, these E-commerce and content providers have failed to create profitable businesses because slow narrowband connections limit the Internet's potential. Slow connections inhibit this industry by limiting product information to

static pictures and text. High-speed Internet access, with speeds up to 100 times greater than narrowband, eliminates these impediments.

The broadband market is heavily oriented towards content, and will include packages of video and data. The key broadband offering is an integrated package of transport and content, not just transport alone. The cable industry occupies the strongest position in this market because it has the facilities and faces *NO* regulation. Likewise, the telephone companies today are in the best position to compete with the cable industry and other broadband providers to bring new services, lower priced services, and more choices to consumers, but not without making a substantial investment to build a competing broadband network. This is exactly what SBC has started.

PROJECT PRONTO

On October 18, 1999, a few days after SBC closed its merger with Ameritech, we announced one of the most ambitious network enhancement upgrades in telecommunications history. We called this Project Pronto to emphasize the speed that customers want to access the Internet and the need for quick time-to-market to compete with cable modem providers and others that are providing alternative technologies for high-speed Internet access. Unlike many programs and services offered by the large long distance companies and other local competitors, this Project was intended to serve the mass residential and small business market, not large business customers. In other words, customers wanted high-speed access, cable companies already had a head start in this market and we needed to commit capital and deploy new facilities fast in the market. The size of the Project is huge, as is its $6 billion price tag. It calls for constructing 16 thousand miles of new fiber optic cable, 17 thousand "remote terminals" and much more equipment. This was an SBC shareholder driven investment, with no tax incentives or government loans. Project Pronto involved SBC acquiring and deploying new types of advanced services equipment that all other potential DSL competitors could have invested in and deployed on their own.

Pronto started out covering all 13 SBC states. Besides the quality of life enhancing benefit of bringing high-speed Internet access to the broader mass market of residential and small business consumers that make up your constituents, Pronto means more jobs in each state and contributions to the economy via purchases of equipment from several vendors for items such as the new fiber facilities and new equipment used to provide this access.

STATE REGULATORY MINEFIELDS

Managing a project of this scope and complexity is hard enough from a pure business perspective, but the road to deploy Pronto has also involved trying to manage our way through a regulatory minefield. The recent DSL related regulatory requirements imposed in Illinois illustrate how onerous and technically infeasible requirements can distort and potentially destroy competition in the high-speed Internet access market. The regulatory requirements in Illinois are such that SBC has determined it must suspend Pronto deployment in that state.

This decision was made with great reluctance in that it, in effect, concedes market share to the dominant provider of high-speed Internet access, the cable modem providers and the other providers in that state. However, we made this decision because of our obligations to our shareholders to make investments where there is an opportunity to earn a reasonable return on such investments. The end result of this situation is that, if the Illinois Commerce Commission ("ICC") does not reconsider its order, consumers in that state will lose a choice in the high-speed Internet access market, and all DSL providers within SBC's ILEC territory in Illinois (including SBC's own affiliate) will fall even further behind cable modem providers who already serve about 3 out of every 4 residential customers. The bottom line is that consumers and DSL providers lose and cable increases its lead in this market.

What is so bad about the Illinois regulatory situation? While the subject is quite technical in nature, essentially the ICC is applying rules primarily designed to open the legacy local exchange voice market to these new DSL-capable facilities and equipment in the high-speed Internet access market. In our view, the types of state actions ordered by the Illinois Commission not only are unlawful under the 1996 Act, but also they apply solely to one provider in the market (DSL), destroy the incentives of SBC and other LECs to invest in the high-speed Internet access market, and compliance with those requirements are technically impossible. Even the manufacturer of the advanced services equipment in question has testified under oath that they are technically infeasible and simply will not work. As a result of these

actions, SBC has had to suspend deployment of DSL facilities in Illinois, to the detriment of consumers and competition in that state.

Specifically, these rules require the Pronto architecture to be made available in minute piece parts in a "mix and match" manner to allow competitors to install equipment components made by different manufacturers inside SBC's advanced services equipment. There are substantial problems with these rules. First there are portions of the Illinois orders that just don't work. Trying to fit one vendor's components in another vendor's equipment is like trying to insert a Sega game cartridge into a Nintendo game system or a Toyota carburetor into a Ford engine. It won't fit and it won't work.

It is not just SBC that is saying this. So do the manufacturers of the telecommunications equipment in question. The chief technology officer of Alcatel has submitted a sworn affidavit to the ICC that the requirements imposed by the ICC are simply not technically feasible. The ICC requires the Pronto architecture to do things it is just technically not capable of doing. All of these new obligations are unworkable from an economic, technical and operational perspective. Even if these requirements were technically feasible (which they are not), they add unnecessary and unjustified complexity and costs. They undermine the business case for proceeding with Project Pronto in Illinois. These additional costs—which may exceed more than $500 million for Illinois alone—would price DSL completely out of the Internet access marketplace. While SBC is not opposed to providing access to its Pronto high-speed Internet access service to competitors at forward looking prices and, in fact, offers to do so, it cannot deploy new DSL facilities under the Illinois regulatory model.

A major concern is that the FCC and other states may decide to follow the counterproductive policies enacted in Illinois. Onerous regulations that single out only the non-dominant provider in this competitive market discourage investment and eliminate the benefits that facilities based competition brings to consumers. This important issue calls out for a national direction and policy. We believe that this bill is essential and to promote investment and competitive choice to the benefit of American consumers.

INTERLATA RESTRICTIONS

One of the key regulatory disparities in the market for high-speed data and Internet access services is the restriction from offering interLATA long distance services. Section 271(c) of the Act prevents the Bell operating companies (BOCs) and their affiliates from providing services across LATA boundaries and from offering the Internet backbone service itself. This restriction is no longer necessary or required because the market for high-speed data services for business customers is a fully competitive market and the BOCs are not in a monopoly position in this market. None of our competitors in this fully competitive market—cable companies, satellite or wireless providers, the interexchange carriers, nor the CLECs—are subject to this restriction.

The interLATA restriction thus places BOCs at a significant competitive disadvantage, in the provision of a full complement of competitive high-speed data services. Most medium and large business customers have offices in multiple locations, states, or even countries that need to be interconnected for the exchange of high-speed data communications. Frequently, these business customers also want someone to manage these high-speed data networks, including for example the ATM and Frame Relay engines, SONET rings, and interLATA transport. This requirement places the BOCs at a distinct competitive disadvantage, because they are unable to be full service providers to these business customers.

There is no continuing need for the interLATA restrictions for these services. As the FCC has found, the business market for high-speed broadband services is separate and distinct from the consumer market for the same services.[1] Virtually all business customers have access to high-speed broadband service that is typically provided over T-1 lines, and business customers have many competitive alternatives for obtaining that high-speed broadband access.[2] Accordingly, there is no "bottleneck" in the "last mile" to the business customer for such competitive services.

Finally, the interLATA restriction (as well as the other disparate regulatory requirements) artificially inflates the BOCs' costs of deploying high-speed Internet access and data service technologies, and renders that deployment less efficient. These

[1] In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, *Report,* CC Docket No. 98-146 at ¶28 (released February 2, 1999).

[2] Id. at ¶26.

costs are reflected in our costs to our customers, and they preclude our ability to exert downward pressure on the retail rates in these markets to the detriment of customers. Further, it means that significant portions of our nation, particularly in rural areas, cannot receive high-speed access to the Internet because they are not close enough to a hub that can connect them to the Internet backbone. With the limited interLATA relief contained in this bill, the BOCs will be in a position to connect these communities to the Internet, thus making available to rural consumers and businesses the same high-speed Internet access and high-speed data services that are available in urban areas.

CONCLUSION

HR ____ has gained the support of many members of this Committee and over 70 members of the House. It is a major step in the right direction to correct the imbalance in regulation and close the "digital divide." We look forward to working with the Committee and the Congress to achieve these objectives.

Thank you for the opportunity to comment on this very important legislation which will, if passed, promote competition and benefit all consumers by providing them with more choices and higher quality services at lower prices.

Chairman TAUZIN. I thank the gentleman.

The Chair recognizes Mr. Clark McLeod.

## STATEMENT OF CLARK McLEOD, CHAIRMAN AND CO-CEO, McLEODUSA

Mr. MCLEOD. Thank you, Chairman Tauzin. I appreciate being invited to speak to the committee today. I will depart completely from my written comments, and try to respond to some of the comments from the group. I would like to start with the fact that this bill is totally unnecessary.

There is nothing that occurs in this bill that will spur broadband deployment to rural markets. That's obvious from what this group has already said. There is really nothing that prevents the telephone companies from deploying DSL service today. Nothing.

And for us to go and retool something that took 6 years to create the Telecom Act and undermine it in this fashion is very, very disruptive to our industry. No and's, if's, or but's about it.

This bill actually does damage. It restricts access to the Bell networks by competitors. It restricts access to a monopoly supply that is totally destructive to a competitive environment.

And it takes away any reason for the Bell companies to comply with the 14 point checklist. The 14 point checklist once complied with will allow the Bell companies to do everything everywhere, and we all agreed on it back in 1996.

So let me step back for a moment. I only have a couple of minutes here, but I have a perspective that maybe is different than some of the other people here, and that I have been in the competitive industry now for 21 years, and you can tell by my gray hair that I have been around for a long time.

I started a company in 1981 that turned out to be the fourth largest long distance company in the United States. It was started in 1981 for one reason; the FCC opened up the AT&T network to competitors to use in March 1981.

MCI had tried to compete with AT&T for 13 years up to that point, and had gotten 1 percent share. AT&T's market was open to competitors like ourselves so that we could buy services and bring in new network to combine with that to provide a ubiquitous coverage of our market area.

The exact same thing is true today. If we want a competitive marketplace, if we want broadband services deployed, the key to that is in the access to the local network. You know, that local network is made up of both copper and fiber that the Bell companies have today?

And you know that DSL is just putting a copper link on steroids? Right? So what we need access to is that copper network. Now, the Bell companies would say the network is open.

Well, if you call it being open that open, then you are right. But try to walk through a door that is that wide open. So I want to be as constructive as I can with the group today, and talk about what we could do. A couple of things that have worked recently.

Chairman Powell talked about wanting to be able to impose fines. A little twist to the fines. They do need to be imposed, $60 million have been imposed on SBC in Illinois recently, but it all went to the Illinois Government, not to the competitors who were hurt by their non-compliance.

In three States—Colorado, Iowa, and Minnesota—Qwest Communications pays us when they don't meet standards. That makes sense doesn't it? The people who are damaged.

So, one, I would propose that if anything is done that we should look to the FCC to enforce the current Act, and award damages, and award them to the right place. Make the 14 point checklist mandatory; date certain, complied with throughout the country; and then everybody is free to do everything.

And finally we can't do anything to restrict access to the current Bell network. That is what makes a monopoly a monopoly. They control supply. Competitors have to get access to that supply. Thank you.

[The prepared statement of Clark McLeod follows.]

PREPARED STATEMENT OF CLARK MCLEOD, CHAIRMAN AND CO-CEO, MCLEODUSA INCORPORATED

On behalf of McLeodUSA, I would like to thank the Committee for the opportunity to talk with you today. I would like to accomplish two goals today: first, summarize our concerns with providing the Mega-Bells unwarranted additional access to intercity long distance markets; and second, propose alternatives that will improve nondiscriminatory and quality access to all intracity networks, thereby accelerating the benefits of competition to consumers.

I. MCLEODUSA IS EXACTLY WHAT CONGRESS ENVISIONED.

*A. Entrepreneurial*

In the early 1980s, I was CEO of Teleconnect, a company founded to compete in the long distance industry. I started basically out of my garage and began to bring the benefits of competition to my customers. In 1981, the Federal Communications Commission (FCC) mandated AT&T to allow competitors complete use of its existing network. As public policy continued to develop and support competition in that industry, several competitors, including Teleconnect, began to have success. Over the course of about 8 years we built Teleconnect into the fourth largest long distance company in the country employing nearly 7,000 employees. In 1990, MCI purchased the company, then named TelecomUSA. So you can see that entrepreneurial spirit can produce effective competition.

In 1992, I organized McLeodUSA, headquartered in Cedar Rapids, Iowa, and began competing in the local and long distance telephone markets. We started slowly. When the Telecommunications Act of 1996 ("the '96 Act") was passed, we were able to take our company public and really accelerate our competition with the local monopoly Bell companies.

McLeodUSA's corporate team is recognized as one of the strongest management groups in the telecom industry: strong because of our breadth, and strong because

of our depth. With the support of policy-makers, we can continue our competitive activities at a similar pace if policy makers do not give unwarranted favors to the Mega-Bells that will delay or foreclose competition.

McLeodUSA Incorporated is a Nasdaq-100 company traded as MCLD. The Company's Web site is available at www.mcleodusa.com.

*B. Serving a Wide Range of Customers*

We serve both business and residential customers. In fact we have more residential customers than business customers. Our goal is to be the number 1 and most admired company in the markets we serve. We cannot accomplish that by only serving large business customers in large cities, so we rejected that model. The Mega-Bells like to portray competition as competitors who merely "cherry-pick" high-margin large business customers. This portrayal is clearly false as to McLeodUSA.

We also serve a wide range of communities ranging from cities as small as a few hundred people up to cities as large as Chicago. The "96 Act only required the Bell companies to open their intracity networks. Consequently, McLeodUSA is currently serving or plans to serve customers in all markets served by the Bells (now including GTE).

In the communities we serve, our focus is primarily on small and medium sized enterprises. While we do serve residential and large businesses, we have found that small and medium sized businesses are largely underserved. We have good success with those customers using our beat-cop sales approach that meets customers face-to-face. Currently our average customer only has about 6 lines. So again you can see we are not in this business to only serve the "high margin" large business customers of the Bell companies.

II. MCLEODUSA IS BRINGING COMPETITION AND ITS BENEFITS.

In March 1996 we served approximately 40,000 local access lines. By December 2000 we served 1.1 million lines. Although we have demonstrated rapid increase in our annual compounded growth rate, we currently serve less than 1% of the nearly 200 Million access lines served by the Bell companies. We can attest to the fact that competition in the local markets is a long-term endeavor.

*A. Jobs*

In late 1994 we had approximately 200 employees, primarily in Iowa. Today we have nearly 11,000 employees working in 130 offices located across 25 states. We have invested in and created jobs in many of the districts of the members of this committee. We expect our job creation will continue to grow as long as public policy continues to support competition.

*B. Technology*

At the end of 2000 we had 50 central office and long distance switches and 396 data switches in operation. In addition we deployed and operated nearly 22,000 route miles of fiber optic cable connecting most of those facilities, growing to more than 30,000 miles by year-end. Our one functional network connects 810 cities in all 50 states allowing McLeodUSA to reach approximately 90% of the U.S. population. Even better, we are now actively developing next-generation enhancements to our network. This activity will allow us to offer high speed, broadband, next-generation services throughout our network coverage area. The one critical missing requirement, however, is nondiscriminatory and quality access to the intracity network.

McLeodUSA is not alone in the installation of fiber optic cable. I encourage you to look at other competitive companies who are installing fiber optic networks. I believe you will see an astonishing amount of intracity fiber and technology installed.

During my years in the competitive long distance industry, I saw deployment start in the early "80s and really take off after divestiture in 1984. During the next 15 years, numerous competitors have entered the intercity long distance markets and constructed multiple intercity fiber networks. Long distance competition is robust and so much intercity fiber exists throughout this country that arguable supply exceeds demand. This should not surprise anyone and, I contend, is the normal consequence in a truly competitive industry. Consumers are reaping the benefits through reduced long-distance rates.

This country has an oversupply of intercity network capacity to carry all services, both narrowband and broadband. We do not need more intercity capacity as proposed in this so-called "Internet Freedom and Broadband Deployment Act." What we really need are intracity networks with broadband capacity. Existing intracity networks are narrowband only. This is the real "Digital Divide." It exists between intercity broadband fiber networks and intracity narrowband copper networks.

This divide can only be effectively bridged by competition. Meaningful competition, not legislative "relief," will drive appropriate investment and technological advancement just as it has for the past five years. Meaningful competition absolutely depends on quality access to all intracity networks.

Quality access means much more than simply ordering a loop or circuit. It entails equal, nondiscriminatory treatment in every step of the process, including Pre-ordering (exchanging information), Ordering (accurate and timely data exchange between competitors), Provisioning (confirm and implement orders accurately), Maintenance and Repair (service problems) and Billing.

III. CHANGING THE FUNDAMENTAL RULES OF THE "96 ACT IS UNNECESSARY AND HARMFUL TO COMPETITION AND CONSUMERS.

*A. Unnecessary*

Changing the existing system of laws and regulations as supported by the Mega-Bells will definitely not address the critical problem of nondiscriminatory and quality access to all intracity networks. Congress debated the telecommunications issues for seven years before finally passing the "96 Act with the support of all segments of the industry. Since then the FCC has further defined and enforced the law. The system is working, and could be strengthened with certainty of compliance by the Bells and additional enforcement of the current law.

During the past 5 years, McLeodUSA and other competitors have formulated and executed business plans. We are aggressively competing under the existing rules and never asked Congress for any legislative "favors."

In sharp contrast is the action of the original seven Bell companies and GTE. Although the stated purpose of the proposed legislation is to allow the Mega-Bells to provide intercity long distance data services, it is interesting to note that these Bell companies have always been free to provide these services outside of their own regions. In fact, at the time the "96 Act became law, it was anticipated that we would see widespread competition between the Bell companies. In this sense, the original seven Bell companies and GTE controlled their own destinies. They could have chosen to, and were expected to, compete directly against each other. If they had, they could be in the intercity market today. Instead they merged to form four larger, stronger "Mega-Bell" monopolies.

During their merger review proceedings, both SBC and Verizon made commitments to compete outside their region to gain regulatory approval. Their actions since show that their promises were hollow. For example, given the size and scope of SBC it would not have been difficult (in fact, I believe it would have been relatively easy) for SBC to invest in fiber to connect its California operations with its Texas operations and actively compete in Arizona and New Mexico along the way. But they refused. Furthermore, Verizon had competitive operations and customers in Illinois, California, Indiana and Texas and was poised to compete with SBC in those states. Instead, they recently sold that business to SBC. The result is increased monopoly and decreased competition in these states. Verizon avoids competition and SBC invests in its monopoly rather than in competition. Their choices have slowed the development of competition and delayed competitive choices for consumers.

Furthermore, the Mega-Bell-controlled intracity network serves over 90% of the nation's business and residential lines. They also have a combined market capitalization of $404 billion as of April 4, 2001, which is about 33 times larger that the aggregate market cap of CLECs. Their size and last mile stranglehold puts them in control of the course of competition. Even large companies like AT&T, WorldCom and Sprint are not in a comparable position because they lack ownership or quality access to the intracity network. Instead of working with us to provide quality access to the intracity network, the Mega-Bells have constructed countless roadblocks, like imposing special charges only on competitors, and pursued numerous legal challenges to the requirements we felt they agreed to.

Now, in spite of their actions and their inherent competitive advantage, they are before Congress asking for favors. Last year, they asked Congress to eliminate reciprocal compensation payments. Now they seek unwarranted access to the intercity long-distance business that will only delay competition and preserve their monopoly over local markets. Their actions warrant consternation not "relief."

Congress should not being granting "favors" to the Mega-Bells. Since our existing system is working, and we have robust intercity networks, there is no need to give "relief." When Mega-Bells effectively open their intracity network quality access, the FCC grants authority to provide long distance service. To date the FCC has granted long-distance (intercity, narrowband and broadband) approval in 5 states: New York, Texas, Kansas, Oklahoma and Massachusetts. Numerous other Section 271

activities are ongoing. Most of the remaining 45 states have invested heavily in the 271 process, and we should support that investment of tax dollars.

We should also consider what has already been given to the Mega-Bells. Currently the telecommunications industry is divided into intracity (local) and intercity (long distance) markets. The Mega-Bells currently have access to and control virtually the entire intracity portion of the industry. On the long distance side, the industry is further divided into intra-LATA (which the Mega-Bells also have access to) and the interLATA markets. The inter-LATA segment is further divided into in-region and out-of-region. The Mega-Bells have always had access, but refused to serve, the out-of-region segment. We must not simply "give" them access to an additional part of the intercity long distance market.

*B. Harmful to Consumers and Competition*

We are making progress on opening the critical local loop bottleneck. We cannot afford to stop or slow that effort by allowing Mega-Bells to prematurely enter the intercity long distance data market.

Today the sole method of solving the last mile bottleneck is by offering the "carrot" of in-region intercity long distance entry. Of the total "pie" of telecom revenues, the Mega-Bells already have access to more than one-half by offering local and intra-LATA long distance service. In fact they dominate that portion of the total telecom market. SBC alone now serves approximately one-third of all access lines in the country.

If you do not find the pace of local competition acceptable, the solution is to increase the "carrot" or add a "stick," rather than to reduce the carrot. Data services constitute the high-growth, high-revenue segment of the intercity long-distance market. It makes up the largest portion of the "carrot." If it is lost, there will be almost no remaining economic incentive to comply with the 14-point checklist in Section 271 and provide quality access to the last mile local loop.

In addition it is almost impossible to divide the "carrot" as a practical matter. There is no meaningful distinction between voice and data. Whether you are watching voice or data, when they are digitized and transmitted over a fiber optic cable they are both just flashes of light. When you see those flashes there is no way to determine whether the message is voice or data and, therefore, no way to know if the message should be allowed. Furthermore, as voice over the internet technology continues to develop, the problem grows. If we allow the Mega-Bells to provide long distance service for the Internet, then when voice communication over the Internet becomes widespread, the "carrot" will be gone and there will be no incentive to ease the stranglehold on the last mile local loop.

Just as important is access to capital. Since passage of the "96 Act, McLeodUSA and other competitors have raised billions of dollars in capital to fund aggressive plans to deploy broadband networks to serve business and residential consumers in both urban and rural America. Continued access to capital is a critical need for competitors like McLeodUSA to continue providing consumers with a competitive choice.

McLeodUSA is acutely aware of the need to maintain investor confidence in the national goal of bringing competition to the telecommunications marketplace as set out in the "96 Act. Legislation which would carve out intercity long distance data services from the pro-competitive goals of the "96 Act would surely be seen by Wall Street investors and others in financial markets as a retreat from that national commitment and bad for competitors. As a result, the ability of new entrants to raise the capital needed to bring true, facilities-based competition to all telecommunications markets could be placed in jeopardy. Such a further constriction on al already tight capital market could slow the drive toward competition even though that is not what supporters of such "data deregulation" legislation intend.

During last year when Congress considered changing the rules and granting legislative "favors" to the Mega-Bells, access to capital declined dramatically. The stock prices for the Mega-Bells decreased in equal comparison to the overall market drop. In contrast, the CLEC stock prices were really punished and driven to historical lows. During a 52-week period prior to April 4, 2001, stocks have fallen the following amounts: Mega-Bells—39% and CLECs— 94%.

Although stock prices for the strongest CLECs like McLeodUSA, Allegiance Telecom and Time Warner Telecom only fell 80%, 89% and 65%, respectively, Wall Street clearly favored the Mega-Bells who were the clear beneficiaries of the proposed changes in the rules. CLEC stock prices disproportionately decreased for two key reasons: uncertainty in the public policy arena and continued difficulties in accessing the Bells' intracity networks.

Certainty in public policy will steady the capital markets. Additional capital flowing to competitors will allow continued deployment of intracity fiber to connect with the existing copper network owned by the Bell companies. This will help connect

the intracity network with the robust intercity network and bring high-speed services to every home in the local market.

## IV. ALTERNATIVES TO ENSURE NON-DISCRIMINATORY AND QUALITY ACCESS TO ALL INTRACITY NETWORKS, THEREBY BENEFITING CONSUMERS

### *A. Separate Mega-Bells' Network and Retail operations*

In order to facilitate the growth of competition we must return our focus to nondiscriminatory and quality access to the "last mile" local loop.

As I described earlier, by the end of 2002, McLeodUSA will be capable of delivering broadband service to within a local telephone connection of approximately 90% of the U.S. population. Our fiber network will be up to the Mega-Bell bottleneck at the local loop. But, we need continued commitment from policy-makers to help open the bottleneck in order to complete delivery of broadband services to customers.

There is an inherent conflict of interest between the Mega-Bell's dual role as both the network supplier and retail competitor. As the Mega-Bells lease their local network infrastructure to CLECs, the Mega-Bell's retail operations are threatened with lost customers and revenue. As long as they can, the Mega-Bells will preserve the use of their last mile network for preferential use by its retail operations.

The only viable, long-term solution, and the very best way to facilitate competition, is to separate the Mega-Bells' network and retail operations. Competitors and Mega-Bell retail operations must each have quality access to the local infrastructure (loops, unbundled switch ports, unbundled trunks) on a nondiscriminatory basis. As we have seen before in other circumstances, separate but equal does not work. Mega-Bell retail operations must be required to purchase the same network inputs at the same rates, under the same terms and conditions and through the same operation support systems (OSS) as competitors. And, Mega-Bell network operations must be made blind. When an order or request is received they must not know whose order is being handled in order to insure equality.

Separation can be done either structurally, by breaking the Mega-Bells into two companies, or functionally by establishing processes and procedures to separate the operations. Qwest has recently undertaken functional separation and while we are at the very early stages we hope their actions will be fruitful. We are working closely with Qwest in this process and are willing to work with others. We believe, however, that if competitors can show that functional separation has not occurred, then either the FCC or state regulatory bodies should have jurisdiction and authority to require structural separation. In the end we must have separation to insure quality access for all competitors to the ubiquitous network paid for by consumers, along with improvements being paid for with forward-looking UNE rates and true parity regarding provisioning of local service, which is the cornerstone of the Section 271 competitive checklist.

### *B. Require Mandatory Date Certain Nondiscriminatory and Quality Access to all intracity Network*

Requiring specific actions can also facilitate competition by the Mega-Bells. What I propose here is adding a "stick" to our policy scheme, in addition to the "carrot."

Congress should make compliance with the 14-point checklist in Section 271 of the 96 Act mandatory. Compliance with the 14-point checklist will provide competitors with nondiscriminatory and quality access to the intracity network. So the key is for Congress to amend Section 271 to require the Mega-Bells to meet those requirements to the satisfaction of the FCC by a date certain. If they fail to do so, the statute should provide a penalty for noncompliance and the penalty must be sufficient to make compliance the more economic alternative. The statute should also authorize a private cause of action so that those who are harmed by any Mega-Bell's failure to comply with the law could bring suit to recover damages. These actions should also allow recovery of treble damages and attorneys fees as well as awards of punitive damages in egregious cases. These tools have been adopted previously by Congress to produce results and can be used now to establish effective competition.

Congress might also consider another alternative. Require the Mega-Bells to meaningfully compete out of region before they are allowed to offer long distance service in region. Such a requirement could be easily measured. For example we could require each Mega-Bell to actively serve a substantial number of customers in at least 150 central offices in at least 25 different markets within the territory of the other three Mega-Bells before they can offer in-region long distance.

### *C. Award Damages to Competitors*

Congress should authorize the FCC to award meaningful damages directly to competitors when the Mega-Bell company is found to have engaged in anti-competitive

conduct, violated the law or breached an agreement. Awarding damages to competitors is the fastest way to speed competition and benefit consumers by incenting the Mega-Bells to change their behavior and fix the problems, rather than simply pay the fines as a cost of doing business.

McLeodUSA has experienced the absolute truth in the concept that awarding damages directly to aggrieved competitors benefit consumers. State Commissions in Iowa, Minnesota and Colorado, through various proceedings and processes, have established a series of objective, measurable and verifiable standards in provisioning local service. If QWEST fails to meet these standards, the Commissions are authorized to require QWEST to pay damages directly to competitors. Since January 1999, QWEST has paid $4.76 million directly to McLeodUSA for failure to comply with its obligations as determined by these 3 state Commissions. Requiring the Mega-Bells to pay damages directly to the aggrieved competitors was one reason QWEST negotiated a long-term agreement that, among other things, accelerates McLeodUSA's entry into additional markets throughout the 14-state footprint of QWEST. Competition benefits. Consumers benefit.

In contrast, the Illinois Commerce Commission (ICC) does not have the statutory authority to award damages directly to competitors, and consequently, the Mega-Bell has chosen to merely pay the fines as a cost of doing business rather than fix their problems. During the past 18 months, the Illinois Commerce Commission (ICC) has imposed fines over $60 Million for anti-competitive acts and historically unacceptable quality of service performance. Under Illinois law, however, all damages imposed by the ICC are simply deposited into an Illinois state general fund. SBC, with a market capitalization of $147B as of April 4, 2001, chose to pay these $60M fines merely as a cost of doing business rather than fix the problem. Therefore, because the ICC cannot award damages directly to competitors, competitive providers are hurt and consumers are denied a competitive choice.

I want to stress this critical fact: awarding damages directly to aggrieved competitors will accelerate competitive entry into more markets and provide consumers a competitive choice.

CONCLUSION

Today we clearly have a "Digital Divide." It exists between intercity broadband fiber networks and intracity narrowband copper networks. It can only be effectively bridged by competition.

Mega-Bells have refused to compete and resisted opening their intracity networks, which has delayed competition. Congress must not reward those actions.

Meaningful competition will drive investment and technological development and absolutely depends on quality access to all intracity (local) networks that are controlled exclusively by the Mega-Bells. The biggest impediment to competition in the intracity market is the lack of nondiscriminatory and quality access to the local intracity network.

If Congress wants to facilitate competition, and the related advancement of broadband services, it *must* ensure nondiscriminatory and quality access to all intracity networks. This proposed Mega-Bell legislation does nothing to accomplish this goal, and therefore, Congress should oppose it.

To ensure such quality access, Congress should not further restrict our access to capital by changing the agreed rules, but instead should mandate compliance with the 14-point checklist by a specific date and award damages to aggrieved parties for noncompliance.

Again, I thank the Committee for the opportunity to appear before you today, and would welcome the opportunity to answer any questions that any of the Members might have.

Chairman TAUZIN. Thank you very much. The Chair is now pleased to welcome and recognize Charles McMinn for his testimony.

## STATEMENT OF CHARLES J. McMINN, CHAIRMAN OF THE BOARD, COVAD COMMUNICATIONS

Mr. MCMINN. Good afternoon, Mr. Chairman, and Ranking Member Dingell, and distinguished members of the committee. Thank you for inviting me here to testify today. I am the Chairman of the Board and a co-founder of Covad communications. Covad is the Na-

tion's largest competitive provider of broadband DSL services, including Internet access.

We offer our Internet services in an area that covers nearly 50 percent of the country. That is more than any CLEC, and that is more than any cable company, and that is more than any ILEC in the United States.

We have over 320,000 DSL subscribers on our network, half of which are residential customers, and we are a company that did not exist before the Telecommunications Act was passed.

I am here to tell you that if you pass this bill as it is currently written that you will eliminate the driving force behind the hi-tech sector, the investment unleashed by the Telecom Act of 1996.

While this bill will certainly benefit the four Bell monopolies, I promise that it will halt investment in the hi-tech sector. It is a poison pill for the technology economy. I was in New York only yesterday at a financial conference.

I am already being told by investors that because of their fear of this bill that they are slowing their technology investments, and not just in CLECs like Covad, but in equipment suppliers like Lucent and Cisco.

As you can see from this panel the three competitive companies you invited here today all chose to send their top executive officers. This issue is absolutely critical to us. The sad fact is that competition in the local telecom markets, especially in residential broadband services, would be virtually eliminated by this bill.

The Tauzin-Dingell bill dismantles the core unbundling requirements of the 1996 Act. It eliminates line sharing, and it ensures that the four Bell companies will be the only ones offering residential consumer broadband activity in the United States.

They won't tell you this, but the Bells are deploying DSL as fast as they can. In 1996, there were virtually no DSL lines installed. At the end of 2000, there were 2.3 million. SBC alone has nearly a million subscribers.

What's more, the DSL share of the market is projected to pass the cable share of high speed access in the United States within the next 2 years, and that's despite the fact that the cable industry got a 3 year head start.

The speed of DSL deployment by the RBOCs would not have happened without competition from companies like Covad. We were the first out of the gate, taking technology that they had in house for over 6 years and driving it into the market. We were the prod that got the Bell Companies moving.

We offer services in all of their markets, while still today they only offer their broadband services in their own monopoly territories. This unhealthy situation will be cemented in place if this bill is passed. The Bells, of course, will say that they face fierce competition from cable companies.

This is true only where cable companies offer high speed data services, which is a small fraction of the whole country. To put that competition in perspective, Covad's national DSL network is already larger than all of the cable modem networks in this country combined.

I have with me today our newest product, a Covad Jump Start Kit. Using this equipment, just the equipment in this box, and fol-

lowing some easy instructions, new DSL customers can install their own broadband connection without the need for us to send them a technician.

There is no need for a step data line, and a customer gets connected in a matter of days. Our kits work by employing line sharing. Every carrier uses line sharing to reach residential customers.

It allows the customer to receive DSL and surf the net over the same copper line as regular old telephone servers. This bill, as it is currently written, eliminates line sharing for everyone by the ILECs. Let me be clear. If line sharing is eliminated, Covad will have no choice but to withdraw from the residential market.

We cannot match a competitor whose lines are subsidized. We have tried in the past and it just does not work. The bill goes even further. If line sharing is eliminated, not only would we disconnect over 50,000 of our subscribers, but we would be locked out of the residential market forever.

This bill destroys the very core of the Telecom Act and the right of competitors to lease basic portions of the monopoly network. The Telecom Act does provide a tremendous framework to induce competition or introduce competition into the market. It does come up short on enforcement.

Several members of the committee have mentioned that fact. We believe that additional enforcement is necessary, and not a reduction of the competitive capabilities that the Act put in place.

I will commit to you in closing to discuss any and all of these matters at your convenience. It is without question the most important issue facing this industry and one that we take very seriously. Thank you very much for your time.

[The prepared statement of Charles J. McMinn follows.]

PREPARED STATEMENT OF CHARLES J. MCMINN, CO-FOUNDER AND CHAIRMAN OF THE BOARD, COVAD COMMUNICATIONS COMPANY

Good morning Mr. Chairman, Ranking Member Dingell, and distinguished members of the Committee. Thank you for inviting me here today to testify on this very important issue.

My name is Charles McMinn. I am the Chairman of the Board and a co-founder of Covad Communications Company. Covad is the nation's largest *competitive* provider of broadband DSL Internet connections, offering service to nearly 50% of the country—more than any other CLEC *and* any other ILEC. We have over 320,000 DSL subscribers, half of which are residential customers. I am here today to tell you that if you pass the bill before you as it is currently written, you will eliminate the driving force in the deployment of broadband technology in the United States, competition that the Telecom Act of 1996 created.

Your decision in 1996 to open local telecommunications markets to competition allowed consumers a choice in broadband services from a variety of competitive providers. The bill you are considering today will take that choice away.

The public telephone network is the only ubiquitous, government-subsidized communications delivery system in the nation. Using copper phone lines, companies can and do offer a variety of different services, including voice, data, and video. While other delivery systems offer a promise for the future, the monopoly copper phone network is the here and now. It is the only choice that many consumers will have for the next decade.

**The sad fact is that competition in local telecom markets, especially in residential broadband services, would be virtually eliminated by this bill.** The Tauzin-Dingell bill dismantles the core market-opening provisions of the 1996 Act, eliminates line sharing, and ensures that the four Bell monopolies will be the only companies offering residential consumers broadband DSL internet connections to the vast majority of consumers in the U.S.

Two colleagues and I founded Covad in October of 1996, just months after you passed the Telecommunications Act. We took DSL technology—which had been col-

lecting dust on the shelves and in the warehouses of the Bell companies for over six years' and quickly used it to build a broadband network that can reach nearly half of the homes in America.

This competition drove the Bells to deploy their own DSL services for the first time. The total number of DSL lines installed nationwide in 1996 was zero. In 1998 it was about 38,000. At the end of 2000, that number topped 2.3 million. Verizon alone jumped over 500% between 1999 and 2000, from 87,000 to 540,000. SBC ramped up to 767,000 from 169,000.

The speed of DSL deployment by the RBOCs would not have been accomplished without competition from companies like Covad. Still today, CLECs like us are the only competition that the ILECs face in many of their markets. We offer services in all of their markets, while they offer services only in their own markets. The fact is, we are the ones who compete against each and every ILEC in each and every region in the United States. They do not compete against each other.

Let me repeat that. Even though the ILECs were allowed to compete against each other, none of them have chosen to do so. Only CLECs like Covad are competing to offer consumers a choice. If this bill is passed, competition will be history and consumers will suffer, as they have in the past.

The ILECs, of course, will say that they face competition from cable companies. This is true only where cable companies offer high-speed data services, which is a small fraction of the whole country. To put that competition in perspective, Covad's national DSL network alone has more coverage than all of the cable modem systems in the U.S. combined.

I believe that Covad is a tremendous example of the type of innovation and entrepreneurship that you envisioned and expected when you passed that great law. Starting from scratch, we at Covad have led the charge to bring broadband services to every home in America, and we couldn't have done it without the Telecommunications Act.

I have with me today our newest product—the Covad JumpStart kit. It represents the progress and innovation possible through a policy of local competition. Using the equipment in this box, and by following some easy instructions, new DSL customers can install broadband in their homes without a visit from a technician. As a matter of fact, almost 80% of our residential lines are installed using the JumpStart kit. There is no need for a separate data line, and a customer can get connected in a matter of days. With JumpStart, broadband DSL can be wrapped up and given as a gift. That's quite a long way from a few years ago when the ILECs controlled broadband services, when prices were high, availability scarce, and installation times stretched into months on end. This was a time when no consumers and few businesses could even afford broadband connections. This bill would return us to those times because it would eliminate the only competition that the Bells face—CLECs like Covad.

Our JumpStart kit works by employing line sharing. Line sharing is a simple policy. It allows a customer to receive DSL and surf the net over the same copper phone line used for regular old telephone service, that same copper line that has been paid for by consumers over and over again. Because of the unique technical characteristics of DSL, broadband services and voice services can travel over the same copper wire. They literally share the line. The issue before the committee is—who has the right to choose how that wire is used—the customer or the monopoly?

Using line sharing and ADSL technology is the only economically feasible way to serve residential users and to mass market DSL service. When a Bell company provides DSL to a customer, it exclusively employs line sharing. They do not force the customer to install a separate phone line, and they do not send a technician to the customer's house to complete the installation. When Covad serves a residential customer, we also employ line sharing. This fairness principle is at risk in the legislation you are considering.

**The Tauzin-Dingell bill as it is currently written eliminates line sharing for everyone but the ILECs.** This conveys a preferred status on the ILECs that we can not possibly overcome. Let me be clear. If line sharing is eliminated, Covad and other CLECs will have no choice but to stop offering broadband services to consumers. This could result in the disconnection of 50,000 residential DSL lines for Covad alone. It also means that our Jumpstart kit would become a thing of the past. The oft-ignored section of the current bill reads:

> "... the Commission shall not require an Incumbent Local Exchange Carrier to provide ... unbundled access to any network element used in the provision of any high speed data service, other than those network elements described in Section 51.319 of the Commission's regulations (47 C.F.R. 51.319), as in effect on January 1, 1999 ..."

Line sharing was ordered in November 1999, and therefore would, under the proposed Tauzin-Dingell bill, cease to exist. How can this possibly benefit the consumer?

I would also note that numerous other pro-competitive rules that are vital to a competitive marketplace would be completely eliminated as well, but the elimination of line sharing is at the top of the list

Aside from unplugging over 50,000 Americans from their Covad broadband connections, the elimination of line sharing also represents a serious retreat from the goal of a competitive local telecommunications market. **By eliminating line sharing, Congress will ensure that the Bell monopolies, and only the Bell monopolies, are allowed to offer residential customers DSL services in the vast majority of the U.S.** In the absence of line sharing, competitors will have to lease a separate phone line and send a technician to the field, adding significant costs and time delays, a cost disadvantage that we can not hope to overcome. And so we will have to withdraw from the consumer market.

Moreover, the Tauzin-Dingell bill would relegate consumers to only those broadband services the Bell monopolies decide to offer. While the Bells offer only one type of DSL called ADSL, Covad and other competitive companies offer a menu of DSL services and products that give consumers a wide range of broadband choices, higher speed and farther-reaching services. The Tauzin-Dingell bill takes away new and innovative services from consumers. I submit, and Covad firmly believes, that such a re-monopolization of the local market is clearly not in the best interests of the nation. That certainly was not the goal of the Telecommunications Act.

We are not alone in our opposition to returning to a local phone monopoly. I point to an April 18, 2001 Business Week editorial that reads:

> "The Bells are not known for their competitive vigor or their willingness to roll out broadband quickly. Indeed, it was only competition from new companies that spurred them to start. Even now, the monthly cost—about $40—for broadband service is high, and the quality of digital subscriber line (DSL) service often low. Baby Bell SBC Communications Inc. just hiked its rate to $50 a month. Broadband is clearly the next big thing in the info-tech economy. Cellphone and handheld-device manufacturers, Internet infrastructure builders, server makers, content providers, software writers, advertisers, and others in the IT sector are betting on broadband . . . But regulators will have to do their part as well. If consolidation produces more monopolization of the telecom market, America's high-tech economy will suffer."

At a time when competition for local broadband services is beginning to take off, I don't believe the nation can afford to return to a monopolized local telecommunications network.

The Tauzin-Dingell bill addresses a variety of other issues that relate to local telecommunications competition. In each case, we believe such provisions will stifle competition and slow broadband deployment. The Section 271 process is crucial to ensuring that local markets are indeed opened to competition. Eliminating it with respect to data services is not only technically infeasible; it is the same as eliminating it all together. There is no feasible way to accurately distinguish between voice and data. How would you classify a videoconference between Chicago and San Francisco? How about a forwarded voice transcript of that same conference? Or an online replay of the conference available to anyone on the Internet?

The process that Congress put in place in 1996 is working—the FCC has not rejected a single RBOC long distance application since 1998, and the Bell Companies have announced plans to submit dozens of applications for approval this year. By year-end, it is expected that half the nation's population will be able to buy long distance services from their monopoly phone company. Removing this pro-competitive provision from the Act would return the nation and its broadband consumers to a monopolized local market—*but no provision of the bill will harm consumers more than the elimination of line sharing.*

Covad has more experience competing in the last mile of the local market than perhaps any other carrier. We've competed in local broadband since December of 1997, when we began providing service in San Francisco. We deal with each of the four Baby Bells, and can offer service to nearly half of the homes in America. It is this long history and experience that leads me to believe there are indeed steps that Congress can and should take to further the goal of local competition. I don't believe they will come as a surprise to any Member of this Committee.

The Telecommunications Act provides a tremendous framework to induce competition into a monopoly market. It comes up short, however, on enforcement. Only the rigorous enforcement of the law and of the Telecom Act will promote the deployment of broadband. Not only do competitors continue to receive poor wholesale perform-

ance from all the Baby Bells, we are without an effective means to have our concerns addressed by policy makers. The current fine structures that regulators possess are wholly inadequate. I believe that FCC Chairman Powell said essentially the same thing in his testimony here in March.

For example, in the month following Verizon's entry into the long distance market in New York, both the FCC and the New York Public Service Commission found that Verizon had violated the law and "lost" thousands of CLEC orders. Both agencies together fined Verizon over $13 million. An impressive sounding figure, but when one considers the size of this company, the penalty is quite literally pocket change. Verizon recovered the $13 million in just three hours of operating revenue. In regulatory proceedings, the Baby Bells will tell you that it is cheaper to pay the fine than to actually address and fix the problem. It is also ironic that the Bells are permitted to recover the costs of the fines from customers through their local phone rates. Clearly the current enforcement regime is not a deterrent to anti-competitive behavior.

Whatever the intent of this legislation, the elimination of line sharing will end residential DSL competition overnight, leaving consumers with no choice. Granting "interLATA data" relief will delay indefinitely the opening of the local market. **If Congress is to take action, it must be to ensure increased and vigorous enforcement of the law and increased competition, not the elimination of the only real competition the ILECs face.** Without it, American consumers will be left out in the cold, and once again will be at the mercy of a monopoly local phone company.

I would leave you with one final thought. Monday's edition of The Wall Street Journal features a story on the impact of the economic slowdown on fiber-optic companies. The article reads:

> "After two years of staggering sales increases, the world's major fiber-optic companies are experiencing growing pains, as a slowdown in telecommunications spending hurts components and systems makers alike . . . The big domino in all of this is the lack of funding for start-up phone companies. Funding began to dry up in the middle of last year. The start-ups, which were building optical-telecommunications networks, no longer have the cash to spend on optical equipment, and some have declared bankruptcy. As a result, the large incumbent phone companies, which had to spend aggressively to protect their customer bases, have curtailed their own spending plans . . ."

The message from this article is clear. Competitive deployment drives the Baby Bells to spend and deploy. Further, outlawing local competition, as Tauzin-Dingell does, will have serious repercussions on the economy as a whole.

I look forward to working with you to see us through this process. The story of Covad is one I believe you all envisioned back in February 1996. Unfortunately, I fear our story, and the story of all competitive providers of broadband services, is lost amid the hype about "leveling the playing field" of pseudo-competition between the Bell monopolies and the cable companies. Competition and innovation brought broadband to the masses. The real beneficiaries of this competitive policy have not been companies or shareholders. Instead, the beneficiaries have been consumers and constituents who have reaped the benefits, in the form of new services and—for the first time—a choice in a local provider. Please do not eliminate that choice through your actions.

Thank you very much, and I would be happy to answer any questions you might have.

Chairman TAUZIN. Thank you very much, sir. The Chair is now pleased to recognize for an opening statement Mr. Peter Pitsch, of the Intel Corporation.

## STATEMENT OF PETER PITSCH, COMMUNICATIONS POLICY DIRECTOR, INTEL GOVERNMENT AFFAIRS

Mr. PITSCH. Thank you, Mr. Chairman, and members of the committee. I am the Communications Policy Director for Intel, and I would like to thank you for this opportunity to be here this morning to testify before the committee on this important topic.

In my oral testimony, I want to limit myself to three main points. First, I would like to discuss the importance of broadband deployment. Second, I would like to lay out Intel's policy prescrip-

tions in this area, and last, I want to make a brief comment about Intel's position and posture in this larger broadband debate.

First, regarding broadband deployment, Intel believes that rapid deployment of affordable broadband technology will dramatically drive the growth of the Internet, E-commerce, and our larger economy.

In my testimony, I cited our chairman, Andy Grove, surveys of EEOs, business press, and so on, but today I want to make just one fundamental point about the importance of broadband, and that is that we are just beginning to phantom the importance of broadband deployment.

I would ask you to consider back to the first days of the PC and those initial computer applications, and then consider where we are today. I submit that dramatic increases in the growth of broadband penetration will lead to a similar growth of developments, and flourishing of opportunities that we saw with the interaction between software and hardware developers in the P.C. sector.

One particular study I reference is a study that looks at the broadband revenues worldwide and indicates that in 1999 those revenues were about $60 billion, and projects that by 2004 those revenues could be over $460 billion.

It should come as no surprise then that Intel and many of the high tech sector want policymakers to get broadband policy right, and in our view, like consumers, Intel believes that public policy should best promote rapid deployment of affordable broadband to all consumers.

We believe that the Congress and the FCC should and can make this happen through the deregulation of the incumbent local exchange DSL services in the last mile. I wish to point out that I am not taking any position. Intel does not take any position on the interLATA provisions of this bill.

However, we do believe that eliminating the unbundling restrictions that currently exist and threaten the investment opportunity for the incumbent telephone companies in the last mile between their central office and the residential customer do represent a barrier to deployment. I would like to explain that just briefly.

This investment is risky. It is discretionary. It is not part of the legacy of existing copper in central office buildings, and if we impose that kind of unbundling obligation, we undertake the business case for these companies to make that investment.

Intel's position is that if a company takes a broadband deployment risk, it should get the reward. We are satisfied that there can be safeguards designed that protect competition and achieve this goal.

In my testimony, I mentioned conditioning relief upon compliance with the FCC and States, co-location, and loop provisioning requirements. I also mention the possibility of conditioning relief for an ILEC on the achievement of milestones, benchmarks that would require the companies to meet certain buildout requirements.

Last, I would like to talk about Intel's position in the larger broadband debate. The position here today is really just one of a consistent set of policy positions we have taken in this larger area.

I would like to point out that Intel, through our trade association, ITI, a hi-tech trade group that I know that many of you are familiar with, supported the FCC's decision in finding cable unbundling to be premature at this point.

We supported the FCC's decision to require the companies existing—the incumbent companies to unbundle their existing copper and make their central offices available. We also supported the FCC decision not to impose unbundling requirements on DSL electronics, and there are other examples as well.

It should be clear here that Intel is not uninterested. We believe that we are disinterested. We want all these providers to have ample opportunity to provide this, and our positions at various points are that we have opposed or supported all of our friends in this larger community.

But consistently hopefully always with the goal of encouraging affordable broadband for all consumers. Thank you.

[The prepared statement of Peter Pitsch follows.]

PREPARED STATEMENT OF PETER PITSCH, COMMUNICATIONS POLICY DIRECTOR, INTEL CORPORATION

Mr. Chairman and Members of the Committee, my name is Peter Pitsch and I am the Communications Policy Director for Intel Corporation. I would like to thank you for this opportunity to testify before your Committee. For three decades, Intel Corporation has developed technology enabling the computer and Internet revolution that has changed the world. In 2000, Intel had sales of $33.7 billion, over 86,000 employees, and spent $3.9 billion on research and development and another $6.7 billion on capital expenditures. Intel's mission is to become the preeminent building block supplier to the worldwide Internet economy. Of particular relevance to the issue of broadband deployment, last November Intel successfully launched the Intel® Pentium® 4 processor designed to deliver advanced performance for Internet computing, including imaging, streaming video, speech processing, 3D, multimedia and multitasking.

Intel believes that the rapid deployment of affordable broadband technology would drive dramatic growth of the Internet, e-commerce and the IT sector. As Chairman Andy Grove, said in Intel's most recent annual report, "Connectivity is certainly what's driving the growth in computing right now." [1]

Broadband has the potential to transform the Internet. Sixty-four percent of CEOs "cited broadband connectivity as the most significant immediate factor influencing the way customers will experience entertainment and communications in the future." [2] According to a recent Business Week article, "In the long run, realizing the promise of the Net will depend on the widespread introduction of advanced technologies such as broadband to the home . . ." [3] Some reasons why are:

- Increased bandwidth could enhance distance-learning, telemedicine, home-management, and public services, in addition to features such as video on-demand and audio streaming.
- Video conferencing and Voice over the Internet could connect family and friends.
- Web surfing and e-commerce will occur at much faster speeds and with more video content.
- The "always on" capability of broadband means that services such as electronic yellow pages, stock quotes, and weather forecasts, will be utilized more often than when users have to dial-in every time they want access to this type of information.
- Websites will become more interactive and graphics-intensive. Online shopping will become more attractive when more websites are able to offer better customer service. For example, Land's End converts more than 10% of its Web visi-

[1] Intel 2000 Annual Report, p.6.

[2] "Broadband Will Profoundly Alter Consumer Experience" by Ben Macklin. http://www.emarketer.com/analysis/broadband/20010327_bband_consumer_exp.htm.

[3] "Rethinking the Internet" by Michael J. Mandel and Robert D. Hof. Business Week, March 26, 2001.gQ02

tors to buyers—compared to the average 4.9%—in part because it offers live chat and other customer service extras.[4]

However, we are just beginning to fathom the possible effects of broadband access. Consider the difference between the first computer applications and those offered today. Dramatic increases in broadband access could spur another "virtuous cycle" of innovative products and services similar to those that have been introduced by hardware and software developers in the PC sector. And while only about 5% of U.S. households have broadband, one thing is certain: once users experience broadband, they value it. In fact, 63% of respondents in a recent survey stated that they would give up coffee before they gave up their DSL service.[5]

Broadband access has implications for more than just service providers and their customers. Specifically, the IT sector as a whole will benefit. For example, one study considered broadband revenues for various groups including manufacturers of communications equipment, gateway devices, and semiconductors, as well as service and content providers. They estimate that worldwide broadband revenues will increase from $59.7 billion in 1999 to $464.5 billion in 2004.[6]

It should come as no surprise then that Intel wants policymakers to get broadband policy right. Like consumers, Intel wants public policy that promotes the rapid deployment of affordable broadband technology to all consumers. In pursuit of this goal, Intel joined other members of the Information Technology Industry Council (ITI)[7], in the adoption of the following broadband principles:

1) Markets, not regulators, should drive the deployment of broadband technology. To that end, ITI supports the deregulation of the telecommunications industry and the continued non-regulation of information services.
2) Market-based competition among all channels of the communications marketplace is the best way to promote rapid deployment of broadband technology.
3) Government intervention in the market is appropriate only where a competitive bottleneck exists.
4) ITI does not endorse any single broadband technology and believes deployment of multiple technologies will benefit consumers.

Consistent with these principles, Intel believes that the Congress and Federal Communications Commission (FCC) should encourage the rapid deployment of broadband services to consumers through deregulation of the incumbent telephone companies' new, so-called "last mile" broadband investment. I wish to point out that Intel is neutral on whether the interLATA restrictions of the 1996 Act should be modified. We believe that deregulation of last mile broadband investment, however, could be done in a way that would preserve the 1996 Telecommunications Act goal of removing barriers to competition in the telecommunications markets and stimulate investment, spur technological innovation, reduce prices, and increase consumer choices. Section 232 of H.R. 2420, last year's vintage of The Internet Freedom and Broadband Deployment Act, would have moved in this direction.

In particular, Intel believes unbundling requirements for new broadband equipment and fiber loops deployed between an incumbent telephone company's central offices and residences should be eliminated. This action would remove a deployment disincentive that Incumbent Local Exchange Carriers (ILEC) face—being required to allow competitors unbundled access to this new high-speed equipment. In the past, Intel has supported the imposition of unbundling obligations on the ILECs' essential facilities but we do not believe these obligations should be extended to new broadband services for residential customers because that investment is both risky and discretionary. Unlike the existing local loop, ILECs do not have a legacy advantage in newly installed broadband investment and broadband equipment is readily available to competitors and ILECs alike. Removing the unbundling disincentive will lead ILECs to deploy more quickly high-speed services such as DSL, bringing the benefits of broadband technology to more consumers. Intel believes those who take the broadband deployment risk should get the reward.

Intel is satisfied that safeguards can be designed to ensure that the removal of those barriers has the desired effect and does not adversely impact competition. Importantly, deregulation should be conditioned on ILEC compliance with FCC and

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[4] "Rethinking the Internet" by Michael J. Mandel and Robert D. Hof. Business Week, March 26, 2001.

[5] DSL users just love their high-speed Net, http://www.nua.ie/surveys/?f=VS&art__id=905356682&rel-true.

[6] "Entering the Broadband Era" Cahner's In-Stat Group, May 2000.

[7] ITI is the association of the leading information technology companies, including computer hardware and software manufacturers, networking companies, and Internet services companies. ITI member companies employ more than 1.2 million people in the United States and exceeded $633 billion in worldwide revenues in 1999.

state collocation and loop provisioning rules. Intel has long maintained that it is important that the competitive local exchange carriers (CLECs) have access to ILEC loops and central offices. Indeed, in December 1998, we reached an accord with several ILECs that conditioned deregulation of their broadband services on their making these essential facilities available to the CLECs. Finally, in the case of new fiber loops, ILECs should be required, upon request, to maintain the existing copper local loop, so competitors do not lose access to the home and remain capable of providing advanced and other telecommunications services.

Intel also believes that to get relief an ILEC should be required to meet important build-out benchmarks. For example, it could be required to make advanced services available to 80% of its customers within 3 years and 100% of its customers within 5 years. In sum, Intel believes there is a sensible step-by-step approach to eliminating regulatory barriers that will encourage rapid deployment of advance services to consumers through deregulation and competition.

I would like to close by noting that Intel's support of DSL deregulation is just one part of a consistent set of policies that we believe will increase the deployment of a variety of competing broadband technologies. For example, in the area of high-speed cable access, through ITI we supported the FCC's decision to forego regulatory action to mandate cable access.[8] ITI has also advocated regulatory relief for ILECs before the FCC. ITI argued, and the FCC agreed, that certain high-speed DSL equipment installed by incumbent local phone companies should not be required to be unbundled. ITI submitted comments to the FCC on this particular matter because we believe that it will enhance the competitive growth of the broadband market by providing an incentive for ILECs to deploy DSL quickly. At the same time, however, the FCC also agreed with the position taken by ITI that the local loop must remain open to all competitors.

As you can see, Intel has been actively involved in broadband policy issues. We have not sided with one camp or another, but instead we have supported and opposed the positions of all of the major players at one time or another. Throughout this policy process, Intel has supported the same basic goal; namely, rapid deployment of widespread, affordable broadband for consumers.

We would encourage the Committee to be as forward-looking as possible when it examines broadband issues. As we all know, the telecommunications debates of the latter part of the 20th century often involved pitting entrenched business interests against each other, or they focused on the competitive deficiencies of one communications medium or another. Today, we have a far different landscape, one that has emerged only in the last several years. With the Internet achieving status as a mass medium, consumer demand for broadband data service has grown dramatically. All major communications infrastructure providers should be encouraged to meet that demand even if, in practice, that means the government will be loosening some of the regulatory restrictions that may have made sense in a prior era. As this debate continues, I would urge you to turn to Intel and the high-tech community as an disinterested voice on these important issues.

On behalf of Intel, I would like to thank the Committee for its time, and I would be glad to respond to any questions.

Chairman TAUZIN. Thank you very much, sir. The Chair is now pleased to welcome and for his testimony Mr. Tim Regan, of Corning, Incorporated.

## STATEMENT OF TIMOTHY J. REGAN, SENIOR VICE PRESIDENT, CORNING INCORPORATED

Mr. REGAN. Thank you, Mr. Chairman. As you said, I am from Corning, Incorporated, and we are the original inventors of optical fiber, and obviously have a lot of interest in seeing the technology deployed.

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[8] ITI wrote to FCC in support of the Commission's *amicus* brief in *AT&T v. City of Portland.* ITI argued that because cable Internet access is an emerging service and the providers currently lack market power in the Internet access market, they should not be subject at this time to open network requirements. Furthermore, ITI agreed with the position taken by the FCC that the question of whether cable companies should be required to open their cable modem services should be addressed at the federal level. Apart from legal arguments over federal and local jurisdiction, ITI argued that there are compelling economic and business reasons for developing a national policy on this important issue.

I applaud the committee for undertaking this discussion today, because it deals fundamentally with the issue of investment, and we really have two problems from where we stand on investment.

One is to get investment going again in the telecommunications sector. One of the things that brought this economy down is that investment dried up in the telecommunications sector, and so we need a revival of it.

The second thing is that we really can testify to the fact that broadband as we define it is not being deployed to American homes today. And let me explain what I mean by broadband.

Broadband, as I refer to it, is the capability to both send and receive information in all its forms—voice, data, video, graphics, high speed video—by the subscriber. It is not DSL, and it is not cable modems, and it is not fixed wireless. These are properly defined as high speed capabilities.

And I will address only the broadband issue, because fiberoptics is inherently capable of transmitting broadband, and not these other capabilities. Now, we have witnessed very unusual investment behavior in this sector as it applies to investment in fiberoptic broadband systems to residential customers.

Specifically what we observed is that incumbent local exchange carriers are investing in copper rather than fiberoptic systems in new bills and in rehab situations when fiber systems are equal in cost to copper. It is hard to believe, but it is true today. We have reached the cross-over point.

And I can read a statement that came out of the Wall Street Journal specifically that refers to that. The quote is, "Sales of communications wire from fiberoptic and coax cable to old fashion copper rose 6 percent to $14 billion last year. Here is the most surprising part. The bulk of the industry sales continue to come from the same type of wire that Alexander Graham Bell developed in 1879 to transmit voice signals. Copper." Obviously this situation puzzled us and so we hired a couple of economists, and we said look at this thing. Why is there this apparent irrational act. They came back and said, no, the ILECs are acting in a very rational way.

It turns out that there is new economic research that indicates in certain situations you are better off to wait than to invest in new technologies. Those situations include situations where you have high—some costs, and in situations where you have technology uncertainty.

They also noted that the unbundling rules at Telric that came out of the FCC have also caused a bit of a problem, and that they have not allowed a sufficient rate of return on the capital investment to get the investment moving.

So you have essentially a powerful—two powerful forces going on at the same time, which are inhibiting the investment in this revolutionary technology. So you might say, well, what is the solution, and we don't have any magic wands.

One solution we might think about is to consider the possibility of actually amending the unbundling rules so that you can allow a sufficient rate of return on capital to justify the investment. In a sense, this is not a regulation issue. It is a financial issue.

It is how do we get the rate of return up, and you can get the rate of return up by changing the rules. So it is worth taking a look at this, and I think in the final analysis what we really face is we face here a tug between two things.

We all want competition, and we have a natural tug between the unbundling rules that will enhance competition, and the rules which can inhibit investment, and somehow we have to find the right balance. So, with that, I would like to thank you for your time. I guess I am less than 5 minutes, but I'm sure that is probably appreciated.

[The prepared statement of Timothy J. Regan follows.]

PREPARED STATEMENT OF TIMOTHY J. REGAN, SENIOR VICE PRESIDENT, CORNING INCORPORATED

*Introduction*

Mr. Chairman, my name is Tim Regan. I am a Senior Vice President of Corning Incorporated. We are the original inventors of optical fiber and, of course, are anxious to see the technology deployed to all Americans.

My argument is very simple. From the perspective of the fiber optics industry, broadband is not being deployed to residential customers in America. This is true for residences located in urban, suburban, or rural America. Business customers are getting it, but residences are not.

I know that you might find this statement somewhat astounding because you hear a lot about the so-called broadband deployment. Cable modem service, ADSL service (i.e., asynchronous subscriber line), and various wireless data have been described to be broadband, even by the FCC. I will argue in my testimony that these capabilities are more properly described as high-speed data service, not broadband service.

I will also describe in my testimony recent economic research that Corning has commissioned to determine why broadband capability is not being deployed to residential customers. The study identifies both financial and regulatory barriers to deployment.

And, finally, I will propose a possible solution to remove barriers to broadband deployment. The Internet Freedom and Broadband Deployment Act of 2001, in large part, encompasses this proposal. Thus, we are positively inclined toward the bill.

*What is Broadband?*

The first issue, of course, is the question of what is broadband. The answer is not obvious.

Oddly enough, the term "broadband" really comes from an older age—the analog age. In the analog age, the information-carrying capacity of a network was defined by the width of the band of spectrum used to carry a signal. The wider the band, the greater the information-carrying capacity. Thus, the term "broadband" was used to characterize a system capable of carrying a considerable volume of information.

In the analog world, a standard television video signal that requires 6 megahertz per channel was considered to be broadband. Voice at 4 kilohertz was thought to be narrowband.

In the digital world, the notion of broadband really doesn't apply. The information carrying capacity of a digital network is described as a bit transfer rate. As you know, digital signals are represented by a series of on and off signals that are characterized by pulses of electrons or photons. Transmissions in the digital world appear more like Morse code.

If we use standard television video as a service to characterize broadband, as we have done in the analog world, a bit transfer rate of 4 million to 90 million bits per second would define broadband. An uncompressed standard television video signal requires 90 million bits of information per second to transmit. It can, however, be compressed to 4 million to 6 million bits per second using compression standard known as MPEG-2.

Data has become a very important form of information in the digital world. Remember that computers were originally called data processing machines. In the computer data world, the connections between computers are quite robust. A standard has evolved known as Ethernet, developed by IBM over two decades ago. It provides for the transmission of 10 million bits per second between computers on a local area network. Today, the Ethernet standard has been upgraded to a 100 million bits per second.

Frankly, I think the term broadband is so imprecise, it is probably useless at this point.

I think the better way of engaging the public debate is to identify bit transfer rates Americans will need to gain access to audio, video, and data applications. Table 1 describes the transmission speeds necessary to gain access to a variety of applications.

Table 1

Network Transmission Speed Requirements for Real Time Audio, Video, and Data Applications

| Applications | Downstream Speed | Upstream Speed |
|---|---|---|
| **Audio** | | |
| CD Quality Sound | 256 kbps [1] | — |
| Broadcast Quality | 48 kbps to 64 kbps | — |
| Plain Old Telephone Service | 64 kbps | 64 kbps |
| **Video** | | |
| Broadcast HDTV (compressed) | 20 mbps [2]/channel | — |
| Broadcast Standard TV (MPEG-2 compressed) | ~4-6 mbps/channel | |
| Videoconferencing | 64 kbps-2 mbps | 64 kbps-2 mbps |
| **Data** | | |
| File Transfer (Ethernet) | 10 mbps | 10 mbps |
| Web Browsing | 240 kbps | 240 kbps |
| Network Games | 80 kbps | 80 kbps |

Source: Timothy C. Kwok, Microsoft Corporation, ''Residential Broadband Internet Services and Applications Requirements,'' IEEE Communication Magazine June 1997, Tables 3 and 4, p. 80-81.

[1] 1 kbps is one thousand bits per second.

[2] 1 mbps is one million bits per second.

If you think that Americans will need access to information in all its forms—audio, video, and data—it is easy from Table 1 to see that a capability in excess of 22 million bits per second downstream and 10 million bits per second upstream is ideal. Let me explain with some examples of the bit transfer speeds necessary to do audio, video, and data:

- Plain old telephone service requires 64 thousand bits per second both upstream and downstream.
- Standard television using MPEG-2 compression technology uses 4 million to 6 million bits per second per channel downstream. Since there are on average 2½ television sets in every household in America, three channels at 4-6 million bits per second each is needed.
- HDTV using the most advanced compression technology requires 20 million bits per second downstream.
- And, 10 million bits per second both upstream and downstream—the so-called 10 Base-T Ethernet standard—is required to give people the same data speeds at home that they get at work in order to facilitate telecommuting.

I realize that the 22 and 10 million bits per second sound like a lot. But, I believe it is what will be needed. Here's the calculation. You need 10 million bits per second both downstream and upstream to give subscribers the same capability at home that they have in the office (i.e., Ethernet 10 Base-T). The remaining 12 million bits downstream could accommodate two to three channels of standard television quality video.

The FCC has stated in its various Section 706 reports that broadband is 200 thousand bits per second—or less than 1% of my prescription. I do not see how the FCC can defend such a low standard in light of the speeds described in Table 1 above as necessary to transmit the applications we know of today, never mind the limitless array of new ones that will be created once the infrastructure is deployed.

The FCC and others have defined broadband at such a low level because they fundamentally misunderstand the nature of the future network. It has been described by the FCC as a superhighway. And, consistent with this analogy, the connections to the home are simply narrow on and off ramps.

This is the wrong analogy. The network of tomorrow, which will all be digital, is not a highway. It is a series of bridges. The bridges connect islands of intelligence—computers. After all, this is what the Internet is. It is a network of computers, and each computer has the capacity to store and process hundreds of millions of bits of information.

Today, these islands of intelligence are for the most part connected by very narrow bridges, a copper pair that can transmit only 56 thousand bits. Even

with these very narrow bridges, we have been able to realize tremendous economic benefit from connecting these islands of intelligence.

Fed Chairman Alan Greenspan best characterized the impact of this connectedness before the Business Council when he said:

> "Your focus on technology—particularly the Internet and its implications—is most timely . . . The veritable avalanche of real-time data has facilitated a marked reduction in the hours of work required per unit of output and a broad expansion of newer products whose output has absorbed the work force no longer needed to sustain the previous level and composition of production. *The result during the last five years has been a major acceleration in productivity and, as a consequence, a marked increase in the standards of living for the average American household* (emphasis added)." [1]

Tremendous economic prosperity has been realized over bridges that connect the computers at 56 thousand bits per second. Can you imagine what will happen when we can connect these islands of intelligence by bridges that can carry over 10 million or 20 million bits per second?

The question before us is how to build these bridges as soon as possible.

*Why Aren't the Bridges Being Built?*

Obviously, to deploy this new technology will require considerable investment on the part of all telecommunications carriers. The problem is, the dynamics to finance this investment have not been unleashed.

In fact, we have witnessed some unusual behavior. Incumbent local exchange carriers (ILECs) continue to deploy copper wire rather than new technology like fiber optics to provide service to new residential customers (i.e., "new builds") and to totally rehabilitate deteriorated plant that is serving existing customers (i.e., "rehabs"). They are spending approximately $9 billion deploying copper to serve new builds and rehabs in the residential market.

This reality was evidenced in a recent article in *The Wall Street Journal* which stated:

> "Global sales of communications wire, from fiber-optic and coaxial cable to old-fashioned copper, rose 6% to $14 billion last year . . . Here's the most surprising part: *The bulk of the industry's sales continues to come from the same type of wire Alexander Graham Bell developed in 1879 to transmit voice signals—copper* (emphasis added)." [2]

The fiber optics industry is somewhat puzzled by this investment behavior because it does not appear to be cost driven. The cost parity between fiber optic and copper solutions for residential customers is well established by industry sources. For example, Matthew Flanagan, President, Telecommunications Industry Association, submitted comments to the FCC attesting to this fact. As evidence, he submitted sworn affidavits from four different telecommunications engineering experts who all supported the cost parity claim. [3]

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[1] Remarks by Alan Greenspan, *Information, Productivity, and Capital Investment,* Before the Business Council, Boca Raton, Florida, October 28, 1999.

[2] Mark Tatge, "Wire Makers Thrive Despite Advent of Wireless Phone", *The Wall Street Journal,* February 16, 2000, p. B-4.

[3] Matthew J. Flanagan, re: *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-98, Telecommunications Industry Association, letter to Federal Communications Commission, August 2, 1999, which states at p. 6-7 that "In his Declaration, Mr. Cannata from Marconi Communications, demonstrates that POTS can be provided over a fiber-to-the-curb ("FTTC") system at 98 percent to 103 percent of the cost of providing POTS over a copper system using a digital loop carrier ("DLC/copper"). He notes further that the FTTC system can be upgraded to provide high-speed data (i.e., 10/100 Base T) by incurring a 16 percent incremental cost compared to a 40 percent to 50 percent incremental cost to upgrade DLC/copper to provide Digital Subscriber Line (xDSL) service. Finally, he demonstrates how a further upgrade to provide VHS-quality broadcast video can be deployed for an incremental cost of 44 percent over FTTC for POTS, which again compares favorably to the 40 percent to 50 percent incremental cost associated with the xDSL solution.

Mr. Jacobs from Corning Incorporated shows in his Declaration similar results with respect to broadband solutions. His analysis shows that an Ethernet fiber-to-the-home system ("EFTTH") using multimode fiber can be deployed at 7 percent less than ADSL over copper, and EFTTH is substantially more capable. The EFTTH system can deliver POTS, 10/100 Base T data, and VHS-quality broadcast video, which cannot be done on an ADSL system.

Mr. Tuhy from Next Level Communications states in his Declaration that "fiber-based narrowband solutions for local access serving residential end-users can be deployed at cost parity with copper-based solutions as measured on an installed first cost basis for newly constructed or totally rehabilitated outside plant." He makes a similar statement with respect to broadband. He notes that Next Level Communication's FTTC system "can be deployed to provide integrated voice, data, and video for the same cost as a copper-based solution with an ADSL

Because we are somewhat puzzled by this investment behavior, we commissioned a study by three Ph.D. economists, Drs. Kevin Hassett and J. Gregory Sidak, who are associated with the American Enterprise Institute for Public Policy Research, and Dr. Hal Singer who is associated with Criterion Economics. The study concluded that the ILECs and the CLECs are acting very rationally in delaying their decision to invest in new technology to serve residential customers. They identified both financial and regulatory explanations for the delayed investment behaviors. From a financial perspective, this delayed investment behavior is explained by a rather new model for explaining investment behavior known as the Dixit-Pindyck model. This model shows that when faced with certain conditions, a prudent investor will maximize his return by delaying investment in next generation technology. These conditions include a sunk cost investment, a high degree of market or technology uncertainty, and the absence of robust competition. Under these three conditions, which are all prevalent in the residential telephone market, a carrier is better off delaying a decision to invest in new technology.[4] Since ILECs are required to provide telephone service, they invest in copper solutions which are suited for just plain old telephone service.

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overlay for high-speed data." This assumes new builds or total rehabs as well as first installed cost comparison.

Finally, Mr. Sheffer from Corning Incorporated addresses the rural deployment issue in his Declaration. He cites a proprietary Bellcore (now Telcordia Technologies) study prepared for Corning showing that the cost of narrowband fiber-to-the-home ("FTTH") at $2,370 per home passed beats narrowband DLC/copper at $2,827 per home passed. In other words, narrowband FTTH is 16.2 percent less costly than DLC/copper in a rural setting. More surprisingly, broadband FTTH also beats narrowband DLC/copper by 7.5 percent (i.e., $2,616 per home passed for broadband versus $2,827 per home passed for narrowband). Again, this analysis was based on new builds and total rehabs and the cost comparisons were done on an installed first cost basis.

[4] Kevin A. Hassett, J. Gregory Sidak, and Hal J. Singer, An Investment Tax Credit to Accelerate Deployment of NewGeneration Capability, February 28, 2000, p. 7, which states: "A simple example can make the point more intuitive. The traditional view is that one should invest in any project that has a positive net present value of cash flows. Recent advances in economic theory have shown, however, that this rule is not always correct. On the contrary, it is often better to wait if at all possible until some uncertainty is resolved and cost reduction can be achieved. Consider, for example, a firm that traditionally offers telecommunications services through copper wire. The firm must decide whether to install a new advanced broadband line that costs, say, $100 today but has an uncertain return tomorrow. Suppose that, if the demand for high-bandwidth services is high, the firm stands to make $400 profit. If, on the other hand, there is a bad outcome and the demand for the new services is low, then the new "pipe" will be underutilized, and the firm will gain nothing from owning it. If the probability of either outcome is 0.5, then the expected net present value of laying the new broadband line is, ignoring discounting, calculated as follows: (0.5 x $400) + (0.5 x $0) - $100 = $100. We can summarize this simple decision problem in the following table.

Scenario 1: The expected profit if firm installs a NGi fiber-optic cable that costs $100 and has an uncertain return tomorrow.

| Today Invest | Tomorrow | | | | Net Expected Return |
|---|---|---|---|---|---|
| | Good Outcome | | Bad Outcome | | |
| -$100 | (0.5 x $400) | + | (0.5 x $0) | = | $100 |

Because the project has a positive expected cash flow, one might think it optimal to install the cable today. But it is not. If the firm delays making the investment, it can reduce the risk by observing the experience of others and capturing the gains associated with deploying reducing-cost technology later. The value of waiting is that the firm can decide not to make the investment if the bad state occurs. We can summarize this subtler decision problem in the following table:

Scenario 2: Expected profit if firm waits and decides tomorrow.

| Today Invest | Tomorrow | | | | Net Expected Return |
|---|---|---|---|---|---|
| | Good Outcome | | Bad Outcome | | |
| $0 | 0.5 x ($400-$100) | + | (0.5 x $0) | = | $150 |

By waiting, the firm would increase its expected return by $50. If the firm invests today, it gives up an option to invest tomorrow that is worth $50. The firm is better off waiting because it can avoid the loss of $100 by not purchasing the new cable in the bad state. Note that the two examples would have the same expected return if the firm were allowed to resell the ad-

The study goes on to conclude that the incentive to delay for ILECs is intensified by the so-called unbundling rules which require incumbents to allow their competitors to use parts of the incumbents' network at a regulated rate. This rate does not provide a sufficient return on investment to justify investment is new technology.

The parts of an ILEC's network that must be unbundled and resold to competitors are known as unbundled network elements, or "UNEs." The FCC has defined the price for the sale of these UNEs as TELRIC, or total element long run incremental cost. TELRIC attempts to value the various network elements based upon their forward-looking costs. The FCC believes that TELRIC replicates how competitive markets actually operate by approximating what it would actually cost an efficient, competitive firm to produce UNEs.

The study concludes that TELRIC pricing creates a disincentive to invest in new technology. It states:

> "Most observers believe that mandatory unbundling [at TELRIC] limits the upside potential of any new investment project and that the expected return to investment in some projects may fall below the firm's cost of capital. "This disincentive to invest has been emphasized in the public debate over telecommunications policy by both incumbent local exchange carriers (ILECs) with respect to the local telephony networks, and by AT&T with respect to proposals that unaffiliated Internet service providers be given the legal right of mandatory access to AT&T's cable-television networks."[5]

In other words, the rate of return provided for TELRIC pricing is inadequate to give carriers an incentive to invest in new technology.

Other experts, including Kathleen Wallman, former Chief of the FCC's Common Carrier Bureau and Deputy White House Counsel in the Clinton Administration, as well as Supreme Court Justice Breyer, have observed this disincentive. Ms. Wallman stated in a speech to state regulators:

> "Do we really mean to say that any carrier that is thinking of building a new broadband network should count on being able to recover, from day one of the operation, only the forward looking cost of their brand new network? I don't think so. No rational, efficient firm would take that deal. And that would be our collective loss, not just theirs."

Similarly, Justice Breyer reinforced this observation when he noted that "... a sharing requirement may diminish the original owner's incentive to keep up or to improve the property by depriving the owner of the fruits of value-creation investment, research, or labor."[6]

The point is, the new economics as characterized by the Dixit-Pindyck model combined with the unbundling rules at TELRIC create a powerful disincentive for ILECs to invest in new technology. This disincentive is reflected in the stock price of incumbents, including AT&T, when they make decisions to invest in infrastructure. Their stock price falls.

With this explanation, it is clear that regulatory changes are necessary to give carriers an incentive to invest in new technology, especially broadband technology. As indicated in the analysis, financial changes are also necessary.

*The Proposed Solution*

One thing is clear from the analysis, the existing regulatory structure is not working. It is discouraging investment in broadband to residential customers, not remaining neutral or encouraging it.

One possibility to address this problem is to start out with an obvious regulatory failure. This failure is reflected by the fact that ILECs are investing in copper systems for residential new builds and total rehabs rather than fiber-based solutions that are equal in cost. The analysis we commissioned indicates that this seemingly irrational behavior is, in part, due to the unbundling requirements and the price set for the various unbundled elements.

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vanced broadband line at the original purchase price if there is bad news. But that salvage scenario is patently unrealistic for two reasons. First, many pieces of equipment are customized so that, once installed, they would have little or no value to anyone else. Second, if the demand for high-bandwidth services is indeed low, then the advanced broadband line would have little value to anyone else. For these reasons, the investment in the equipment is "irreversible" or sunk in the sense that it has virtually no value in an alternative use.

[5] Id., p. 3-4

[6] AT&T Corp. v. Iowa Util. Bd., 119 S. Ct. 721, 753 (1999) (Breyer, J. concurring in part and dissenting in part) (citing 1.H. Demstez, *Ownership, Control, and the Firm: The Organization of Economic Activity,* 207 (1988)).

A possible solution, therefore, would be to eliminate the unbundling rules entirely, or only with respect to residential new build and total rehab situations where the regulatory failure is occurring. In either case, the regulatory relief would be conditioned upon an ILEC investment in broadband capability. Broadband in this case would be a data transfer speed sufficient to allow the subscriber to both send and receive audio, video, and data. This capability can be delivered with a variety of technologies and architectures including copper-based xDSL, satellite, hybrid fiber coax, and fiber-to-the-home.

In any event, the conversion of the network to broadband capability is a long-term undertaking. By some estimates, it could take 30 years to complete. We must move ahead now. The Internet Freedom and Broadband Deployment Act of 2001 is a good place to start.

*Conclusion*

Mr. Chairman, in conclusion, I think my testimony can be summarized by three points: First, broadband is not happening. Second, the lack of deployment is caused by the unbundling rules and financial factors. And third, eliminating the unbundling requirement, either entirely or for residential new builds and total rehabs, where broadband is being deployed, is a reasonable and measured step to take.

Thank you for your time and attention. I stand ready to address any questions you may have.

Chairman TAUZIN. Thank you, Mr. Regan. And finally the testimony of Tom Tauke, of Verizon Communications, is welcomed.

Tom.

**STATEMENT OF THOMAS J. TAUKE, SENIOR VICE PRESIDENT FOR PUBLIC POLICY AND EXTERNAL AFFAIRS, VERIZON COMMUNICATIONS**

Mr. TAUKE. Thank you, Mr. Chairman. It is always good to be here. I will say it is nicer to be up there where you get to walk around a little bit during the course of the meeting.

I want to make a couple of assertions that I believe most of us agree upon. The first is that the broadband market is a distinct market. The high speed services market is an identifiable and distinct market.

The second is that the deployment of broadband services is key to economic. Alan Greenspan has suggested that the productivity growth that we have experienced over the last several years has come from networking, and the improvement of those networks will explode the economic growth.

Third, that the members of this committee, and the Members of Congress want the right public policy for broadband, and the right public policy is a policy which, one, encourages deployment, and two, encourages competition. Now, I think that we can agree on all of those things.

For some of you, I think you are not aware that Congress has never established a broadband policy, and if you believe that Congress has established a broadband policy, I encourage you to look at what the three Circuit Courts have done that have addressed broadband issues.

They haven't been able to figure out what the 1996 Act said about broadband services, and whether or not they are telecom services—they couldn't agree on that—or what rules ought to apply.

Congress needs to set a broadband policy. When you don't, you have a lot of confusion and we have mass confusion to day as to what rules apply. You have unfairness, and certainly it is unfair

for the dominant provider to be able to offer services and not have any rules or regulations, while the provider that has less than a quarter of the market has all kinds of rules and regulations. You have that unfairness today.

And you have barriers to the deployment of broadband services. We believe that the Tauzin-Dingell bill moves in the right direction in setting the right policy. I will say to you that we might start by agreeing on what the Tauzin-Dingell bill does, because I don't recognize the bill from a lot of the assertions that have been made today about it.

Let me tell you what I think it does. First, it does not change any of the rules relating to the telephone network, to telephone services, to narrowband services, none of those change.

The assertion has been made, for example, that if we deploy fiber in the network that we don't have to unbundle. We don't see that. We believe that we still have to unbundle and sell the loop to carriers, even if it is on fiber, and sell it to them for their voice services. The telephone rules don't change.

Second, it imposes no new rules on anybody else. Satellite, wireless, cable, nobody else gets any new rules. Third, it lifts the telephony rules which we believe the FCC and some have mistakenly begun to apply to broadband which Congress never directed be applied to broadband.

I might say that the FCC even tried to undo some of that and got overturned by the Courts. Let me just say that we believe there are two areas where the rules need to be lifted.

One is in the local broadband networks. We have learned a lot about DSL deployment and DSL is important, but the first one that talked about fiber was Tim Regan, and the biggest challenge we face is that as we attempt to upgrade the local networks by putting fiber out to the neighborhoods, we have all kinds of technical inhibitions to doing so because of the rules, and economic inhibitions from doing so.

And yet it makes no sense for you to try to discourage us from deploying fiber in the network. The second area where we think the rules should be lifted is the interLATA restrictions, and we believe that also happens under the Act.

I testified 2 years ago before this committee, and at that point I used the airport analogy, and the long hauls. We were getting lots of long hauls, you know, and lots of routes from New York to Los Angeles, and we weren't getting those regional networks that would serve places like in Iowa in my hometown.

Well, I can report to you 2 years later that everybody is continuing to invest in those long haul networks, but we don't have many more regional airports that hook people in to the broadband nationwide network, and the need is still there. There are two separate needs and both are important.

You are not plowing new ground here by the way. What you are doing is very parallel in this bill to what was done with wireless services back in 1993. Wireless at that time was recognized as a separate market. Congress decided that the telephony rules, even though wireless service looked a lot like telephony, the telephony rules should not apply.

And Congress established a pro-market policy and then in 1996 lifted the interLATA restrictions on wireless. What happened to wireless? An explosion of growth from 11 million users in 1993 to a hundred-million today.

Development of robust competition, and ubiquity of deployment, new services provided for consumers, and lower prices. You can get the same good results from the right policy for broadband.

[The prepared statement of Thomas J. Tauke follows:]

PREPARED STATEMENT OF THOMAS TAUKE, SENIOR VICE PRESIDENT, VERIZON COMMUNICATIONS

Mr. Chairman, thank you for this opportunity to testify before the Committee. I am Tom Tauke, Senior Vice President for Public Policy and External Affairs at Verizon Communications. I am before you today in support of the Internet Freedom and Broadband Deployment Act of 2001 and to tell you that, without changes in the current regulatory regime, the deployment of high speed Internet access will be significantly impeded, to the detriment of the American economy as a whole and all Americans.

Mr. Chairman, the Internet is a wonderful tool that developed far faster than anyone could have imagined. Use of personal computers and dial-up access to the Internet fueled the growth the U.S. and world economy enjoyed in the late 1990's. This growth has now reached a plateau. More is needed now to move the economy to the next level. And that stimulus—stimulus to the economy as a whole—could be provided by greater deployment of high-speed broadband Internet access.

The current infrastructure on which the Internet rides has proven insufficient to handle the explosive growth. To stimulate the infrastructure investment that is required, policy-makers must stop applying old regulatory models to this entirely new, competitive technology. As the recent economic indicators have shown, the consequences of this policy are very serious. The entire Internet economy rests on the ability of businesses to reach consumers and to reach each other. Without broadband deployment, many local communities will never realize the promise of high-speed Internet, and Internet companies will not be able to reach their markets. This has had and will continue to have a serious impact on the value of the Internet economy itself and the economy at large.

Using policies for the Internet and broadband services that were intended for a local voice telephone market has slowed deployment of broadband, inhibited competition and slowed investment at the very time when we need every possible player involved to help advance the capabilities and capacity of the Internet.

The opponents of this legislation will talk about everything *but* broadband services. They will tell you their stories about narrowband local service competition and about voice long distance. But this bill is not about narrowband or voice long distance. This bill will not change the market-opening provisions of the 1996 Act or the section 271 tests that Verizon and the other Bell companies will have to pass if they are to provide voice long distance services. What the bill will change is rules that were never intended to apply to the Internet world in the first place and, in doing so, will allow more resources to be devoted to meeting consumers' needs for broadband services. That is why I urge you all to support this legislation.

THE STATE OF THE INDUSTRY

As recently as a few years ago, the American people knew nothing of the Internet. Electronic commerce was all but unknown. In 1995, when Congress was re-writing the Communications Act, revenues generated by the Internet were a mere $5 billion. Since then, the growth of the Internet has been astounding, far outstripping everyone's predictions. Last year, Internet revenues rose to an astronomical $130 billion.

With this growth, there has been increasing demand for bandwidth and speed. The 56k modems that were fast a couple of years ago now seem to crawl. Consumers who have gotten used to high-speed connections at work want the same speeds when they go online at home.

This problem is exacerbated in rural areas and other locations that are distant from backbone connections or hubs. Even where backbone exists, such as in major urban centers, it is often congested. Many Internet providers have no way to get their data traffic to the backbone efficiently and without numerous back-ups and delays. Many are simply located too far away from convenient backbone connections. And when they do get to the backbone, they find that the lack of adequate capacity slows their customers' service.

If *any* leg of the transmission is slow, the consumer cannot enjoy the benefits of high-speed Internet service. Without this speed, some of the more exciting applications for education and telemedicine involving video, for example, are impossible. We need competition and investment in the Internet from end-to-end—from the local connection to the nationwide and global backbone. Without it, whole new industries based on a more advanced Internet will be stymied and the continued development of our high tech and computer industries will be slowed. The Internet drove the growth of the high tech sector, and it can drive it again, if we change the regulatory regime that now inhibits investments by some of the most logical players.

Today, the two landline technologies that provide residential consumers with high speed Internet access at a reasonable cost are Digital Subscriber Line (DSL) services and cable modem services. Only one of these services, DSL, is subject to significant federal regulation. Even worse, only certain providers of DSL—the Bell operating companies (BOCs)—are so constrained as to not be able to provide data services across LATA boundaries that were drawn with traditional voice telephone service in mind.

If consumers are to get widespread deployment of high speed Internet services from competing providers, it is necessary for DSL services to be deregulated just like cable modem services. Current regulation hampers significant DSL deployment and denies consumers benefits.

THE BROADBAND MARKETPLACE

Broadband services are different from narrowband services and constitute a separate market. As the FCC found in analyzing the AOL-Time Warner merger, "Residential high-speed Internet service constitutes a discrete market that must be considered separate from the residential narrowband market." [1]

This market is already competitive, as the FCC has repeatedly held. For example: "The record before us, which shows a continuing increase in consumer broadband choices within and among the various delivery technologies—xDSL, cable modems, satellite, fixed wireless, and mobile wireless, suggests that no group of firms or technology will likely be able to dominate the provision of broadband services." [2]

Local telephone companies like Verizon are not the dominant providers in this market—in fact, they are the new entrants. Cable operators serve more than 70% of all residential broadband customers, offering these customers high-speed local access bundled with the service of an affiliated ISP.[3] Local telephone companies are newer entrants in the residential broadband access market, challenging the dominant market position held by cable operators.

In addition, local telephone companies must make substantial improvements to their networks to provide residential broadband access.[4] As the FCC has recognized, "traditional telephone" networks "are not ideally suited for broadband." [5] Specifically, the Commission has found that "variations in legacy outside plant conditions can limit access to certain end-users even in upgraded areas." [6] For example, ADSL service cannot generally reach customers whose loops exceed 18,000 feet or are routed through a Digital Loop Carrier.[7] Further, "in contrast to an upgraded cable network, which can offer upgraded service to all homes it passes, LECs must 'condition' each end-user's line by removing" "devices that were used to enhance the quality of voice traffic over the copper." [8] The necessary improvements to the telephone network will require substantial investments.

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[1] FACT SHEET: FCC's Conditioned Approval Of AOL-Time Warner Merger at 3, dated January 2001.

[2] *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Establish Rules and Policies for Local Multipoint Distribution Service and Fixed Satellite Services,* 15 FCC Rcd 11,857, at ¶19 (2000).

[3] On February 22, 2001, Precursor Group reported that 73 percent of residential broadband service was provided by cable modems. How Broadband Deployment Skews Economic/Business Growth at 1, dated February 22, 2001. According to data released by the Commission in October, cable operators control 70% of all "residential and small business high-speed lines"—a total that understates cable operators' share of the residential market by including a class of business customers largely served by DSL. Industry Analysis Division, Common Carrier Bureau, *High-Speed Services for Internet Access: Subscribership as of June 30, 2000,* at Table 3 (Oct. 2000).

[4] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans,* Second Report, CC Docket No. 98-146, at ¶¶31. 35 (Aug. 21, 2000) (Second Advanced Services Report").

[5] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans,* 14 FCC Rcd 2398, at ¶46 (1999).

[6] *Second Advanced Services Report* ¶31.

[7] See *id.* ¶¶38, 40.

[8] *Id.* ¶39.

THE REGULATORY LANDSCAPE

Cable operators started first, are ahead in deployment and have more customers than local telephone companies. And yet cable is unregulated, while telephone companies are burdened with a set of rules that were designed for the voice business and that make no sense at all in this marketplace.

This regulatory disparity has a direct effect on the market. Observers note that "DSL is a long shot to seize the lead now" in part because "archaic regulations that forced DSL players to adopt a wrong-headed structure from the get-go."[9] "Even if the FCC acts quickly [to free the Bells], it isn't clear that DSL, in such turmoil, can keep pace with cable."[10]

Existing federal regulations handicap Verizon's provision of DSL. The FCC has applied the section 251 unbundling and resale requirements to Verizon and other incumbent local telephone companies. They require Verizon to allow competitors to put their DSL equipment not only in our central office equipment buildings but also in small "remote terminal" boxes in local neighborhoods.

They require us to provide not only unbundled lines from our locations to customers, but also "subloop" pieces of those lines. The FCC first required us to provide DSL-capable loops, then it required "line sharing"—allowing a competitor to use only a portion of the capacity of the loop almost for free to provide DSL service while Verizon provided the underlying basic telephone service. Now we are also required to "line split"—to arrange for two different competitors to share our lines, while we provide no service at all to the customer.

The FCC is now considering requests from other carriers that we be required to provide our new DSL services to them at very low TELRIC prices—that is prices that are below our costs. If we have to do this, what incentive will we have to make the investments that make these services possible? And yet that investment is exactly what you and the public expect from us.

The other characteristic of the regulatory landscape is uncertainty—participants and investors don't know for sure what the rules are. One federal court of appeals has held that cable modem service is a "telecommunications service" under the Communications Act; another has held the opposite. A third circuit court has found that comparable services provided by telephone companies are "telecommunications services." Whether Verizon must provide wholesale DSL services at discounts to their competitors and whether it must unbundle its retail DSL service are now before the courts. Our investment decisions, and the investment decisions of our competitors, will be effected by the actions of these courts and by the Commission's actions in response to them. If Congress wants to encourage broadband investment, it needs to set a clear, national broadband policy.

THE CELLULAR EXPERIENCE

There is a better way. And it is not to heavily regulate telecommunications services. Arguably, one of the greatest success in this industry in the last twenty years is the growth of wireless services, but that success came only after regulation was disposed of and the marketplace was allowed to operate.

In March 1982, the FCC created commercial cellular service,[11] and service began in 1983. No one at that time predicted cellular's fantastic growth. In fact, at the time of the breakup of the Bell system, it was unclear as to whether AT&T or the BOCs would inherit AT&T's cellular spectrum licenses. AT&T had predicted that cellular subscription levels would reach one million by 1999. In reality, cellular subscribership reached that level in 1987, and at the end of 1998, there were 69,209,321 wireless subscribers in the U.S.[12]

Wireless growth was slow at first. By the end of 1988, there were approximately two million cellular subscribers in the U.S.,[13] with an average monthly cellular bill of $98.02. At that point, the FCC made an effort to significantly deregulate cellular service.[14]. Within four years of the FCC's deregulatory effort, cellular subscribership

[9] *Technology: Highway to Hell,* Forbes, dated Feb. 19, 2001, at 98-99.

[10] *Technology: Highway to Hell,* Forbes, dated Feb. 19, 2001, at 100.

[11] Report and Order, 86 F.C.C.2d 469 (1981), *modified* 89 F.C.C.2d 58 (1982), *further modified* 90 F.C.C.2d 571 (1982).

[12] CTIA Semi-Annual Wireless Industry Survey Results.

[13] *Id.*

[14] Amendment of Parts 2 and 22 of the Commission's Rules to Permit Liberalization of Technology and Auxiliary Service Offerings in the Domestic Public Cellular Radio Telecommunications Service, Report and Order, 3 FCC Rcd. 7033 (1988), recon. in part 5 FCC Rcd 1138 (1990).

reached 11 million, while the subscriber's average monthly bill dropped by nearly 30 percent.[15]

A second major deregulatory effort was undertaken by Congress in 1993. In the Omnibus Budget Reconciliation Act of 1993,[16] Congress, to a great extent, deregulated the cellular telephone industry. In the next five years, wireless telephone subscribership rose from 16 million to 69 million, while the average monthly bill dropped by nearly 50 percent.[17] Today, there are more than 100 million mobile customers in this country, paying as little as $15 per month for basic service. Wireless long distance service has become so inexpensive that about 40% of mobile phone users make long distance calls on their cellular phone while they are home.

Regulation was not necessary to keep prices reasonable—the market did that. In fact, regulation actually raised cellular prices. During FCC proceedings, a Cellular Telephone Industry Association study showed that cellular prices in regulated states averaged 17% higher than the prices in unregulated states. It also found that cellular penetration and cellular growth is lower in regulated states than in unregulated states.[18]

The inescapable conclusion is that the cellular industry—and cellular consumers—benefited greatly from deregulation. In a deregulated environment, subscribership rose and prices dropped.

The high-speed Internet market today is in a similar position today as the cellular industry was more than ten years ago. Of the more than 60 million U.S. Internet households, 5.5 million access the Internet via high-speed cable modem, and only 2.3 million use xDSL technology for high-speed Internet access. Adoption of deregulatory measures, such as those contained in the Internet Freedom and Broadband Deployment Act, will permit telephone companies to provide xDSL technologies at a more rapid pace, hopefully with the same results as deregulation of the cellular industry: more consumers accessing the technology for lower costs.

CONGRESS NEEDS TO ACT NOW

The FCC cannot solve the problem of regulation that inhibits broadband deployment and skews the competitive marketplace—Congress must do that. The longer the delay, the longer consumers will have to wait for services they want and the longer the economy will have to wait for the boost that these new services would surely produce. The authors of this bill want to free the Internet from the LATA constraints that were established for the voice telephone network nearly twenty years ago. They want to remove burdensome regulation that discourages innovation and deployment in data services. And they want to put telephone company broadband providers on a more level competitive playing field with cable. These are all worthy goals. I urge you to start the process and to take up and report out the Internet Freedom and Broadband Deployment Act without delay.

Thank you.

Chairman TAUZIN. And you wrapped it up very nicely, and almost within the time limit, Mr. Tauke.

We are going to have a vote on the floor in just a few minutes, and I know that you would like to walk around, perhaps for some very reasonable reasons.

And what we are going to do is that we are going to take a break for lunch and other purposes, and come back at 1:30, when we will begin our questions of the panel. The committee stands in recess until 1:30.

[Whereupon, at 12:47 p.m., the committee recessed, to reconvene at 1:35 p.m. the same day.]

Chairman TAUZIN. All right. The Chair will recognize himself and then members in order of their appearance for a round of questions. The Chair recognizes himself.

Let me first make a statement, and then I want to ask a few questions of you. History is a good gauge by which you can tell

[15] CTIA Semi-Annual Wireless Industry Survey Results.
[16] Omnibus Budget Reconciliation Act of 1993, Public Law 103-66.
[17] CTIA Semi-Annual Wireless Industry Survey Results.
[18] The Cost of Cellular Regulation, Jerry Hausman, McDonald School of Economics, MIT, January 3, 1995.

where people have been and where they are going. I just want to remind this audience and all of you that there was a time in the history of this panel when we took on the deregulation of the cable industry in 1986, and we accomplished that into law.

And we were back here in 1992 reregulating cable, because we discovered in those interim years that cable and its vertical integration had fairly well monopolized the video marketplace.

There was a huge fight if you recall in 1992 when we took on the issue of whether or not we ought to provide competitors to cable then, and the programmatic access provisions that created the satellite industry.

We allowed cable to go back into total deregulation, and to let those new rules in 1992 expire on the basis of that renewed interest in video competition and satellite services, and the good effect of the program access bill.

It is for that very same reason that Mr. Dingell and I bring this bill today, is to make sure that we don't have to come back as we did in 1992 to revisit the question of cable deregulation, as cable now moves into broadband deployment and broadband services.

Several members mentioned that today, and Mr. Cicconi, I want to focus on that first. If we didn't have a phone issue here, and if this wasn't about the side of your business that has to do with telephones, and if it was strictly about whether or not cable is going to be permitted in this country to operate broadband services in the deregulated market place we provided for cable, which we want to preserve in this new marketplace, these advanced services, and the minority competitor with DSL continues to be regulated—and I have the list of them, Mr. Mancini, and there are 22 different requirements on the phone companies trying to provide broadband services that don't apply to cable.

And absent—and just getting away from the phone company issues themselves, telephone service, how could cable expect that Congress wouldn't 1 day be forced to reregulate you if there isn't enough competition out there in the marketplace, and cable's share of broadband growth from 75 to 80, to 90, to wherever it may end up being, absent a fair playing field? Mr. Cicconi.

Mr. CICCONI. Mr. Chair, first of all, cable's share of multichanneled video is declining dramatically. Competitors have about 20 percent of the market, and they are growing at twice the rate of everyone else, and the opposite is happening in local phone service. So I dare say that——

Chairman TAUZIN. Well, wait a minute. I only have a limited amount of time. I want you to get away from the phone service. I want you to simply answer the question. How can cable not expect this panel 1 day to be revisiting regulation of cable rates, terms, and conditions, when video for cable becomes part of broadband services, and you have got 75, 80, 90 percent of the market because we have not created a fair playing field for competitors?

Mr. CICCONI. Well, Mr. Chairman, first of all, the chart you held up is with respect or is somewhat misleading. I know that the Bell companies produce it. They picked out 20 areas where they are regulated and we are not.

Chairman TAUZIN. Twenty-two.

Mr. CICCONI. I could produce about 30 areas where we are regulated that they are not.

Chairman TAUZIN. Bring me a chart like that. I want to see it.

Mr. CICCONI. I would be happy to provide you that, but several of the largest I mentioned in my opening statement. We have regulation by 30,000 local franchising authorities across America. The Bells have to deal with nothing of the sort. We pay about $2 billion annually in local franchise fees.

Chairman TAUZIN. Well, the Bells pay all kinds of telephone taxes.

Mr. CICCONI. The Bells pay nothing of the sort. The Bells benefit from the Universal Service Fund. We don't benefit from that in providing these services.

Chairman TAUZIN. So you think right now that the state of the law is a fair playing field, and cable is as regulated as the Bell Companies in the provision of broadband services?

Mr. CICCONI. Mr. Chairman, we are regulated differently. We are both regulated, but we are regulated differently.

Chairman TAUZIN. Are you as deeply regulated as the Bells?

Mr. CICCONI. Mr. Chairman, you yourself decided there in the program access rules that satellite would be regulated differently than cable.

Chairman TAUZIN. Are you—I don't have a lot of time. Are you as deeply regulated in the provision of broadband services as the Bells? Do you make that assertion to this committee?

Mr. CICCONI. We are regulated, and we are regulated differently. We have our obligations and they have theirs.

Chairman TAUZIN. Let me move on. We heard a huge difference of opinion in the middle of the panel. By the way, we have had to excuse Mr. Hill, who had to catch a plane, and I apologize for that.

We have heard a huge difference of opinion as to whether or not the Bells are really incentivized to connect the last mile, to lay the fiber, and to cook up the homes. As Mr. Tauke indicated, to do something more than just build networks to fly over us, but to actually connect our homes and our towns, and our small businesses to broadband.

Mr. Regan, whose company buildings the fiber, and who would love to see the Bells putting down more fiber to the home, and Mr. Pitsch is obviously representing a company that has been critical and instrumental in the computer industry, and in the power of this new technology to service so well, and they are both telling us that we had better worry about these unbundling requirements because they serve as a disincentive to investment in connecting the homes.

Mr. McMinn says, no, and I think Mr. McLeod says no, too. These are good laws, and we are going to get deployment regardless. The guys that make the cable and the guys that literally empower the computers for us tell us it ain't happening unless we change the laws.

Now, I want to ask you, Mr. McMinn, we wrote a law in 1996 to try and create and empower competition of the telephone service. I am very interested. How many residential telephone consumers does Covad serve for telephone service?

Mr. MCMINN. We are not yet in telephone service.

Chairman TAUZIN. So you serve zero residential telephone consumers?

Mr. MCMINN. We have a technology that——

Chairman TAUZIN. But you are not doing it.

Mr. MCMINN. We have a technology that is operational in the San Francisco Bay Area that is in trial with our own employees to provide not just one telephone line and one DSL line, but up to 10 telephone lines on top of 10 DSL lines.

Chairman TAUZIN. But for the time being, you are providing data services to customers, but no telephone services?

Mr. MCMINN. Mr. Chairman, we have only been around for 3 years. We have managed to put in place a footprint that covers half the United States in that time, but we have not yet managed to offer voice services and data services in competition.

Chairman TAUZIN. To a single customer. And this is my last question as my time is up. I want to get a good understanding of your argument that unless we change the policy on unbundling, we do not incentivize the connection to the homes.

And only 7 percent of the homes in America are connected to broadband right now, and unless we change the policy, that number doesn't rise rapidly. That is kind of what I heard from you two guys. I would like for each of you to elaborate on that. Why is that true?

Mr. PITSCH. Mr. Chairman, I think I can put it quite intuitively that if you are a company making a broadband investment and if it fails, you assume the entire risk, and your shareholders assume the entire risk. But if it succeeds, your upside is capped by unbundling requirements, which in most of these States the cost of cap was about 13 percent.

And you obviously are going to undercut the business proposition to make investment, and this investment is risky, and it is uncertain, and it is discretionary. This is not plain old telephone service.

Chairman TAUZIN. We are talking about new investments, building new investments?

Mr. PITSCH. We are talking about building new investments, exactly. So on that level, I submit that this is not cold fusion. If they can make more money doing it, they will do it.

Chairman TAUZIN. Mr. Regan, if you will answer, please.

Mr. REGAN. I guess my answer is somewhat similar to Peter's, except that I guess I want to modify it a little bit. We have studied a very specific segment of the market, and that is the deployment of what we call broadband. This is the capability to deliver all the services, both in and out of the home, in new build, and in rehab situations.

And what we have found is that the rate of return is insufficient to justify the investment because of the unbundling rules at Telric.

Chairman TAUZIN. And finally do you agree with that, Mr. Tauke?

Mr. TAUKE. The financial issues are one thing, and I agree with what they said about the financial issues. But frankly the more troublesome thing right now are the technical issues. If you put—let's say right now as you know, we have a limit on the length of deployment of a DSL service.

If you live more than 1,800 feet from the central office, you can't get it. The logical thing to do is to deploy fiber to the neighborhood. If we are going to deploy fiber to the neighborhood, then we have to—and this is just one example, but we have to then offer co-location in remote terminals—those little green boxes that you see in suburban neighborhoods—for competitors.

To offer co-location and remote terminals requires that we expand those remote terminals or have a garden pot of several of these remote terminals in an area, and expansion would be the thing you do.

When you try to expand, you have to get neighborhood association approval, zoning ordinances, and you have to go to zoning authorities, and city, county, to do this. The hassle of trying to get co-location in remote terminals is so great that it is a huge deterrent, in addition to the economic issues.

But it is a huge deterrent in the deployment of fiber. So we aren't deploying the fiber to the neighborhoods right now and this is a big deterrent as much as we could, and this is a big reason why.

Chairman TAUZIN. Thank you very much. Mr. Dingell.

Mr. DINGELL. Thank you. Mr. Chairman, I have a series of questions which I will direct at Mr. Tauke, Mr. Mancini, and Mr. Cicconi. These will all be yes or no responses. I am doing that because we have a limitation on time, and I want to be of assistance to our witnesses, Mr. Chairman.

Now, gentlemen, at an earlier hearing my friends at AT&T, Verizon, and SBC agreed on one thing; that the cable modem service and DSL are functionally equivalent services. Do any of you disagree with that statement, Mr. Cicconi, Mr. Mancini, and Mr. Tauke. Do you disagree with that?

Mr. CICCONI. Yes, sir, I think they are very different services.

Mr. DINGELL. All right. Mr. Mancini, do you agree or disagree?

Mr. MANCINI. Absolutely not, and the FCC, and I think every other independent analyst would agree that they are——

Mr. DINGELL. So you are contesting then what was said earlier. Mr. Cicconi is contesting what AT&T told the committee earlier, and you are not, Mr. Mancini. Mr. Tauke, what is your view on the matter?

Mr. TAUKE. They offer the same service to consumers.

Mr. DINGELL. And they are substantially identical?

Mr. TAUKE. They are substantially identical.

Mr. DINGELL. Very well. Now, Mr. Tauke, is Verizon's high speed Internet service regulated by the Federal Government; yes, or no?

Mr. TAUKE. Yes.

Mr. DINGELL. Mr. Mancini, is SBC's high speed Internet service regulated by the Federal Government; yes or no?

Mr. MANCINI. Absolutely yes.

Mr. DINGELL. Now, Mr. Cicconi, AT&T offers high speed Internet service. Is that regulated by the Federal Government?

Mr. CICCONI. Yes, sir, over cable it is.

Mr. DINGELL. And you are saying cable is regulated?

Mr. CICCONI. Under the cable Act, cable services offered are regulated by the government, and that is subject at all levels.

Mr. DINGELL. What are you required to do under this regulation?

Mr. CICCONI. We are required to get local franchises, and we are required to pay local franchise fees.

Mr. DINGELL. I am not asking you about cable. I am asking about your Internet services. Are they regulated by the Federal Government?

Mr. CICCONI. Not in the same way, no, sir.

Mr. DINGELL. Just answer my question.

Mr. CICCONI. Not in the same way.

Mr. DINGELL. And so how are they regulated?

Mr. CICCONI. Well, I have indicated that under the Cable Act that there are various requirements that we have on cable services, and that's a cable service.

Mr. DINGELL. All right. Let's go through that. Are you subject to FCC prescribed depreciation rates on your investments; yes or no?

Mr. CICCONI. I don't know off the top of my head, sir.

Mr. DINGELL. You don't know. Do you have a legal duty to interconnect with other companies, including your competitors; yes or no?

Mr. CICCONI. When we offer telephone services to CLECs, yes.

Mr. DINGELL. When you offer telephone services. We are talking now about your Internet services. Are you compelled to do that at this time?

Mr. CICCONI. No, sir.

Mr. DINGELL. You are?

Mr. CICCONI. I said no.

Mr. DINGELL. You aren't compelled to interconnect with other companies when you offer Internet services?

Mr. CICCONI. No, sir.

Mr. DINGELL. You're not. Now, with regard to Internet services, does the government require you to allow your competitors to resell your services; yes or no?

Mr. CICCONI. Does the government require us to let our competitors resell our services? No, sir.

Mr. DINGELL. Okay. Are you under a duty to negotiate access to your network on your Internet services?

Mr. CICCONI. No, sir.

Mr. DINGELL. Must you allow competitors to physically co-locate on your property?

Mr. CICCONI. No, sir.

Mr. DINGELL. Must you obtain government approval before carrying Internet service traffic over long distances?

Mr. CICCONI. No, sir.

Mr. DINGELL. Okay. Now, Mr. Mancini and Mr. Tauke, you are required to be regulated by government on all of those matters are you not?

Mr. TAUKE. That's correct.

Mr. DINGELL. Very well. Now, Mr. Cicconi, if cable modems and DSL are functionally equivalent services, why should a DSL be subject to Federal regulatory burdens in these matters, while cable modem service is not?

Mr. CICCONI. Do I have to answer yes or no, sir, or can I explain my answer?

Mr. DINGELL. Just give a short answer.

Mr. CICCONI. They are regulated differently because the Congress has concluded that one is a bottleneck facility and the other is not. You have a choice of receiving cable services through the type of service cable offers through a variety of means. You don't have a choice today in local phone service. That is why they are regulated differently.

Mr. DINGELL. Now, Mr. Cicconi, you make a very interesting point. What percentage of the share of broadband residential market service does cable modem service currently have? Is it 75 percent?

Mr. CICCONI. It is about 4 million out of a little over 6 million, sir.

Mr. DINGELL. And what percentage that? Is it 75 percent?

Mr. CICCONI. Roughly.

Mr. DINGELL. Now, assuming that DSL has all the remaining broadband customers that would put telephone companies at a 25 to 30 percent market share. Now, Mr. Pitsch, you are an economist and does that sound like a bottleneck or a monopoly to you?

Mr. PITSCH. Sir, I would say that in that broadband market that cable has more market power than DSL.

Mr. DINGELL. Would it be fair to say that it was a monopoly with that 75 percent?

Mr. PITSCH. I am always reluctant to call anything less than 90 percent—sir, I think your questions are going very much in the right direction. I think if I could just say two sentences by way of explanation. I think that the broadband market is a dynamic nascent——

Mr. DINGELL. And 75 percent controlled by one kind of company?

Mr. PITSCH. It is now controlled by one. However, if the regulatory environment straightened out, and if wireless specter becomes available, then these shares could change. I think the point is that the——

Mr. DINGELL. Well, this is a wonderful point. Is DSL a bottleneck?

Mr. PITSCH. No, I do not think so.

Mr. DINGELL. You don't think so. All right. Now, the——

Chairman TAUZIN. The gentleman's time has expired. One last question.

Mr. DINGELL. Mr. Cicconi, this is what I know what you want to answer. If Congress were to pass a law that required AT&T to lease its broadband facilities to competitors at cost, and to allow competitors to physically co-locate on AT&T premises, and which would permit access to AT&T's network by all competitors who want to interconnect, would you recommend that any further investments by AT&T be made in broadband facilities?

Chairman TAUZIN. Yes or no.

Mr. CICCONI. Mr. Dingell, that is really not the situation facing us here. One is a monopoly facility and the other is not.

Mr. DINGELL. That would put you, my dear friend, on exactly the same awkward ground that Mr. Mancini and Mr. Tauke stand. And if you were in that position rush out to instruct your company to make investments in this area, or would you say, you know, I think we can put our money more profitably to work in other places? What would be your response?

Mr. CICCONI. Mr. Dingell, there is no impediment today, regulatory or otherwise, for DSL deployment.

Mr. DINGELL. I am transgressing upon the chairman's time. He wants you——

Chairman TAUZIN. He would like you to answer his question. Why don't you do that, Jim. Would you invest or not invest?

Mr. DINGELL. How about Mr. Ashton. Mr. Ashton, you are an expert in these matters. And you don't have any particular axe to grind in this matter. Would you advise clients of your company to rush out and invest under these circumstances?

Chairman TAUZIN. Last question.

Mr. ASHTON. No, I would not.

Mr. DINGELL. Would not. gentlemen, thank you for your kindness. Thank you, Mr. Chairman.

Chairman TAUZIN. Thank you, Mr. Dingell. Chairman of the subcommittee, Mr. Upton.

Mr. UPTON. Thank you, Mr. Chairman, and I look a lot at my district as a microcosm of the country. We have a lot of different blends. We have ethnic strengths, and we have a very good blend of rural and urban, large businesses and small, and some terrific educational State universities there as well.

And when I look at a—and because Mr. Stupak is here—a partial map of Michigan, and I'm sorry that I don't have the upper peninsula here, but on the other side, and when I look at a map of Michigan, a partial map of Michigan, and this district is mine in this corner of the State, the southwestern side, also looks like a microcosm of America.

By the way, yellow means DSL, and Michigan DSL service as provided by Ameritech. In other words, the answer is that there is not a lot that is there, and as I look at this legislation, and I look at the intent of where I want to this technology to go, I want to see all of Michigan in yellow, including the upper peninsula, too.

But sadly this is where we are, and our district I don't think is any different than very many districts around the country, particularly when you have such variances as mine.

And I guess, Mr. Mancini, I would like to know from you—I know that there is a project, project Pronto, which you have prepared to testify with regards to, and I think the clock ran out, but how is that investment proceeding, and what will this legislation do in terms of speeding up shading our State yellow?

Mr. MANCINI. Well, Congressman, as you are aware, there are distance limitations in DSL. In other words, if your home is beyond 15 thousand feet from a central office, DSL really can't provide service.

About 40 to 50 percent of our customers are within those space limits or space requirements. So we have started Project Pronto, and we could observe 45 to 50 percent of our customers. What Project Pronto does is that it is a $6 billion investment or bet on our part—no tax credits, no government assurances behind it—to extend that work from 40 to 50 percent to 80 percent.

As a result of this $6 billion investment, which requires us to lay fiber from the central office and build new remote terminals closer to the neighborhoods, put new advanced services and equipment

into those remote terminals, and hook up to the fiber, we will be able to reach 80 percent of the customers.

That investment is proceeding in Michigan and the rest of the country, but as I mentioned it is on indefinite hold in Illinois because—and this causes us great concern, because what the Illinois Commission did is being considered by Commissions in Kansas, Texas, and California.

The end result of those kinds of overregulatory decisions, which definitely do not apply to cable, could destroy the economic base in our incentive to invest. What the Illinois Commission did was go well beyond what the 1996 Act and the FCC had required regarding unbundling.

They required that within those little remote terminals that are close to the neighborhood, they are what we call line cards, which are used to provide to split the data voice.

They require us to allow competitors to take their own line cards made by their own manufacturers, and try to insert them into this facility. First of all, it is technically infeasible. The manufacturer of that equipment has said that it cannot be done, and in addition, and as a result of those requirements, it has imposed an additional $500 million cost on us.

And that destroys the economic base, and as a result we will not deploy Project Pronto in Illinois, and over a million Illinois customers will not have an alternative to cable.

Mr. UPTON. Mr. Henry and Mr. Ashton, as I have had many, many meetings over the last couple of months with a variety of different interested parties, one of the common comments is that—and particularly with the CLEC industry—is in big trouble.

That they are not getting the return on their investment, and some have suggested that this legislation would in fact provide the final nail in the coffin, and that presupposes, of course, the argument that the corpse is also inside the coffin.

You two have a little bit of a different view in terms of the Wall Street analysis of the CLEC industry, and perhaps what this legislation will do. Can you expound, and can you look at each other's arguments that were made during the testimony and offer some comment?

Mr. ASHTON. I will go first. I am encouraged by the questioning this afternoon when I see more questioning geared toward the cable competitors in the cable industry than the earlier commentary, which was very CLEC dominated.

And the reasons are because of where those companies focus their networks, and where the networks have largely not been modernized. And that goes back to my earlier comments this morning, which were you have to think about the markets, in terms of large business and small business, and residential access.

And in the large business market, I think it looks more like the core market. It has been largely—you can say in some cities it has been overbuilt to some extent. There have been a lot of fiber runs in the cities, which was a natural way for the CLEC market to try and grow up, and get into the business. But if you look at the small business and residential market, it is not where the CLECs are largely dominant.

It is not an overly economical market for them, and so I think more or less we have to move the commentary toward broadband access in those markets to a competitive battle between the regional Bell companies and the cable companies.

And I think, you know, the other thing is that a little bit of this is in hindsight. The CLEC market itself is in dire straits, and this may or may not kind of put that sector to rest to some extent.

Mr. UPTON. And getting a signal from my Chairman. And that happened with or without this legislation?

Mr. ASHTON. I think it would happen with or without it. I don't think it is—it is my personal opinion, and not Bear Stearns' opinion, but it is my personal opinion that this bill, or without this bill, that those competitors are not worth really worrying about.

Chairman TAUZIN. The Chair recognizes the gentleman from California, Mr. Waxman, for a round of questions.

Mr. WAXMAN. Thank you very much, Mr. Chairman. Mr. Mancini, in a letter last fall to Pacific Bell, two small California cities in Ventura County, California, complained that they were being redlined based on population and income levels, and long term business development potential.

They had been trying to get DSL service for 2 years before they sent their letter complaining. At the same time, a spokesman for Pacific Bell told the L.A. Times that the company's only obligation is to provide basic telephone service, that high speed Internet service is deregulated, and that the cities didn't have enough potential customers to be profitable.

Now, Pacific Bell had more than a 19 percent increase in earnings last year, and in fact Pacific Bell's annual profits have ranged from almost 12 percent to almost 21 percent. How much income—let me ask you two questions.

How much in profits do you believe that Pacific Bell and SBC, and other local carriers, are going to have to earn for them to have enough of an incentive to offer high speed Internet service to undeserved areas?

Mr. MANCINI. I can't answer what the profits need to be, but I can tell you what the criteria are on how we decided to spend $6 billion to expand our network to cover 80 percent of our customers, and those had to do with where central offices were located, and where population centers were located, and where the growth was going to be.

It was purely a decision on what is the most effective way to expand the network, but in addition to that, we did make a commitment to the FCC, which we have kept, that we would deploy in what are called underserved and rural areas.

So as part of that $6 billion, we have in fact gone to areas which we would not have economically normally done.

Mr. WAXMAN. Well, let me ask you this. I want to point out that John Britain, who is the media director for Pacific Bell, was quoted as saying of the high speed Internet services deregulated in Ojai and Fillmore—these two cities don't have enough potential customers to be profitable. What assurances do we have in H.R. 1542 that you will ever deploy long distance data service in some areas of this country that are not going to fit that profile?

Mr. MANCINI. My guess is that those areas are in fact already served by PAC Bell with regard to long distance data, and so I think they would immediately be able to provide that.

With regard to high speed Internet access, every company has to make economic decisions. It is a competitive market, and I think the right question is what incentives do the telephone companies, as well as the cable companies and wireless companies, and satellite companies, have to serve those areas. It is not just us. This is not a monopoly market.

Mr. WAXMAN. Does the bill give you any requirement ever to serve those areas?

Mr. MANCINI. It doesn't give us or anyone else a requirement to serve those specific areas.

Mr. WAXMAN. You have begun to offer long distance service in Texas about a year ago.

Mr. MANCINI. Yes.

Mr. WAXMAN. And can you tell us whether you were offering services in rural areas?

Mr. MANCINI. We are offering service in every single community to every single customer that we serve.

Mr. WAXMAN. Mr. Tauke, Verizon has met the 14 point checklist in New York State, and can offer long distance service there. Can you tell me how many rural markets you are currently offering long distance service and when you plan to roll out service to those areas?

Mr. TAUKE. We are offering long distance service, the traditional long distance service, every place in New York State to every customer. In terms of high speed data services, that varies from area to area of the State.

Mr. WAXMAN. One thing that I can't understand, and maybe someone on this panel can answer it for me, but there is a savings clause in Section 232(b) of H.R. 1542, and it is at the bottom of page 6, that reserves to the States the right to continue to regulate voice services if this bill is enacted.

And my understanding is—and a number of my colleagues have pointed this out today—that voice and data are identical when transmitted with packet switching technology.

Can anyone explain to me as a technical matter how voice and data traffic carried over high speed data service lines can be separated so the States can fulfill their regulatory function?

Mr. TAUKE. Well, Mr. Chairman, I think there is a substantial amount of confusion following the discussion this morning on this issue. If Verizon, for example, under this bill, builds a broadband network, we cannot market, we cannot build, we cannot charge for any voice service that goes over that network. Now, if someone else purchases from——

Mr. WAXMAN. My question was about technologically how a State can regulate.

Mr. TAUKE. Let me just speak to that. I am trying to get to that. Just as it is the case today, if AOL leases a line from us in order to provide ISP service to a customer, and they over this broadband line offer voice services, and they charge for the voice services, we can't do anything about that. We get no money from it.

We aren't marketing it, and we can't do anything about it, and whether or not the State Commission can regulate what AOL does on voice services is a good question today, and it will be a good question if this bill passes.

But it doesn't change what is currently the situation relating to AOL offering IB telephony.

Mr. WAXMAN. Mr. McMinn, can you respond to my question?

Mr. MCMINN. I think that your distinction of voice and data is disappearing. As ones and zeros are indistinguishable from each other, they are also indistinguishable in terms of how far they have traveled, and how they have traveled to get to a particular customer.

I mean, take a teleconference, and if it is handled over the Internet between people that are in New York State and California. Is that long distance, or is that data, or is that voice? How about if someone makes a transcript of that conference and makes is available on a website, and it is accessible in Florida? Is that voice or is that data?

And supposing someone chooses to modify and redistribute that? I mean, is that voice or is that data, or is that video? I don't think that technologically the distinction is going away by bits or bytes.

What I think is important for everyone to remember is that we are trying to enable the most competitive broadband distribution system for those bytes, and it is not about one versus the other. It is about giving the consumers as much different choices as they can get, and as many different options to be able to get.

So we should not be picking winners and losers between CLECs, ILECs, and cable companies. We should be figuring out how to make all three of those networks continue to compete.

Chairman TAUZIN. The gentleman's time has expired. The Chair recognizes the gentleman from Oklahoma, Mr. Largent, for a round of questions.

Mr. LARGENT. Thank you, Mr. Chairman. Mr. Ashton, in your written testimony, you state that we need regulation that will, quote, we need regulation that will reward risk taking, one that gives those who do the risk taking the incentive to garner its rewards.

And I wholeheartedly agree with that statement. My question to you is how does rolling back access provisions, such as line sharing rules, reward Mr. McMinn's company, Covad?

Mr. MCMINN. Our point is that your voice network is basically built out, and that competitive—and competing in that market is largely something that can go on if it was worth competing for, and there is no restrictions in the current rules, nor do I read this Act to restrict voice competition.

But if you look at the broadband services buildout, and you go beyond narrowband services, we need a new access network, and the cost of that is going to be extremely high. And in my belief that in order to get us going in that direction, it is not just regulation.

It would not propose that this reform will just—just holds all the answers. There are technical and equipment costs and issues that need to drop, and more than anything, and it is often forgotten, we have to identify services that will actually travel over this network,

and people will pay money for, and demand in a large enough quantity to actually pay for the network buildout.

And that is a question that is still out there, but that is a major risk, because high speed—you know, $40 a month or whatever it might be is not going to be enough to pay for this buildout.

So I see it as a major risk, and I see it as a new type of risk that the large carriers have not had to deal with before, and I see it as something where we should reward that kind of risk taking if it takes place.

Mr. LARGENT. But major risks, and yet this leads to my third question, and I will ask the SBC folks in just a second, but major risks. SBC's data revenues increased 39.9 percent to $2.1 billion, compared to $1.5 billion in the year ago quarter. The company's data revenue stream has nearly doubled in the past 2 years. Man, that is the kind of risk that I would like to get in on, a 39 percent rate of return. Wouldn't you?

I mean, that is what you would advise your customers wouldn't it? Let's get in the kind of risk that has a return that has 39 percent. That does not seem like a lot of risk to me.

And yet the bill that we are talking about, and that his hearing is about, is going to take players like Covad out of the market. So they have zero ability to invest any capital in making this kind of investment. Am I correct?

Mr. MANCINI. No.

Mr. LARGENT. I am not asking you. I am asking Mr. Ashton.

Mr. ASHTON. I wasn't sure. First off, the services that are being offered today are being offered to customers that are the easiest to offer them to; those that are within the distance limitations of central office switches if it is DSL, or it is all data services.

Data services are not that new. We have been offering T-1 and frame relay, and all kinds of data service for some time, and that's where the companies are doing very well, because there is more data demand than there ever used to be.

The question is that to bring this down to the mass market, which is what I think is what we would all like to see, that is going to require a different type of expenditure. We are not talking about the large business market where they derive most of their data revenues from.

We are talking about the consumer market and the small business market, and those customers are largely not part of these numbers, and they are not part of the growth, and they won't be addressed because there are different economic questions addressing them versus large businesses.

Mr. LARGENT. Mr. Ashton, you seem like a pretty sharp guy. Are you aware that the CFO of Verizon Communications sits on the Board of Directors for Bear Stearns?

Mr. ASHTON. I am aware of that, but these positions——

Mr. LARGENT. I thought you would be.

Mr. ASHTON. But I want to make this very clear. We are also the largest—and James can answer this better than I can—but we were one of the major financiers of CLECs, and we were the primary investment bank behind Covad. But it is important that the committee know that my comments are mine and not Bear Stearns.

Mr. LARGENT. Mr. McMinn, in your testimony, you have outlined your concerns with eliminating line sharing. I'm curious. What has Covad's experience been with the Bell companies' willingness to provision a line or loop when you sign up a customer?

Mr. MCMINN. Our position has really been a compromise. Unfortunately, it is going to take me a few seconds to give you the history here. As soon as the FCC determined that they were going to encourage the adoption of line sharing, which was April 1999, we began to offer DSL to consumer customers at a loss.

We knew that it was uneconomical to do it on second lines, but we anticipated the passing of that line sharing order, and we began to offer consumer services. The FCC finally passed that line sharing obligation in November 1999.

We thought that then we would be able to offer up line shared lines. It took an additional year until some, but not all, of the ILECs were able to offer line sharing for us, and in particular let's take the case of Verizon.

They claimed publicly that they installed 3,500 line shared lines per day increasing their customer base. In the first full year of operation, they were unable to give us 3,500 lines of line shared DSL. That is the disparity of all of this.

I think it is also important to remember that we are not taking about wanting a free ride on these remote terminals or the fiber that might be put into the field. What we are asking for, and the only thing that we are asking for, is access to the 1.6 billion miles of copper that are out there in the plant.

And even in the most optimistic scenario of rolling out remote terminals, that at least two-thirds of that existing copper plant will remain in effect. It is that two-thirds of the copper plant that lie beyond these exotic fibers, or lie beyond the remote terminals we want.

We are willing to pay for the fibers ourself, and we are willing to pay for the remote terminals ourself. We need access to that copper.

Mr. LARGENT. Thank you, Mr. McMinn, and Mr. Chairman, I will yield back. I do have another question for Mr. Mancini that I hope to get to ask about the seeming incongruity of their complaint about the burdensome regulation at a time when they are getting a 39 percent rate of return on their investment in broadband. I yield back my time.

Chairman TAUZIN. The gentleman's time has expired. The Chair recognizes the gentleman from Massachusetts, the ranking member of the subcommittee, Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman. Just a little bit of history. In 1967, the Federal Government gave the Bell system 50 megahertz to deploy a cellular system, and they didn't do anything with it. Nothing.

They were able to deploy DSL before the 1996 Act. They didn't do anything with it. Nothing. They came here in 1995, all seven chairmen from the Bells, and they said that if we lift the restriction on their ability to get into cable that they will compete against the cable industry.

What have they done? Nothing. They said that would give them an incentive in fact to deploy. Have they? No. What has led to the

fact that we have now gone from virtually zero of broadband access in 1995 to 52 percent of all homes in the United States that now have access to broadband?

Paranoia. The cable industry and the telephone industry afraid that someone else is going to get there before them. Plus, Mr. McMinn, and Mr. McLeod, and Mr. Gregori, that's what drives them. Paranoia.

You give something to the Bells and they don't have to do anything with it, they won't. And, in fact, in 1993, this committee, working with the Federal Government, had to say that the Bells could not compete for the third, fourth, fifth, and sixth licenses because they had not even gone to digital yet. They were still on analog for their cells.

So we had to actually say that they can't even compete in the regions in which they already own cell phone licenses. That's 1993, because only the competitors were going digital, and then they moved to digital, the Bells.

Let's get the little history here straight of the incredible, backward way in which the Bells have looked into the deployment of new technologies over the years. Mr. McLeod, many companies in the telecom market have talked about one stop shopping, and about a bundled package, and that includes a group of services, including a DSL line, and voice data, local and long distance, and Internet services.

How does a regulator know what service it is regulating? How is the State or the Federal Regulator going to be able to track down voice from video, from data, to make sure that it is being monitored?

Mr. MCLEOD. There really is no way to track it down. On the backbone networks, starting out in the 1980's when fiber was deployed throughout the United States, and those networks carried both voice and data services, and now as we move forward in the local access arena, voice and data services are integrated on the same copper wire.

So there is no way of separating the two. What is the key element here through all of this is that that network element, that last mile connection, is 100 percent controlled by the Bell companies today, and we need access to it, equal access to it.

Mr. MARKEY. So there will be a regulatory morass that is created then?

Mr. MCLEOD. There will be, yes.

Mr. MARKEY. And this bill really doesn't help to clarify that as far as I can see, because it really even doesn't provide a definition that is useable.

Mr. MCLEOD. There is no definition whatsoever, and the focus here on data, as compared to voice, is really absurd in the new world of communication.

Mr. MARKEY. Well, when the Internet telephony explodes over the next 5 years, will we be back here with a slew of lawsuits on requests to change the legislation?

We have people down here saying you people didn't get it when you acted in 2001. The bill really should have been about Internet telephony. You didn't say anything about it. Are we missing really where it is all heading right now, Mr. McLeod?

Mr. MCLEOD. Well, certainly voice over IP over the next 5 years over Internet protocol technology will be the primary way that voice is carried.

Mr. MARKEY. Well, let me ask you this. Do you agree—you and Mr. McMinn if you could—do you agree that we should not import legacy subsidy models of per minute access charges, or usage sensitive fees, on the Internet, including on IP telephony, rather than having per minute charges on per Internet traffic, while they are having flat rate, for example, universal charges?

Mr. MCLEOD. Well, I think that eventually that—access rates have been coming down, and recipe comp rates have been coming down over time because they are viewed as artificial charges, and some orderly mechanism for bringing those rates close to zero should be in place, and I think that is the direction that we are moving in.

Mr. MARKEY. Mr. McMinn.

Mr. MCMINN. Well, I think in terms of what regulations or what concerns might come up 2 or 3 years from now in the regulatory environment, I think that is indicative I think of the profound forward looking thinking that was in the Telecom Act.

It did not try to predict what type of services were going to be put in place. It opened up the network to a whole host of new services, and in fact no one could have really predicted the rate at which the Internet data use of the network has evolved.

That was exactly the beauty of the Act. What we are seeing now is an attempt to roll that back. The ILEX finally realized that they weren't the most innovative forces in the United States, and now that the door is open a little bit, all four monopoly bodies are slamming against that door to try to shut it down again.

Mr. MARKEY. I think to be honest with you, this bill is technologically obsolete. I think it creates an image of the FCC as State regulators trying to perform a most futile task, which is chasing ones and zeros down the information super highway trying to put them over to the side, and trying to determine whether they are voice, or video, or data, or Internet, or whatever, in an era when we are trying to appreciate the fact that it is convergence and not divergence which is going to be the hallmark of the future.

And I think what we are heading for in this bill is a regulatory retrogression back to an earlier period of time when there were separate and distinct services which were being performed.

So I think that after we have spent a decade educating ourselves as a committee as to the inevitability of convergence, for us to be considering this kind of legislation demonstrates that unfortunately we still need more remedial work as to where the whole future of this technology is heading over the next 5 and 10 years. Thank you, Mr. Chairman.

Chairman TAUZIN. I would only add that everybody needs a different level of remedial work. The Chair would recognize the gentleman, Mr. Cox.

Mr. COX. Thank you, Mr. Chairman. I'm sorry, Mr. Tauke, a former colleague, that I was not here for your testimony, but I read it. But I would have liked to have been here just to pay you the courtesy of listening to it personally.

And I want to start as basically as I can along the lines of the old Vince Lombardi talk to the Packers about getting back to basics, where he said, "Gentleman, this is a football." And I want to ask you as a matter of philosophy is digital voice information in your view data?

Mr. TAUKE. Digital voice is the same ones and zeros as any other digital service. I don't know that I would call that data, because we do have an artificial regulatory structure in place. It is artificial today.

I mean, the right thing to do is eliminate all of the distance restrictions that are currently in the Act. There should be no local calling areas. There should be no toll. There should be no interLATA restrictions.

It makes no sense in today's world, but there is unfortunately a regulatory structure which drives the way in which the industry develops. It is still in place. Today, there is no way that Congressman Markey or any other regulator can know what is and is not voice that is going over the network today.

The way in which the current law is enforced is by ensuring that there is no offering, marketing, or sale, or money collected, by a Bell company for an interLATA service. That is the same mechanism that would remain in place for voice services tomorrow, but as I indicated earlier, when you look at what is going over the network, you can't tell what it is.

And so when AOL and when we sell a line to AOL today, we don't know whether AOL is offering to their ISP customer voice, video, data, whatever, that they put over that line.

Mr. COX. And when you talk about the restriction that will remain, you are talking about Section 6 of this bill that says that there will be, even if we were to adopt this pending legislation, a continuing prohibition on marketing voice telephone services?

Mr. TAUKE. Correct.

Mr. COX. So let me explore a little bit about what we mean by voice services, because this really is a dynamic marketplace that is changing a lot. During the 2 week recess when I was home in my district, I had talked to a lot of the tech companies that I didn't even know that I represented.

It changes a lot, and one of them is building a car. They are getting together with Honda, and Honda is going to actually build the thing. They started out as a technology company making the computers for the car, and they decided that their computers were so far advanced beyond what is available on the market today that they just built the car around it, and have it be an intelligent automobile.

And when you are driving this car, you can answer your pages hands free when you are on the road, and it does all sorts of fun things, and it would be a fun car to own the way they have described it.

But you could answer your pages just by talking, and via the Internet, you voice responses to your pages are delivered. Is that a voice service, and would it be subject to Section 6 of this bill?

Mr. TAUKE. It is not subject to Section 6 of the bill, because today voice services are not subject to any of the distance restrictions as long as they are via wireless. So when you pick up your wireless

phone, Horizon can provide a nationwide wireless service because the interLATA restrictions on wireless services were lifted in the 1996 Act.

And so the wireless service voice, data, or whatever, that you have in the Honda, those things can—a Bell affiliated wireless company can offer those services because the restriction on interLATA does not apply to wireless.

Mr. COX. And that would be true also after the enactment of this legislation?

Mr. TAUKE. That would be true after the enactment of this legislation. This legislation would lift the interLATA restriction on wire line data services.

Mr. COX. And so now let's move away from the automobile and away from the wireless environment, to the workplace, and let us say that you answer the same page from your place of work, and you use your broadband connection in your office. Is that a voice service?

Mr. TAUKE. It probably would be a voice service given the kind of service that you suggested it is, and as I interpret the Act as it is written, or the proposed Act as it is written, Verizon would not be able to offer that service. Another company could.

Mr. COX. So answering the same page in the same way, depending on whether you do it from your car or your office——

Mr. TAUKE. It depends on which technology; if it is wireline versus wireless technology.

Mr. COX. [continuing] results in two dramatically different regulatory consequences?

Mr. TAUKE. That's correct, and as today, there is a different regulatory consequence between voice over, the wireless phone, and voice over, the wireline phone.

Mr. COX. And without question, and I think we all pretty much all agreed on this, all 11 panelists, that the reason we are here today is that we have some regulatory models that don't fit the current regulatory environment.

And I think in your own remarks in answering my big picture question about what is voice and what is data, you made it clear that you are chaffing under the restrictions of an old regulatory model.

My concern is this. If we move in the direction of the proposed legislation, aren't we again institutionalizing this very artificial distinction between voice, and data, even to the extent of discriminating between voice and voice?

Mr. TAUKE. No, I don't think you are really. I think what you are simply doing is carving off one more piece. If information services and wire services were carved up in the 1996 Act for InterLATA purposes, you would be carving off one more piece, and you would be saying to the Bell companies that if you have the network and the facilities, you can market that service and provide that service, and charge for that service if it goes over your network.

And I would observe because this question has been raised, that the big money is still in the interLATA market is in the voice market. In Massachusetts, where we just got authority, a $2 billion market for interLATA voice services, and that is the big huge incentive that is still out there for the companies.

Mr. COX. Last, let me finish up on a point that I think that Congress Markey raised, if not quite explicitly, almost explicitly. Under this Section 6, you would be prevented from marketing, billing, or collecting, for interLATA carried over your broadband equipment?

Mr. TAUKE. Until we got the 271 approval.

Chairman TAUZIN. The gentleman's time has expired. He is permitted to finish his answer.

Hon. COX. To the extent that you are offering in the future under this legislation broadband services to your customers, and your customers are availing themselves of Internet long distance telephony, local and long distance, do you think that you wouldn't feel justified in coming back to the FCC and to the Congress saying we are being ripped off, and that these people aren't paying any of the fees that we have to pay in our business.

And they are competing in ways that we can't, and they are using all of our equipment, and they are in markets that we should be able to be in, and we want a level playing field?

Mr. TAUKE. Well, today, America On Line, if they purchased one of our DSL lines, which they do, can offer IP telephony over that line if they choose to do so. Verizon On Line, using the exact same line on-line service, cannot offer IP telephony.

And it would be the same kind of restriction that would remain in place tomorrow if this Act passed that is in place today. And we might think that is not right, and I would say that there are a lot of other restrictions that ought to go away, but I think we would expect that we would adhere to the 1996 Act, and go through the 271 process to get rid of that restriction.

Chairman TAUZIN. The gentleman's time has expired. The gentleman, Mr. McLeod, if you would like to respond, you are welcome.

Mr. MCLEOD. Yes, just for a second, because I think there is a tremendous amount of confusion here which we could solve very quickly. It is 5 years after the Telecom Act, and it is 2001, and a 14 point checklist has not been completed in 45 States in this country to open up the local networks.

So we don't have these issues, and so we don't have to define what is going on, whether it is voice or data. So that the Bell companies can be freed to operate, and it is 5 years later, and when are we going to talk about mandating that these networks be open so that there can be competition.

Chairman TAUZIN. The gentleman's time has expired. I would only add as a point of reference that the 14 points have now been expanded to 1,100 by last count. The gentleman, Mr. Boucher, is recognized.

Mr. BOUCHER. Well, thank you very much, Mr. Chairman. And I want to thank all of the witnesses for a very informative presentation and discussion here this morning and this afternoon.

There has been some discussion recently about what I think is a very interesting proposal to create a new title to the Communications Act, and a new Title 7, wherein would reside converged broadband services.

The purpose of the new Title 7 would be to treat the offerors, the providers, of substantially similar services the same way from a regulatory standpoint. And that would be I think a major and an important departure from current practice.

At the present time services are regulated not by the character of the service offered, but by the company that offers the service. So regulation tends to be industry specific and not service specific, and that creates disparities, and it creates a discriminatory and uneven treatment, and competitive disadvantages.

A new Title 7 would have the benefit of placing within a new regulatory environment all of the various services where a common platform is used to provide multimedia offerings.

So if some combination of voice, video, and data, were offered over the platform, this new regulatory treatment would be provided. And telephone companies, cable companies, and others, would be treated the same way under the regulatory structure.

I think the time has come to do this. The legislation doesn't speak to this, but perhaps at some future stage in the legislative process we can address this concern, and if there is a consensus to do it, insert this Title 7 concept.

Mr. Tauke, I would like to ask you for your comments on this general theme, and whether or not you think an approach such as this has merit.

Mr. TAUKE. Well, Mr. Boucher, I do think the approach has merit. As you will recall, Ira Magaziner, who was in the Clinton White House, made quite an effort during the discussion of the 1996 Act to float this notion, and to establish the idea of a separate title for broadband services.

He recognized that broadband was a distinct market and there should be a clear policy established that would apply to all broadband service, regardless of the nature of the company that offered the service.

And I think that there is substantial merit to that. As I alluded to in my testimony, we need a broadband policy. It makes no sense to have different policies for different kinds of companies, and a deregulatory policy which gets rid of the distance issues, which the gentleman from California was talking about, and gets the States out of it and establishes a national policy, is just what we need in my judgment.

Mr. BOUCHER. Well, thank you very much. I can't depart this discussion without raising another issue that is not addressed in the legislation, but is one which I think should be addressed at the proper time.

And that is the need for an open access policy that assures that whatever the platform for Internet transport that a particular customer uses, that customer can have a choice of Internet access providers.

Now, that is the rule today with regard to the telephone company platform, and that would remain the rule for the telephone company platform upon the passage of this bill.

But nowhere in the law, either present or proposed, do we have a provision that applies that same open access principle to the cable platform, the fixed wireless platform, or the 3-G mobile wireless platform that we will soon be using, or to the satellite platform.

And I wonder if our witnesses would care to comment on the appropriateness of having open access so that every Internet user has a choice of the Internet service provider that provides services to

him, and so that we eliminate this perhaps last remaining regulatory disparity, assuming of course the adoption of this bill and its many deregulatory provisions. Who would like to begin? Yes, sir, Mr. McMinn.

Mr. MCMINN. Well, certainly I think that the consumers need absolutely as much choice as they can get in the provision of broadband services. This is a whole new network that is being built at Internet speed in the United States, and I will say that they have open access today with our technology, with our network, which covers 45 percent of the homes and businesses in the United States.

We have over 250 Internet service providers that we sell our services to so that they can provide Internet access to their customers. But what I think is important to remember is that just because the ILECs today are in this transition period, that that choice is unavailable to the market, and in fact choice will decrease in the market if the bill as it is currently proposed goes into effect.

I mean, what more incentive do the ILECs need to roll out broadband services than getting into the hundred-billion dollar long distance business.

Mr. BOUCHER. Well, thank you, Mr. McMinn, that is an interesting answer, but it doesn't have a lot to do with the question. Would anyone on the panel care to comment on the question of the need for open access?

Chairman TAUZIN. The gentleman's time has expired, but anyone is allowed to answer. Mr. Cicconi.

Mr. CICCONI. Mr. Boucher, first of all, I think it is important to point out when one considers open access which as I understand it has been defined as providing consumers with a choice of ISPs, that everywhere in America today, every consumer in America today, has that choice of ISPs.

And they can connect to the ISP of their choice through a variety of means. Cable itself is in the process for providing that form of an open access today, and frankly the only impediment to providing that access has been a contract with the people that built the network in the first place to allow them a return on their investment.

AT&T is in the process of testing its system right now, and we will be deploying it in scale in one of the major markets, and in fact in Mr. Markey's district this year, and will be doing full deployment next year.

Other cable companies are following suit on that, and I might add that the jux of the position of these issues to me is striking, because the bill in front of you would in fact preempt any Federal or State regulation of the Bell facilities in this area which are in fact bottleneck facilities on this if they provide, or if they have anything to do with the delivery of the high speed service.

So even an old Legacy facility within their network, if it is involved in the delivery of this high speed service, the Federal and State regulators would be preempted from anything. So the oddity here, Mr. Boucher, in an open access proposition is that where you don't have a bottleneck facility, some people are opposing to regulate cable.

But where there is a bottleneck facility, we are proposing to deregulate it, and let them shut out people who want to access those facilities. I would submit that that an odd jux of a position.

Mr. MANCINI. If I could just reply. When we are talking about the high speed advance services market, and that's what we are talking about today, the BOCs nor anyone else have a monopoly on those equipment, those facilities. Cable modems do not use any of our systems, and we don't use any of theirs. There is no monopoly.

So to talk about a monopoly system in a new competitive market, where there are four different facilities, I think is just strange cojolity.

Mr. BOUCHER. Well, thank you, Mr. Chairman.

Chairman TAUZIN. I will allow Mr. Pitsch and Mr. Tauke, if you will quickly respond as I need to move on.

Mr. PITSCH. Very briefly, as I indicated in my testimony, we have supported what we would call good symmetry in this market, Congressman Boucher. We have opposed forced access, or access at regulated terms. We supported on negotiated terms, and for that very same reason we would support not imposing on bundling our regulations on the telephone company's last mile fiber in a remote terminal investment.

Chairman TAUZIN. Mr. Tauke, and then I will move on.

Mr. TAUKE. Well, I just wanted to say, Mr. Boucher, that any open access provision that Mr. Cicconi will agree to, I'm sure that Verizon will happily agree to.

Chairman TAUZIN. The gentleman's time has expired, and the gentleman from Florida, Mr. Stearns, is recognized.

Mr. STEARNS. Thank you, Mr. Chairman. Let's see. Listening to your opening statements, I was here for all of them. Let me see where I think we are at here. The Tauzin-Dingell bill will probably pass if members believe that it will move broadband forward in this country.

Will the arguments about what industry is regulated, yours versus cable, and the facts that the CLECs will lose money, all of that will probably not be as powerful as the argument what will move broadband in this country.

Now, Corning obviously when Mr. Regan talks, he is talking from self-interests because they want to sell more fiber. And the gentleman who was talking about getting to the rural part of this country, broadband—I mean, we would all agree if in a magic wand this bill would get us more broadband, and I think we would all go ahead with it.

But it seems to me that we also have to take the fact is that we are not sure that it will. So let me ask Mr. Pitsch. You are from Intel, and just take your hat off for a moment, and you are supporting from your opening testimony the RBOCs.

So I want to say that without Congress doing anything, what could the FCC do today to move broadband across this country? Two things.

Mr. PITSCH. Congressman, they could reboot under Section 251(d)(2). They could determine that under the necessary and impaired standard that a lot of the investment that I was talking about is or should not be unbundled.

And they should do that under a standard set by the Supreme Court, and under the Iowa Utilities case, just to use Just Scilia's term, something akin to a central facility should be unbundled.

Mr. STEARNS. And why is that?

Mr. PITSCH. I'm sorry?

Mr. STEARNS. Why should that be?

Mr. PITSCH. We support unbundling for the copper, and I want to make this very clear, because that is a bottleneck in the dial up market. That's No. 1.

Mr. STEARNS. And No. 2? If that's it——

Mr. PITSCH. Well, another thing they could do is that they could get a lot more wireless spectrum out, and they could rebalance local rates to encourage local telephone competition. Let's face it. One of the reasons we don't have a lot of local telephone competition is because those rates are regulated rates.

Mr. STEARNS. Okay. Now, we have an article here from the New York Times, dated April 22, and I want to give Mr. Mancini an opportunity to answer this. This article in the jump headlines said, "How the Baby Bells May Rule the World."

So the article shows that you folks have all the money, and have all the ability here. So you are coming here with this bill saying that you are the victim here and you need help. This article, the way it is slanted, shows that in addition that you are not only not the victim, but you are the 800 pound guerilla.

And they show a graph here that shows that the long distance calls, that the cost has gone down since 1985. Yet, the costs for the local has gone up. So I want to give you an opportunity to respond.

Mr. MANCINI. Well, I obviously would like to know what they meant by the cost of the local.

Mr. STEARNS. Well, to the consumer. What it costs the consumer to pay for local calls has gone up, while the costs for the long distance has gone down. And my point being is that you are making a lot of profit, and thee doesn't seem to be as much competition in the local line as there is in the long distance.

Mr. MANCINI. Well, I can tell you, Congressman, that the cost of local service to our customers has not increased since 1984. In Texas, for $9.85, you get 24 hour a day, flat rate service, 30 days a month, and that cost has not increased since 1984.

Mr. STEARNS. Did you see this article?

Mr. MANCINI. I saw that article.

Mr. STEARNS. Is the graph wrong from the Federal Communications Commission, Bureau of Labor Statistics, showing that the local calls have gone up almost 70 percent since 1985. Is that graph wrong?

Mr. MANCINI. I assume what they are including in there are various costs of vertical services, like call waiting, call forwarding, and some of those costs have increased. The costs of local basic service has not increased. The cost of vertical services has increased.

Mr. STEARNS. Let me ask AT&T to respond to that.

Mr. CICCONI. Mr. Stearns, I do have the figures in front of me. I think what may be confusing this, in terms of whether they have gone up or not is whether they are adjusted for inflation.

The consumer price index during this same period went up 73 percent and local phone service went up 70 percent, and I think

that is the graph that you are showing. During the same period, even adjusted for inflation, long distance rates declined 34 percent.

This is the competitive market in action. When the Bell system was broken up, it created a vibrant competition in long distance and zero competition in local. And what you are seeing there is the evidence that they have kept their rates consistent with inflation, while competition, despite inflation, has forced long distance rates down over the same period.

Mr. STEARNS. Is there anybody else who would like to respond? Mr. Tauke. And I think, Mr. Chairman, that this article has come out, and I think it is appropriate to give the RBOCs an opportunity to respond to this article, because as it points out, they are certainly the people who are making all the money, or that is the implication here.

Mr. TAUKE. Well, Mr. Chairman, and Congressman Stearns, I first want to say that nobody is coming here, or at least I'm not, saying that we don't have a good business.

And nobody is coming here and saying that our business is not doing well. The market is growing rapidly and there are a lot of new services that we are offering to consumers and it is a good business. And the companies, thank the lord, are doing reasonably well, which allows us to make huge investments in this business.

We have to invest every year $18 billion in our business in order to keep the networks moving forward and the services being provided, and meet the demand that is out there.

In terms of the New York Times article, I would be happy to give you a point by point response to the New York Times article, but I think the basic issue on rates is this. Local rates, the basic dial tone rate, has continued to decline. It has not gone up.

And when you take into account inflation, it certainly has not gone up. In a State like New Jersey, for example, the rates have been $8.19 for as long as anybody can remember for dial tone service.

But where there are increases is we have lowered the access charges for long distance under the Federal cost proposal, and so we got a $3.50 increase in the interstate charge that is going to be coming. I should say that was in the first lowering, and it was $3.00 the first time around, and now with calls it is going up again.

So we lowered the access charges the long distance customers were paying for use of the local network, and that has permitted long distance charges to go down. These flat rate charges that have been added to the local bill in order to offset that cost.

We have seen more services added, such as vertical services, and so those are the things that have added to the cost of local telephone service, but your basic dial tone service has gone down, and not up, over the last 15 years.

Chairman TAUZIN. The gentleman's time has expired, and the Chair recognizes the gentleman from Tennessee, Mr. Gordon.

Mr. GORDON. Thank you. I think Cliff Stearns summed up most of our objective here, and that is that we want to see broadband expanded to everyone, and we want to see competition so that it can be done as economically as possible for relief for our consumers.

I guess the first observation, Mr. Ashton, as I listened to you today, and I remember just broadly trying to characterize what you are saying, but it seems to me that what you are saying is that having broadband is an expensive venture, and that competition is good.

But as a practical matter, we might as well just realize that CLECs, as good of folks that they might be, can't afford it, and that if you want competition to the cable folks, you might as well just go ahead and recognize that the Bells are the only ones that have the money, and let's move on.

Is that generally what you are saying?

Mr. ASHTON. Yes.

Mr. GORDON. That's fine. I just thought I wanted to get it out there.

Mr. ASHTON. Yes. It can only be done by those who have the money. It is pretty basic.

Mr. GORDON. And I guess Chris Cox is gone again, but if he was here, he would have heard once again, Tom, that you are the best. You really are always articulate and your plane over Iowa is a very good analogy.

And I understand your interest in wanting them to land with the broadband coming in there, but what about DSL? Do we need to have—the other aspect of this bill will—is that going to reduce the DSL landings in Iowa? I would like for someone to take the other side of Tom's——

Mr. TAUKE. Well, first, on the local market in DSL and line sharing, I now that this is an issue that troubles the committee, and frankly it is a case where the committee has a choice to make, a tough choice.

I don't think that all the choices here are difficult, but I would have to acknowledge that this one is a challenge, whether or not to require line sharing under the Act. The Act, as it is currently written, does not require line sharing. Others may add to this, but I will try in an objective way to give you the two sides of the issue.

The side against line sharing, what is the reason for getting rid of it? The reason for getting rid of it is, one, that there are very few people, Covad notwithstanding, who are using line sharing.

There are most of the DLECs that are out there that use a different technology. They use SDSL technology, and they do not line share. They purchase the full loop. And so as result, you have a relatively small number of people who are losing or using line sharing.

Line sharing in our view is a real inhibitor technologically speaking to the deployment of additional fiber in the network. We frankly don't know how to do it. We don't know how to deploy the fiber and still be able to continue line sharing.

We have people saying, well, we will just maintain the copper. Well, if you maintain the copper when you are trying to replace it with fiber, it takes all the reason for putting fiber in out. It takes all the reason away, because one of the reasons that you put in fiber is to avoid the maintenance, the high maintenance costs of the copper.

So if you have to maintain the fiber or have to figure out a way to do line sharing over the fiber, you can't make it work, or we

haven't figured out how to do so yet. And so therefore you have a choice between continuing line sharing on the one hand, or on the other hand, encouraging the deployment of fiber.

The second observation that I make is that those who are doing line sharing today, and I emphasize that we believe that it is a very small percent, but those who are doing line sharing today still have the option to buy the whole loop.

Now, when they buy the whole loop, what do they do? They offer not just data services, but they also can offer the voice services, and so therefore you get more voice competition. It would be good for voice competition frankly if Covad would offer voice services, along with their data services.

And I would suggest that they would have a whole lot better business plan if they were offering an array of services over that wire, instead of trying to just offer discreet service to customers.

So I think the choice that you face is that you have to decide is line sharing and the value that it brings to the competitive market in broadband sufficient to offset the downside that comes from the delay in the deployment of the fiber facilities and the broadband facilities in the local loop.

We don't believe it is, and we assume that the authors of the Act don't think it is, but that is the choice that you have.

Mr. GORDON. Mr. Chairman, as usual, Tom is very good. Could we give someone an option if they want to take a contrary view.

Chairman TAUZIN. You still have time, and Mr. McMinn can respond.

Mr. GORDON. Okay. Good.

Mr. MCMINN. I will repeat one fact. The reason why more companies are not offering line sharing, especially in Verizon territory, is the 100 to 1 or 300 to 1 advantage they have put in front of—the obstacle that they have put in front of us, in terms of ordering up line sharing from them in order to be able to implement it. And 3,500 lines in 1 year, and 3,500 lines a day.

Mr. GORDON. What about his technology?

Mr. MCMINN. I would like to address the technology, because there is a couple of things that have been merged together here. One is the deployment of fiber in relatively dense metropolitan areas to offer even higher levels of broadband, which is what Project Pronto and some of the others are designed to do, versus offering broadband in truly rural communities.

Wired technology will never offer that result, and I understand that many of the members here represent truly rural communities. Do not hang your hats on a false promise that the ILECs will roll out fiber to these remote areas.

Think of the analogy to t.v. There is no cable t.v. in rural America. They get their t.v. over satellite, or some other alternative technology, and it becomes much more economical than the build-out of a cable plant to the most remote areas.

It makes much more sense to develop or promote a technology that focuses on alternative ways to deliver broadband, either by satellite or by wireless, to the most remote areas. Certainly cable over time has been pushed more and more outward, but that's only the wire that has to be run, and not the fiber and not the active electronics.

Chairman TAUZIN. The gentleman's time has expired. The gentleman from Michigan has a request.

Mr. DINGELL. Mr. Chairman, I would ask for unanimous consent that the gentleman be given 1 additional minute so that I might and so he could yield for me to ask a question.

Chairman TAUZIN. Any objection? Hearing no objection, the gentleman yields.

Mr. DINGELL. Thank you. Thank you, Mr. Chairman. Mr. Tauke, I am curious. We have been talking about line sharing. Can you think of anybody, or Mr. Mancini, can you think of any company that uses this line sharing for purposes of broadband that also provides voice service, or do they just limit themselves to offering data?

Mr. MANCINI. If they are line sharing that is all that they can offer. They have a choice. If they line share, they can have the high frequency parts of the loop that provide data. They also have their choice of getting the full loop if they want to offer both voice and data.

Mr. DINGELL. But all of them only use the high end, and none of them offer voice service along with the data; is that right?

Mr. MANCINI. Today that is correct.

Mr. DINGELL. Is that right, mr. Tauke?

Mr. TAUKE. Yes.

Mr. DINGELL. Mr. McLeod, do you agree with that?

Mr. MCLEOD. Sure.

Mr. DINGELL. Sir, do you agree with that?

Mr. MCMINN. Actually, that's not true. You can offer voice services——

Mr. DINGELL. How many do it?

Mr. MCMINN. Well, I think the issue here is this.

Mr. DINGELL. No, no, I hope that you are not offended, but I have a question to which I would like an answer.

Mr. MCMINN. I will try to answer.

Mr. DINGELL. How many of them offer voice and data?

Mr. MCMINN. There is quite a few CLECs. Probably a handful of CLECs that do that.

Mr. DINGELL. A handful?

Mr. MCMINN. Yes.

Mr. DINGELL. And most of them do not?

Mr. MCMINN. It is very difficult to compete against a subsidized voice offering with one that is not subsidized.

Mr. DINGELL. So very few of them do?

Chairman TAUZIN. The gentleman's time has expired. If Mr. Tauke would like to respond.

Mr. DINGELL. Mr. Tauke.

Mr. TAUKE. There are a number of CLECs who offer both voice and data services, and they purchase the line in order to do that. They purchase the full loop in order to be able to do that. When you do line sharing, by definition, what you are doing is purchasing a small piece of the loop for a couple of dollars a month.

And the expectation is that the local company, the incumbent, is providing voice service over the line, and then somebody else is providing the data service, which is what Covad generally does.

Now, Mr. McMinn had earlier indicated that you could have IP telephony that you would put over the line sharing piece of the loop. Of course, from all our perspectives, what that means is that we have to maintain the loop, but we get only a couple of dollars a month for the line sharing of that line, and we can't do anything with the rest of it.

And so that highlights I think the problem with the whole line sharing structure that we have. So they can offer the full service without purchasing the full loop.

Mr. DINGELL. You are coming to the point where this imposes certain technological limitations on your use of that line, and it also imposes certain limitations on the services that you can offer in instances where that line sharing takes place; is that not so?

Mr. TAUKE. The biggest problem with line sharing, frankly speaking, is that if you have the copper loop, it is not a big deal. But if you don't have a copper loop and you are trying to put fiber into the network, further into the network, fiber from the central office toward the home, that is where the technological problem arises.

So when you have line sharing in place, that discourages us from being able to put fiber in because we don't know how technologically how to line share in an efficient way when the fiber is part of the loop.

Chairman TAUZIN. The gentleman's time has expired.

Mr. DINGELL. Thank you, Mr. Chairman.

Chairman TAUZIN. I just want to put on the record that cable came to rural America, in my part of the world, a lot earlier than it did to urban American. I don't know where you got the notion that cable was late into rural America. That just isn't true.

Mr. MCMINN. That is not the intent I intended to say.

Chairman TAUZIN. The gentleman, Mr. Ganske, is recognized.

Mr. GANSKE. Thank you, Mr. Chairman. In trying to figure out issues like this, I usually get the advice of fellow Iowans. So I have the opportunity to question two Iowans on this panel.

In fact, my hometown of Manchester is halfway between Dubuque and Cedar Rapids. So I think we will start out with a question to Mr. Tauke, and we will give Mr. McLeod a chance to respond, and we will just go back and forth a little bit.

Mr. Tauke, if you could in 1 or 1½ minutes, just tell me and the citizens of Iowa why if this bill became law it would be good for them.

Mr. TAUKE. For the citizens——

Mr. GANSKE. And let me just interrupt for a minute. And I want to point out that McLeod is a company that employs a lot of Iowans. Qwest does, too.

Both companies have significant investment in Iowa, and furthermore, Qwest has stated on several occasions that they will be applying for their long distance because have met Section 271, and they will be applying for that within the next 3 months. So, Mr. Tauke.

Mr. TAUKE. If Qwest is going to apply for long distance in the next 3 months, then will be offering long distance services before this bill is going to become law, and so I think it is fair to say that that piece of it wouldn't have much impact on Iowa.

The other piece, however, the part which provides a broadband policy for the Nation and addresses how broadband in the local loop is regulated would have impact. And I think that for Iowans they are fortunate to have a very strong competitor like McLeod who is providing services, but a lot of people are still relying on Qwest and other local telephone companies, about 150 of them as I recall in the State of Iowa, to provide broadband services to their homes or the cable companies.

This bill would make sure that those local telephone companies had a greater incentive and greater ability to offer broadband services to customers. That would mean that there would be competition for the cable companies who are offering broadband services in the State, and the competition between the cable and the telephony companies in the State, providing that dual option for broadband services in the local loop has got to be good for consumers.

Mr. GANSKE. Mr. McLeod, would you care to respond to Mr. Tauke's comments?

Mr. MCLEOD. Sure. As far as this bill and the State of Iowa is concerned, with Qwest applying, and if they receive 271, really they can provide data services throughout the area. But I might add that they could do that today as well.

There is nothing stopping them from doing DSL services in any of their markets today, and in fact they are doing DSL services in those markets. On the other piece of this legislation, the restriction to access certain pieces of the Bell network, that could impact us in the State of Iowa, in that it could impact our ability to use the Qwest network as part of the last mile facilities to get to our customers.

Now, we have invested—well, billions of dollars in fiberoptic network, but we have done that to tie together cities like Dubuque, to Cedar Rapids, so that we can bring broadband services to those markets.

But we still are dependent on the last mile connection, and when we get that copper loop, then we can do some pretty nice things with it. We can bring one megabyte service to the computer.

Now, that is not broadband service. That is not 45 megabyte service, but that is high speed Internet service, and the copper loop is the key to that. We would all have fiber going to every neighborhood, and that is going to take 20 or 30 years to get to that kind of point.

What we need to do is get to a point where we can walk, and that means one megabyte service, and that is delivered on copper, and we have to have access to the copper to compete. This bill affects our access to the copper loop.

It is undermining the 1996 Act. However, if Qwest is smart, they will go and get their 271 and they will have most of what this bill provides when that happens.

Mr. GANSKE. Mr. Tauke.

Mr. TAUKE. The fundamental difference in viewpoint here is that we have a different reading of the Act. I don't think the Act says a word about his access to the copper loop.

We think that as long as there is a copper loop there that this Act makes no change about the ability of Mr. McLeod and his com-

pany, or any other competitor, to get access to that local copper loop. So I don't think there is a fundamental difference.

Mr. MCMINN. Oh, there is, because the telephone companies can hide the copper loops if you will behind fiber, and say this is now part of the new deployment of network and no longer can you get access to the copper loop.

So for a period of time anyway the existing copper network as it stands is very important for competition, and we can provide DSL services on it, and we are, and we are moving just as fast as we can to provide service as broadly as we can through our markets.

Mr. TAUKE. Let me be clear on this. There is no intent to say that there is—at least from the perspective of this person, or our company—no intent to have an Act passed which says that you can't get a loop, a full loop from the central office to the home, even if there is fiber in that local loop.

The only thing that we believe this Act does relating to the local loop today is that there is fiber put into the local loop the line sharing would not be required, but you would still have the ability to get the full loop.

Mr. MCMINN. The difference is that we can only get it for voice, and we can't use it for data services according to the bill.

Mr. TAUKE. Well, that's great. How are we going to service customers with an integrated product and only have voice in the future on a copper network? That's absurd.

Mr. GANSKE. Mr. Chairman, do we have counsel to resolve this difference?

Chairman TAUZIN. Which city were you from? The gentleman's time has expired.

Mr. GANSKE. I appreciate it.

Chairman TAUZIN. The Chair would recognize Mr. Stupak for a round of questions.

Mr. STUPAK. Thank you, Mr. Chairman. Mr. Mancini, as you know, I come from Michigan, and last September the Public Service Commissioners of Illinois, Michigan, Indiana, Ohio, Michigan, and Wisconsin, issued a joint statement.

And it said—and I am going to read part of it—it said, "SBC, Ameritech, through its various five-State operating subsidiaries, has in recent months consistently demonstrated its inability to effectively operate the local exchange telecommunications operations that it controls in Illinois, Indiana, Michigan, Ohio, and Wisconsin. We as the five chairpersons of the Public Utility Commissions charged by our respective States with overseeing these local telecommunications properties, have come together today to formally call upon SBC, Ameritech, and its senior management to take further action to address these issues of operational deficiency which have persisted for an extended period of time."

So my question is why should Congress deregulate services provided by Bell companies when the service records in these States is so miserable?

Mr. MANCINI. Well, Congressman, I don't really think there is a relationship between the two. After SBC acquired Ameritech, as you are aware, there were some service problems and difficulties in Ameritech.

SBC changed management in Ameritech, and SBC committed hundreds of millions of dollars. We have hired thousands of technicians, and I believe that you will see and have seen significant improvements in service.

Mr. STUPAK. Yes, but I guess the five Commissioners are saying that it has been for quite a long time and these five States have a real problem. So if we deregulate and get into new services, how can we make sure that they are going to be properly and proficiently provided to our local areas?

Mr. MANCINI. Well, whether Ameritech had service problems in the 1990's——

Mr. STUPAK. Well, they still exist. It is at least 30 to 60 days before you can get any service up in my neck of the woods.

Mr. MANCINI. Well, the alternative is that here we have a competitive market. Those Commissioners have encouraged SBC and Ameritech to deploy and invest monies in those States to upgrade those networks.

Part of Project Pronto not only provides the ability to provide DSL, but it also improves the network. It improves the reliability and reduces costs.

Mr. STUPAK. Sure, but if there was really competition, if the service was so bad you think that someone else would want to come in there and pick up the services that according to the Commissioners that you were not properly providing, right? If the competition was there at the local level in rural areas, you would really see that.

Mr. MANCINI. Well, there has been and continues to be competition, and I would just like to make the point that there seems to be an indication that there is no competition.

Mr. STUPAK. Well, there isn't.

Mr. MANCINI. Well, in fact, let me——

Mr. STUPAK. Let me go back to the bill. Upon that statement, if you go to page 6 of this bill, Section 232, Provisions of High Speed Data Services, what it basically says is that the FCC and the State can't regulate you.

Mr. MANCINI. That's correct.

Mr. STUPAK. So if they can't regulate you——

Mr. MANCINI. Only for competitive high speed Internet access services.

Mr. STUPAK. Right.

Mr. MANCINI. But it has nothing to do with local.

Mr. STUPAK. Here are the public utility commissioners and the FCC who do have some control over you, and you are not providing the service according to local people. And now you want to get into a new area where there isn't going to be any regulation. How do we keep some accountability going here?

Mr. MANCINI. Well, would you prefer that cable have a monopoly? That's the alternative. If we don't compete, and if we don't invest, you are seceding the market to the cable monopoly.

Mr. STUPAK. But if you have sort of monopoly right now, at least in our five States——

Mr. MANCINI. Not in the provision of high speed Internet.

Mr. STUPAK. I will agree, but——

Mr. MANCINI. Could I just follow up?

Mr. STUPAK. Sure, go ahead.

Mr. MANCINI. I think there has been somewhat of a misimpression given that the 1996 Act wasn't successful in opening the markets. As you recall, there was a 14 point checklist, and as SBC states, CLECs have captured more than 10 million customers, with provisions of more than 2.8 million interconnection trunks.

We have exchanged more than 98 billion minutes, and we have invested more than $4 billion opening those networks. Yes, it is true that competitors are focused mostly on the business market, because that is where the profit is.

But if you go down the line, you cannot capture 10 million customers without giving each and every one of them the 14 point checklist. And to say that there is no competition is not completely accurate.

Mr. STUPAK. Well, let me ask this question of Mr. Tauke, and maybe he can answer this one for me. Here is this article again, and how the Baby Bells may conquer the world, and there was a Times article that Mr. Stearns mentioned that my good friend, Elliott Engel, was reading that, and so we both had a chance to take a look at it.

And so the RBOCs that come in our office are very persuasive in telling us how this legislation will enable to get it deployed, these high speed services to urban and rural areas.

But Bell Atlantic and Verizon have been offering long distance service in New York there for some time now. What is the current state of the deployment then of these services in Upstate New York in the rural areas or how about even Harlem? Has that been covered?

Mr. TAUKE. I can't tell you specifically what central offices in New York have been covered and which ones have not been covered. I would be happy to come to your office and try to provide you a map of that.

We are providing and are offering DSL services in New York to a majority of the lines, but I can't tell you where all of them are.

Mr. STUPAK. So upstate, we are pretty well covered up there?

Mr. TAUKE. No. I would have to be honest and say to you that there is greater coverage in New York and the suburbs than there is upstate. But going back again to my analogy this morning to the wireless market.

When we look at the wireless market back in 1993 and 1994, the major deployment was first in the big cities, where you put up a tower and you get a lot of customers per tower.

And then as you go to less populated areas, you go there a second, and the less populated areas, naturally in the deployment of most new technologies get the deployment a little bit later, and I think that is the economics of it, and that is happening with DSL and broadband services as it did with wireless.

Mr. STUPAK. So really the rural areas can count on almost being sort of last to get that?

Mr. TAUKE. You know, in most areas they are always the last. There are some other factors that come into play, too. But I think that generally the competitors in the local market come first to the big cities.

Why do they come to the big cities? Because they can get a lot of people in a relatively small geographic area, and——

Chairman TAUZIN. The gentleman's time has expired.

Mr. DINGELL. Mr. Chairman, I ask for unanimous consent that the gentleman be permitted to proceed for 1 additional minute for purpose of yielding to me. Would someone yield to me?

Mr. STUPAK. Yes, as long as I can follow up on it.

Chairman TAUZIN. One additional minute to you.

Mr. DINGELL. Mr. Mancini, I hope that you were listening closely to what it was that Mr. Stupak was saying, because his questions are very important to you and to me, and to him. I think that he was raising two questions to you which are very important.

The first is that if this legislation passes would your company be up there providing his constituents with broadband service; and this is a very important question. What is your answer to that, sir?

Mr. MANCINI. If this legislation passes, it will provide us with a significantly greater incentive to invest in broadband and to expand our footprint in Michigan and every other State.

Mr. DINGELL. I understand that the upper peninsula of Michigan is a unique area. Would this move you to get up there to provide assistance to those people in terms of providing this kind of service?

Mr. MANCINI. In very remote rural areas, the economics probably make it very difficult for either cable or telephone company wires to serve those areas. As one of the other speakers said, in some areas it may be more cost effective for satellite and wireless to serve those areas.

We are looking at partnering with some of those satellite and wireless companies to serve those areas.

Mr. STUPAK. But to follow that up, cable is actually up there now doing it for us.

Mr. MANCINI. And they can serve it.

Mr. STUPAK. So I think the answer to the question is that you may be willing to do it, but the real question——

Chairman TAUZIN. The gentleman's time has expired again. We have got to move on, guys.

Mr. DINGELL. Just tell us what you are doing now and what you will do to improve services.

Chairman TAUZIN. The gentleman is entitled to answer the question, and we will move on.

Mr. MANCINI. We are spending $6 billion to expand the reach in Michigan in serving 40 percent of the customers to 80 percent of the customers.

Mr. STUPAK. But that's Pronto, and you said 20 percent still would not be covered, and I am sure that the Upper Peninsula wasn't part of that 20 percent.

Mr. MANCINI. And 20 percent would not be covered. That would take additional investment. If this Act passed, there is a much greater likelihood that we would go to those areas. If this Act did not pass, the likelihood is——

Chairman TAUZIN. The gentleman's time has expired. The gentleman from Michigan, Mr. Shimkus, is recognized.

Mr. SHIMKUS. I didn't think that was my colleague from the upper peninsula. I thought that was James Earl Jones with that deep voice that he has today.

Mr. STUPAK. I need high speed Internet.

Mr. SHIMKUS. I have actually enjoyed, although I have not sat through the entire hearing, I think it has been a very good discourse and exchange. Let me ask based upon a comment made by my colleague, Mr. Markey, which raises a question.

I think his point was that prior to the Telecom Act, which was before I became a Member of Congress, the regional Bells had the ability to deploy DSL and did not. Mr. Mancini, do you want to address that?

Mr. MANCINI. Yes, I would just like to make a few comments about that. There is no question that very early versions of DSL were being worked on in the labs. In the 1990's—actually, two points—the technology did not exist that exists today.

And, No. 2, there was no market. The Internet had not developed. We could not spend $6 billion or $10 billion to put a product out there that no one had or would want to use.

It was only until the Internet developed and DSL manufacturers and vendors developed a system. In Project Pronto, we are using a state-of-the-art system which was when we announced it, it was still being in development. So that Elcatel integrated line card was not even on the market when we announced Pronto.

Mr. SHIMKUS. Let me go on. There has been a lot of hi-tech discussion and I would like to boil it down to my simplistic infantry officer perspective. What I see is a debate, and there is a concern about competition in the local loop. I don't think that anyone disagrees with that.

Some people say that to prohibit—that we need DSLs and full coverage, and I agree, and the regional Bells can help provide that service. Others want to say, no, we need to hold them hostage so that we continue to force the local loop.

A question would be that if we increased the 251 and 271 aspects of the Telecom Act, and divorced the debate on voice from the digital aspects, how would that be received? And I want to go back again to Mr. Mancini.

Mr. MANCINI. I'm sorry, I didn't understand the premise. If you divorced the debate on voice?

Mr. SHIMKUS. There is a debate on the committee about your company, sir, which is receiving a lot of fines in Illinois for service issues that are debatable whether the fines are still enough to make some movement on service quality.

And so there are debates at the Illinois Commerce Commission's level, or even within members of the committee, that maybe the stick is not big enough. Do we make the stick big enough to address the local loop questions versus using this whole DSL debate as a whipping boy for access on the local loop?

Mr. MANCINI. Well, I can tell you that we don't need fines to provide quality service. We have not had service problems for 100 years in the Southwestern Bell States, nor IMPAC Bell and Nevada Bell.

We provide quality service because that is what he customer has demanded, and there is competition, and for a whole variety of rea-

sons. Yes, we have had some problems in the Ameritech States after we completed the merger, and we are committed to improving them, and I think the record shows that there have been significant improvements.

Mr. SHIMKUS. And you know, of course, we as Members of Congress have to represent our citizens, and we must ask on behalf of our constituents some of these questions.

But, Mr. Tauke, I want to ask a question on an issue that if some local company requires consumers who subscribe to their high speed Internet services to also subscribe to the local telephone service offering, should this type of requirement be permitted?

Mr. TAUKE. Well, today we can't do that, and I don't think there is anything in this Act which would change that, that you can't tie the two services together.

Mr. SHIMKUS. And that would be a problem, but it all stems to the whole debate of what is the real intent of the legislation, and I think the intent is to provide competitive aspects in the high speed Internet services.

Mr. TAUKE. Right.

Mr. SHIMKUS. And there is a problem still which has been identified as entrance into the local loop or competitive local exchanges. And that is what I struggle with.

Mr. TAUKE. Well, first of all, I think we should or can talk about competition in the local loop, but on the issue of tieing the two together, think again of wireless. There is no tie between giving your wireless phone and your wire line phone—they are marketed separately and they are separate entities.

So even though Verizon has a wireless service and we have a wire line service, we can't tie the two together, as PC can't do it with singular and I would assume that same rule would apply here.

Mr. SHIMKUS. Out of respect, sir, let me stop and yield back the balance of my time in respect to my other colleagues who need to move on.

Chairman TAUZIN. I thank the gentleman.

Mr. CICCONI. Can I just comment on that last point. The SPC really does tie these services together today in the State of Texas. They tie the provision of their DSL to a customer having their local phone service. You can't have their DSL service unless you are a local phone service customer of SBC in Texas.

Chairman TAUZIN. The gentleman's time has expired. The Chair recognizes Mr. Green from Texas.

Mr. GREEN. I will yield for a couple of seconds to my colleague from Colorado.

Ms. DEGETTE. Thank you, Mr. Chairman, and thank you, Mr. Green actually. I have a whole series of searing questions that I know the panel was looking forward to answering but unfortunately I am running a meeting in 2 minutes, and so I have to leave.

So I would just like to make one quick comment. I am sorry that Mr. Hills had to leave because he was—I mean, I understand that everyone here has a lot of business issues relating to competition in this legislation, and he was the purported consumer representa-

tive on this panel, and after all, the reason that we do this, is for the consumers.

I just wanted to point out to the members that I received today a letter from two consumer groups, Consumers Union, and Consumer Federation of America. Consumers Union is the publisher of Consumer Reports, which is my husband's bible. He won't even let me buy toothpaste without reading it.

And the Consumer Federal of America is the Nation's largest consumer advocacy group. They sent a letter to the members of the committee today urging us to oppose the bill because they had three reasons.

The proposed legislation undermines the efficacy of the Telecommunications Act of 1996, because it doesn't encourage local telephone competition.

And it removes one of the best incentives for the Baby Bells to open local markets by allow interLATA data traffic, and it retards the development of strong competition. So I am finishing up and I'm sorry. I know that you will give him extra time, Mr. Chairman, out of comity to me.

But I would ask for unanimous consent to insert the letter that we received from these groups in the record.

Chairman TAUZIN. Without objection, unanimous consent is granted.

The Chair recognizes Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman, and I just have some questions. I have a very urban district in Houston, and first I would like to start with Mr. Tauke from Verizon, because Verizon is a mobil seller in Houston and not an RBOC.

But I represent a district that is blue collar and very urban, and how the passage of this legislation by letting Bell companies provide that Internet backbone benefit urban areas, because the similarities for very urban areas and rural areas are the same, and giving them greater access at lower prices of broadband services.

Mr. TAUKE. I don't know the specifics of the situation on the ground in Houston today, but as a general rule, I think again what this legislation would do is establish a broadband policy that would provide for a more level playing field between telephone and cable, and so both of us would be deploying and competing on an equal playing field in Houston, where you would have both competitors trying to get to the consumer.

And second it would permit SBC in Houston to do a better job of building or engaging in the building of the regional networks that hook to the long haul backbone networks, and that is an area where there is a capacity issue in terms of Internet capability.

Mr. GREEN. Mr. Ashton, I read your testimony and that of Mr. Henry's, and first when it was delivered to my office, because I believe the Wall Street holds the key to the future success of the competitive local exchange carriers.

And can you outline the kind of telecommunications company you personally would recommend as a good buying opportunity, and more specifically, what business fundamentals need to be present to make a telecommunications company worth investing in?

Mr. ASHTON. Well, if you broke them out into two categories, there is service providers and then there is the telecommunications

technology vendors. So they each have different—you have to analyze them very differently, although they are tied together, and lately they have not been looked upon that way.

So what we would like to see from a technology standpoint is a good rate of return, availability to carriers who invest in the network, and then we would expect to see technology spending follow through.

And our concern to that is that you are not seeing that right now because the rate of return isn't there, which impacts the metrics that go into a rate of return, which are revenues and costs, and the costs of capital, and those kinds of issues.

Mr. GREEN. Okay. Mr. Henry, your testimony was interesting because you have a completely different view on the current state of the CLEC marketplace than Mr. Ashton, and you never fully touched on the issue of regulatory scheme uncertainty.

And you seem to think that one of the driving forces slowing the flow investment is capital to CLECs. Can I pose the same question to you? Can you outline the kind of telecommunications company that you would personally recommend as a good buying opportunity, and more specifically, what fundamentals need to be present to make or have that telecommunications company worth investing in.

Mr. HENRY. Certainly. I think the first condition that has to be present is a great market opportunity, which clearly local telephony presents in all its forms and facets a hundred-billion dollars of revenue, and $45 billion plus of cash-flow.

It is an opportunity to dream of and one that the Bells have enjoyed for a long time, and one that I think presents a great market opportunity for the CLECs, and to translate that opportunity into a good business, you need very talented management, and you need lots of capital.

And heretofore the capital markets, Wall street has been willing to fund the CLECs to the tune of over a hundred-billion dollars for their capital expenditures and their operating losses.

The great uncertainty that has arisen is to some extent to the uncertainty of the regulatory regime has dried up that capital, and you see the very unpleasant impact in the marketplace.

Mr. GREEN. When you talk about drying up the capital, let me ask you both the same question, because Ms. Ashton, you have talked about service providers versus vendors. Service providers actually has a network, and a vendor is someone who is a reseller?

Mr. HENRY. A vendor would be somebody who sells equipment to build that network, and so it would be Cisco or Intel, or somebody like that.

Mr. GREEN. Well, I am talking about the distance between someone who has the network, like an RBOC, and somebody who is selling is reselling or just utilizing it, which would be a better cap investment, which would be a better environment for someone who already has that network out there, or someone who is relying on using someone else's.

Well, we can say that traditionally that investors have looked more favorably upon funding facilities based carriers, meaning those that owned and built their own networks.

And so we have not had lot of retail carrier investment, and so it is has appeared to the collective wisdom of investors that facilities based carriers ares more valuable. Now that the competitive facilities based carriers have no longer a kind of—are attracting a lot of investment and attention, the value proposition is moved from just owning facilities to other things, like economies of scales and your ability to raise capital and those kinds of issues.

Mr. GREEN. Mr. Henry.

Mr. HENRY. I would just add that investors tend to like those companies which are perceived to be more in control of their own destinies. Pure resellers that essentially own nothing and just essentially rebrand the Bell's location product are not perceived to have a ton of value companies, and what we refer to as a smart billed CLECS.

So just take the copper loop the last mile and couple that with their own switching fabric. They are on their own transmission transactions, and their own transmissional electronics, and their own get to work intelligence That is perceived to be an attractive business model, and one that will ultimately lead to greater facilities deployment, just as it did in long distance.

Mr. GREEN. I am almost out of time, and my concern is—my goal on the committee and I think from 1996 on, was to have investment capital that would drive the telecommunications marketplace and I am trying to get a feel from each of you how the capital would flow.

And what you are saying in the companies month compared to previous months, it would flow to someone who has the facilities based effort.

Mr. ASHTON. Well, one thing you can say is where does it flow today? They have raised a lot of money, and put a lot of money to work, and it has largely flowed where it theoretically should, which is to large buildings that are highly concentrated and have more money to spend But it has not solved the small business and residential issue.

Chairman TAUZIN. The gentleman is almost out of time.

Mr. GREEN. Let me ask one last question, Mr. Chairman. So if each of you would give me your best prediction about which telecommunication company each of you would still be operating a year from now, whether it is an ILEC or CLEC side, and also please explain the conclusion as briefly as possible so that other members can follow up.

Mr. ASHTON. So if we took a——

Mr. GREEN. Considering where we are at today, who would be around a year from now to provide that investment; what companies, either ILEC or CLEC?

Mr. ASHTON. Your ILECs and your cable companies.

Chairman TAUZIN. The gentleman's time has expired. Does anyone want to answer that? Mr. Gregori.

Mr. GREGORI. Thank you. As a relatively newcomer to this playing field, we are building facilities, and we are spending our capital which is relatively modest compared to many of the other members sitting before you. We are spending that on building out data network.

We believe that the future is in data. The convergence of technologies. However, without access to competition in the local markets, we would have never put forth the business plan.

It is absolutely a requirement that newcomers to today's market be able to bundle services and do so effectively and reach out into the local markets through the use of the unbundled network elements, UNE-P, and other methods of aggregating services to build top line revenues, build cash-flow, and that is what Wall Street requires today.

And you need that totality of support to build good competitive companies in the future.

Chairman TAUZIN. The gentleman's time has expired.

The gentlelady, Ms. Wilson.

Mrs. WILSON. Thank you, Mr. Chairman. Tom, as you know, New Mexico is not in your area. We are a Qwest or U.S. West, territory, but you do have some assets in New Mexico. So you don't need to get approval for long distance to roll out DSL or do all kinds of innovative things.

And it would seem to me then ideal for rural broadband, because in a way this skill has already passed for Verizon in New Mexico. So why are you selling off New Mexico?

Mr. TAUKE. Well, actually, the decision related to the sale of local exchanges in New Mexico was made prior to the merger of GTE and Bell Atlantic. GTE had made the decision to sell off access lines in New Mexico, Texas and a number of other states prior to that time.

And as you know, out of that came the recreation of Valor Communications. As you may know, during the last year, I have been the Chairman of the United States Telecom Association, and one of the things that I think is evident from my activity in that role is that you see in many cases it is a favor to some of the more rural areas if they are the focus of a company like Valor, because Valor is going to focused on those areas , and I suspect, for example, that they may out broadband services more quickly as a result.

Mrs. WILSON. In fact, let's focus on that then, and what you are saying then is that this Act is not a solution for rural broadband. In fact this is a map that stayed in New Mexico, and I know that nobody is close enough to see it, but you can probably see the colors.

The gray hatched area is where you U.S. West territory is, and all that is in blue is rural telephone co-ops. And if I put my thumb right her, I just covered about a third of the population of the State of New Mexico, and for those of you who are not good in geography, if I drive here from Albuquerque over to here in Tatum, it would be like driving through the entire State of Maryland and up through Delaware, and past Philadelphia, and across New Jersey, and all the way to New York City.

I guess my question is why can I get DSL in Mescalra, New Mexico, but it wasn't until 6 months ago that I could get it in the north valley of Albuquerque?

Mr. TAUKE. Well, if you want an honest answer, I will give you one. The honest answer is that most of the rural small telephone companies are heavily subsidized by universal service funds. They are able to draw from those funds in order to be able to provide

high quality service in the rural areas, and the cooperative has additional advantages under the law in taxes and in other areas. That's why they were created.

Mrs. WILSON. Tom, I think you made my point real well, and that is that it is that rural America doesn't need this bill. It is not going to benefit from this bill because you are not in rural America.

This little town here of 20,000 in Clovis and Potalis, that is not a rural area by New Mexico standards. The rural areas of places the size of Delaware with 857 people in them who already have these services. And if this is an answer for rural America, then how come you aren't there?

Mr. TAUKE. Congresswoman, I think two points. One is the cooperative is also not subject to the 1996 Act. They don't have any of the requirements of Section 251 or any of the other requirements that we are talking about today. So that is point one.

Point No. 2 is that Verizon, even though we provide service in many major cities, we provide service to more rural customers than any other telecommunications company in the country.

There area lot of good rural companies who are providing communication services to rural America, but their most rural customers are receiving services from one of the companies that you see sitting at this table.

Mrs. WILSON. One final question, I guess, and maybe I will ask Mr. Mancini this. Why don't you own significant networks in other RBOC territory? Why don't the RBOCs compete with each other?

Mr. MANCINI. Well, SBC is in the process of expanding out of region into 30 major markets, and we have already deployed in 20 of those markets.

Mrs. WILSON. Local service?

Mr. MANCINI. Local service. It is a very difficult business, however, when we do not have the ability to offer long distance service to all of our customers. So it is very difficult when you are handicapped and everyone else can offer a full service of packages and we can't.

Chairman TAUZIN. The young lady is out of time.

Mr. MANCINI. Can I complete my answer?

Mrs. WILSON. I actually heard your answer and that you think that my assumption is incorrect, and that's okay, and maybe I have the wrong data. But the final question I did want to ask you was that your statement that you believe that cable will have a monopoly on broadband if we don't do this Act.

I read in your fourth quarter results that SBC expects to provide an estimated 77 million Americans with high speed voice area and video services via DSL service by the end of 2002. How can that be if you are up against a monopoly?

Mr. MANCINI. Well, that growth is Project Pronto, and it is based on the assumption that we continue it, which of course we have not continued it. We have suspended it based on the regulatory uncertainty in Illinois.

We have expanded and are committed to compete in that market, but because of the uncertainty in the FCC and in other States, it is causing us to rethink that whole option and rethink the investment decision.

Mrs. WILSON. Thank you, Mr. Chairman.

Chairman TAUZIN. The Chair recognizes Mr. Engel.

Mr. ENGEL. Thank you, Mr. Chairman. Mr. Tauke, in your testimony you mentioned that the wireless industry really took off after it was deregulated. Can you expand on the type of consumer benefits which resulted, and you obviously believe that similar benefits will result for broadband deregulation. Can you talk about that a little bit?

Mr. TAUKE. Sure. Wireless service as you know developed relatively slower early in its history. There were two competing carriers, an A license and a B license, i most areas.

And back in 1993 with those two players in the marketplace, Congress decided to essentially move forward with deregulation of wireless services and the wireless market began to expand and grow very rapidly at that point.

Three years later in 1996, with the Telecom Act, Congress lifted the restrictions on interLATA for wireless services. And about that time new technology such as PCS started coming along.

And so what we had in this market was a deregulation if you will of the marketplace, a prohibition on the States that they could not come in and regulate it, and the establishment of a national boundryless policy.

Since 1993, the subscribership has gone from 11 million to 100 million, which was a ton of investment. You had to put towers up all over the country and that has happened. We have competition for wireless services all over the country.

The price of wireless services has declined, and we have seen a proliferation of new services offered via wireless, the latest being a variety of Internet and broadband services.

You are attempting to stop the application again of telephony rules to the broadband service, and you have a market that is similar to what the wireless market looked like a few years ago, with two major players offering services in the market, and I think if Congress pursues the same policy, you will get similar results.

Mr. ENGEL. Thank you. In my home State of New York, in New York Verizon has already long distance authority, and in Massachusetts as well, and I understand that Verizon has filed with the FCC for the same authority in Connecticut.

If this bill were enacted will Verizon continue to push the long distance approval at the same rate?

Mr. TAUKE. Yes. We are going as fast as we can to get approval next in Pennsylvania, and we hope as soon in the other New England States and New Jersey. We would like to get all of those out of the way this year.

Mr. ENGEL. And you wouldn't see any change at all if the bill passes?

Mr. TAUKE. Well, there will be no change in our commitment to move as fast as we can.

Mr. ENGEL. In my opening remarks I had mentioned that one of the difficulties that I had with the current system is the wiring of high Internet access by cable companies is not regulated, and I wonder if the general panel, and I know there are others with different views, is it really fair or should we regulate a product such as high speed Internet access in the same manner regardless of the way a consumer uses it?

Mr. PITSCH. Congressman, I would say this. That unless there is a situation where the company has a competitive bottleneck, they should be regulated the same, and the way that I look at this market is that the Internet access market is the relevant market, and dial up in the bottleneck. The copper is the bottleneck. That under the Act and under good public policy should be made available to the Covads of the world.

But other broadband investment in this last mile should be deregulated so cable and telephone and wireless and satellite companies all have the maximum incentive to make this risky investment.

Mr. MCMINN. Again, let's not get into the business of picking winners and losers. This is about trying to get as much as choice to the consumers as we can. The history of the cable plant deployment and the RBOC deployment differ substantially. One was a guaranteed rate of return funded substantially by the consumers of that business for 100 years.

The net result is 1.6 billion miles of copper in the ground. Even in these scenarios where additional fiber and additional remote terminals are deployed the vast majority of that copper must be reused to provide high speed services.

All that we are asking for and what this bill substantially eliminates is the ability to continue to use that copper unless there is a contiguous run of copper all the way from the central office to the end customer.

If they shortened that up and if they put fiber in place, and they put electronics in place, then one company will be advantaged at offering a much higher class of service to the end customers. Just give us the opportunity to also put our electronics in the field and to also put our fibers right next to theirs, and attach to the existing copper wires.

Chairman TAUZIN. The gentleman's time has expired. The gentleman from Nebraska, Mr. Terry, is recognized.

Mr. TERRY. Thank you, Mr. Chairman. I apologize for missing part of your statements and questions. So if my question has already been asked forgive me, but it does follow up on what my colleague, Ms. Wilson, from New Mexico was getting to.

Obviously as some of you know, I am from Omaha, Nebraska, and I represent just Omaha basically, and so I actually have more cement than fields. But needless to say, broadband in rural areas is an important issue.

I have the University of Nebraska, the Med Center, coming to me and saying we would like to roll out a telemedicine program, but we can't it into our smaller cities because you can't stream immediate video teleconferencing with dial up service. It just doesn't work.

So as they want to provide higher quality medicine using telemedicine, we are restricted by the infrastructure. So obviously even though I am from Omaha, and almost every house in Omaha, Nebraska, is wired with fiberoptics and sometimes from 2 or 3 different companies, we are blessed in that respect.

But once you get outside the city limits it is almost a completely different story. And one of the selling points of this legislation is that it will provide the more opportunity to the rural areas to get

broadband, and they believe it is life or death. It is not just telemedicine, but it is maybe a small business that can compete in a world market.

It may be an employer with 20 or 30 folks, and that is survival in a small town in Iowa or Nebraska. But I read through this Act and have learned a little bit about your industry, and I am having a hard time understanding what this Act really does to either encourage or force broadband in to the rural areas without going into what Heather had brought up, and just forcing Verizon or Qwest, or SPC, to divest some of the rural lines and let the experts in that small market take it over, user subsidiaries, and then roll out a higher end product. Help me with this. Tom, I will let you be first.

Mr. TAUKE. Let me start this way. When wireless rolled out, there was concern expressed in the communications world at that point that wireless was going to be an urban service, but it wouldn't get to the rural areas because it was expensive to erect facilities in rural areas.

But the fact is that it moved into rural areas very quickly. Why did it move into rural areas? Because it was deregulated, and there was an effort to try to ensure that there was a nationwide service, and my cell phone in Washington, DC became worth more when I could reach you if you were out in Nebraska and you could receive the call.

Similarly with broadband, it is a similar thing. I think that if we get the right policy in place that you are going to get more rapid deployment of the services. If we get rid of the rules for everybody, I think that is going to help. If we are in a situation where there is an incentive to invest rather than a disincentive to invest, that helps substantially.

And then beyond that of course there is the desire that everybody will have to have everybody else connected. So for a company like Verizon, it is in our interest to get everybody connected.

Mr. TERRY. What is missing from today that deregulating this aspect is going to allow quicker buildout in rural communities? I am missing that component.

Mr. TAUKE. Okay. There are a lot of things and maybe others want to answer, but quickly——

Mr. TERRY. Well, your voice is almost gone, and that's why we are picking on you.

Mr. TAUKE. Well, the first thing we can do is that we have a mechanism in place that allows us to deploy in the last mile without having the expense and the technological restrictions that are presently in place because of the regulations that apply to the last mile.

This is solely for broadband and not for voice or narrowband services. Getting rid of those technological difficulties and the final disincentives is bid. The second thing is that with the interLATA piece we had the ability to build the connecting networks, which allow the local person to get connected to the regional and to the cross-country if you will broadband network.

Mr. TERRY. Mr. McMinn.

Mr. MCMINN. Again, I come back to this situation that we have to understand the technology that is being deployed. DSL tech-

nology and broadband technology over wire does not make economic sense to very rural areas. Alternative technologies do.

There is a false promise here that somehow magically we are going to change the economics of telephony or telecommunications because we grant a more exclusive monopoly to the service. Choice is what drives this. We should be if we are encouraging—and I think the goal of encouraging more rural broadband access is a very good one.

We should subsidize it if that is the case. We should provide incentives for satellite communications or some of the alternatives. But offering this pseudo-exclusivity by prohibiting the use of the copper plant when it is not directly connected to the central office is not going to make the economics better for rural America.

Mr. MANCINI. If I could just make one comment, because I don't want there to be any misunderstanding. SBC has never claimed that this bill alone would ensure that broadband is delivered to 100 percent rural customers. We don't believe that is true.

It costs more to service rural customers and what we are saying is that this bill will encourage us and incent us to invest more to service a larger number of our customers. We are not saying that this bill alone would incent us to make it economical to service 100 percent rural customers.

Mr. MCMINN. But right now when I buy an unbundled loop from an ILEC, I pay them a cost plus a profit. If we determine what a cost plus a profit is to access unbundled combination fiber and copper loops, we are happy to pay for that. They are making money when we offer it. They just don't want to offer in competition with anybody.

The fastest growing segments of many of the RBOCs are their wholesale segments today, as more and more CLECs come on to their services.

Chairman TAUZIN. The gentleman's time has expired. But you have stirred up a bee's nest and let everybody respond.

Mr. MCMINN. I just want to make a quick comment and hopefully I can be succinct. That first that cable pass by is over 90 percent in this country, and so it is possible to serve many rural customers with wire line. There should be more done in this area through wireless. No question.

Second, in my testimony, I indicated that you could explore benchmarks, build out benchmarks, and when SBC announced Project Pronto, they said within 3 years that 80 percent of their customers would get 1.5 megabytes per second download capability. Half of their customers would get 6 megabytes per second.

Those are milestones that could be explored and they have to be reasonable, but it is a way to make this process work better.

Mr. MCMINN. I just want to tell a real quick story that I think is a little bit appropriate, especially because of the rural aspects of this discussion. Back in the 1985s when we were in the long distance business, basically AT&T controlled all of the lines in Iowa.

So as we continued to compete and get a share using their lines, we crossed over a point where we could make our own investment of fiber, and we built the first fiber to span the State of Iowa. The comment from the monopoly of the day, AT&T then, was our com-

pany was getting all dressed up for a party, but there was no party in Iowa.

That was the comment from the monopoly of the day, and so you see, competition drove the investment, and if you try to get investment being driven by some kind of regulatory scheme, that's really difficult. Create a competitive environment, and you will have investments.

And believe me that telephone companies will go after $220 billion marketplace in the United States with all the gusto in the world. They are going to continue to invest money. They are not going to give it up.

Chairman TAUZIN. Anyone else? Mr. Cicconi, and then we will move on.

Mr. CICCONI. Just a quick point. This bill as we read it would not in any way inhibit the Bells or incentivize them from going into rural areas. They have got all the incentive they have today. They have just as much if this bill passes.

What this bill would do would be to allow them to keep the Covads of the world out of the rural areas. It doesn't mean that they are going to get in there. It allows them to keep others out, and it is strange credulity to believe that keeping competitors out of a rural area is somehow going to advance competition.

The second point is that the DSL providers of the Bell companies have not led the broadband deployment. They have followed. It is the Covads, and it is the Northpoints, and it is the cable companies that have led in this. Mr. Dingell made a good point earlier about who is ahead in this.

AT&T has got about 1 million out of about 6 million high speed customers, and not anywhere near 70 percent. I don't know where this figure is coming from. But the fact is that the other companies are ahead right now for a reason. They led in this.

The DSL providers at the Bell companies have followed. They have only followed because competitors have led the way. They are behind right now because they were slower, and if you take away their competition, they are going to slow it down further.

Chairman TAUZIN. They might even sign non-compete agreements. Who knows. Ms. Harman is recognized.

Mr. MCMINN. I don't think they need to sign them. They don't compete with each other.

Ms. HARMAN. Thank you, Mr. Chairman. I want to commend you and the panel for your stamina and apologize for being in and out of this hearing. The conflict with my other committee was enormous today.

As I watched our colleagues hold up maps, I wondered whether I was in a hearing on reapportionment. I don't think so. But I would comment that we may be closer together than it seems in this way. I think everyone on the committee and every witness is in favor of broadband access.

I think that everybody on the committee and every witness thinks that we don't have enough of it. The question is what do we do, and that is where we differ. As I said in my opening remarks, my preference is to leave the regulatory framework that we worked on so hard in 1996 in place, and enforce it against any and all who violate its provisions.

I think that that framework was a win-win and that changing that framework changes the paradigm to win for some, and lose for some, and that is what we have been arguing for 6 hours today, and obviously for 2 years since this bill was drafted.

So that is my preference, and within that I have a couple of questions. The firs is about definitions in this bill. I remember the computer export wars and I was there when we were debating how many M-tops should be the maximum level for the export of a computer, and an M-top is millions of theoretical operations per second.

So we had our colleagues saying that it should be this level or it should be that level. By the time that we were done, we had prohibited the export of the normal PC, and that was clearly a wrong call, and of course now we are revisiting it.

In this bill the magic number under definitions is 384 kilobytes per second in at least one direction. I am interested in the panel can enlighten me on whether that is the precise right number, and why not 383 and why is that the magic transition number.

And do you think that that number will be valid should we enact this bill for some period of time in the future, and will we need to come back here and have 6 more hours of conversation about whether to change the number, and whether to let more people win or change the formula in some way.

Mr. MCMINN. It is a very much moving target. Any number that you put in place from a regulatory framework will be obsolete in 6 months. I mean, this is an industry that has grown by 3 or 4, or 500 percent a year, depending on which metric that you measure. So it is very, very dangerous for regulatory speed to impose technological constraints on an industry.

Ms. HARMAN. Other comments?

Mr. ASHTON. I could add that the importance of the speeds in these types of services is based on what services the speed can support. So this is one of the issues that all of the companies are grappling with, which is what type of DSL is more upstream than downstream or vice versa, or should they be the same.

And certainly the speed of the service is another. If you want to support video services and streaming video, that will require a certain type of network, and if you want to basically limit it to more high speed Internet access along that way, that would necessitate another. So a lot of it will depend on what services the carriers expect to use or to offer off of these networks.

Ms. HARMAN. So is it fair to conclude that if we pass this bill with this definition that we will be back here again in X-period of time—it could be 6 months or it could be shortly—revisiting our definitions and perhaps trying to fine tune them again to include some other variation on this?

Mr. ASHTON. I think if it said no more than 384 kilobytes, that would be a problem. But it is set at an entry level at a number that I think that seems okay. But clearly it is not no more than.

Ms. HARMAN. Well, I would remind us all of the great M-tops debate and how quickly that became outdated, and I think we may be heading in the same direction here.

Mr. MCMINN. Could I add one little point in terms of sort of the engineering of all of this? I do have a B.S. and an MS.EE, and I

know about the technology. On a single copper wire, you can get as much as 52 megabytes per second over short distances.

So to set a limit of 384 kilobytes, which is 1-1500th of the potential spectrum of the wire is a pretty low hurdle.

Mr. TAUKE. Congresswoman, I think one of the—I think the way you have to look at this particular number—and I don't know if this is the right number, but the industry has had various numbers. But what you are really attempting to do is saying should narrowband regulation apply to what services. So this is saying anything about this we don't want narrowband to apply to, and anything below it, narrowband regulation applies.

I don't think that 6 months from now that we are going to want to change the definition of what narrowband is or what regulation we want to apply to it.

Ms. HARMAN. Well, as you know, I read from the floor debate on the 1996 Act, and my position is that it applied to data, and we already got there. But I have one more question, Mr. Chairman. And that is about the DSL business model.

There were four healthy DSL providers a year ago in Los Angeles to my knowledge. Now there are none. Were they all hit by the plague?

Chairman TAUZIN. I think it was an electricity crisis. I'm not sure.

Ms. HARMAN. Well, in that case the answer is simple.

Mr. MCMINN. Actually, we offer service to Los Angeles. We cover somewhere around 5 or 6 million homes and small businesses in the area, and it is a very viable market for us. We are making money in the market, and we have thousands or tens of thousands of customers in that market.

So the only issue is that it takes time for a startup like us to build out a network, time and money, and then it takes more time to get profitable. We have made a $3 billion investment to do that, and we are working through the process of doing that. So of our competitors didn't make it and that is not a bad thing. That is competition.

Chairman TAUZIN. Thank you, young lady. The Chair recognizes the gentleman from New Hampshire, Mr. Bass.

Mr. BASS. Thank you very much, Mr. Chairman. Mr. Tauke and Mr. Mancini, what do I tell all the local ISP people that have come in to see me over the last few months that are scared to death about the passage of this bill and if they are going to be able to stay in business and will be able to thrive if this bill is passed?

Mr. MANCINI. I don't think that this bill in any way is going to adversely affect ISPs. ISPs will continue to interconnect with ISPs.

Mr. TAUKE. Well, the real concern of the ISPs ought to be that cable is the dominant player in the market and they have no right to have access to any cable customer under the current rules of the game. So what they need is for our companies to be healthy and to be deploying broadband services so that they can get access to customers.

They can get access to a customer that is served by DSL services offered by a telephone company and they have no assurance of getting access to a customer served by any cable company.

Mr. MCMINN. Can I respond to this notion that somehow cable modems are the big boogy men here? Cable modem and high speed services are losing market share every day to DSL. Telechoice projects that within 2 years the total number of DSL high speed connections will be greater than the total number of cable modem connections.

That is because DSL is more pervasively available than cable modem is, and the plant has been rolled out in the United States much more pervasively, and it is only because they got a 3 year head start. This is only because this was not the Telecom Act of 1993 instead of 1996 that DSL doesn't lead already. We are gaining on cable modem every day.

Mr. BASS. Mr. Tauke, Congressman Engel's talked about this briefly, and I would like to ask you to elaborate a little bit more. The FCC granted Verizon approval to offer services in Massachusetts in that $2 billion market, and on Monday, I guess Verizon has applied for long distance services in Connecticut.

New Hampshire is a smaller market, and what are your plans for New Hampshire and the rest of New England, and although I know that this bill won't be even in your wildest dreams enacted prior to September-October of this year, does any aspect of this bill change in any way any plans that you might have with respect to New Hampshire or any other New England State to apply and to offer long distance services?

Mr. TAUKE. In response to the second part of that question the answer is no. No change. In terms of where we are in New Hampshire, we believe we have a tentative understanding with the New Hampshire Commission as to how we will proceed.

We are completing a PriceWaterhouseCooper analysis of our systems in New Hampshire and the other New England States to have a testament from a third party that they are the same as the Massachusetts' systems, which were just the subject of the long distance approval.

Once that study is completed, we will take it to the New Hampshire Commission, along with an application for long distance approval. We expect a 90 day process in New Hampshire and we hope that this fall that we will be filing an application with the FCC for long distance approval in the State.

Mr. BASS. Very well. Mr. Mancini, my last question. The other ILEC, Mr. Tauke indicated that they don't believe that passage of this bill or ongoing network upgrades preclude competitive access to unbundles services in their network elements. What is your position on this, and will you make it clear if that includes fiber deployment?

Mr. MANCINI. We believe under this legislation a competitor like Covad would have access to the loop, all the way to the house. They could use that access to provide data alone, voice alone, or both data and voice.

So we don't see that that is a problem. There may be some issues on why Covad may or may not want to do that, but that is their option, and that is what would be available after this Act passed.

Mr. BASS. Okay. Thank you, Mr. Chairman.

Chairman TAUZIN. Thank you. Would the gentleman yield for just a second? Didn't Covad do that at one time? Didn't it subscribe to the whole loop before the FCC ruled?

Mr. MCMINN. Actually, we still do. Half of our lines are installed where we have at least a second line for business folks, and in addition we tried or started to do that for consumers, but we can't compete against a telephone company that puts one subsidized telephone service and one high speed data service on a single copper line when we can only put one data service on it. To add voice, and it is not a subsidized voice.

Chairman TAUZIN. But you did do it at one time for consumers and then you discontinued it?

Mr. MCMINN. Well, I would like to also say that this is about choice. The consumer ought to be free to choose to get their voice services from us or the ILEC and their data services from somebody else. Customers want the choice.

Chairman TAUZIN. Mr. Deutsch.

Mr. DEUTSCH. Thank you, Mr. Chairman. Obviously we are drawing to a close, and I don't know if I will be the last questioner or close to the next to last one, but to try to put it in perspective with respect to constituents. We really have this huge policy choice in front of us of how to shape or how we can influence or as Congress can influence the future of broadband.

What I would like to try and get a sense from it, and I know that there have been some comments to try to be very clear about this, that if we were to pass this legislation specifically in terms of changing the way the data on the local loops for businesses and consumers, and specifically what would your expectation be both in the short run, medium run, and the long run in terms of consumer prices for Internet access?

Mr. MCMINN. Well, if we don't pass the legislation, the costs of all of those regulatory requirements that we talked about earlier, there is a cost. They add a significant cost to us which we have to pass on to our consumers.

If we could eliminate those requirements, that would eliminate some of our costs. If you pass the bill, that will provide us some additional security and certainty, and provide us with a bigger incentive to expand and to invest. So those are two things that you can expect if you do or don't pass the bill.

Mr. DEUTSCH. And the other side?

Mr. CICCONI. In Texas, where SBC got such relief, DSL prices have been raised 25 percent.

Mr. MCMINN. And I will say before DSL was around the cost of one megabyte's worth of band was—actually 1.5 megabytes worth of bandwidth was the cost of the T-1, was measured in thousands of dollars a month.

We offer one megabyte per second of service for several hundred dollars a month and on long term contracts for less than a hundred dollars a month. So the difference between no competition and competition was a factor of 10 reduction in the price of service.

And I absolutely agree with AT&T that the price has gone up recently as competition has been thinned out in the CLEC ranks.

Mr. DEUTSCH. And maybe again to try to just dialog a little bit. If you could respond specifically to Mr. Mancini's comments and

Mr. Mancini, if you can respond to specifically the experience of Texas, and why did the rates go up in Texas?

Mr. MANCINI. Our rates went up for a very simple reason. Our costs are up. We have to structurally separate thousands of employees. We had to do line share and we had to put in OSS systems. None of these costs are borne by our cable competitors or the other providers.

If we could have kept the price at $39 we would have. We are not competing against Covad. Yes, we are competing at one level, but we are competing against cable modems. That is where the competition is. We are competing against satellite and wireless. The fact that Covad is still in the market, we raised our prices because our costs increased, period.

Mr. CICCONI. We only have got cable in one market in Texas and so that is not really the issue. A year ago, SBC got 271 relief for voice and data, the very data relief that they are seeking under this legislation without meeting the checklist.

And the experience has been that they not only increased DSL rates by 25 percent after getting this type of data relief, but they laid off 25 percent of the people that were installing DSL for them.

Mr. MANCINI. It is amazing that AT&T, who constantly raised cable rates without any competition, talks about our rates. Number 1, the reason that we could let go some of the technicians is that we are doing the same thing that Covad is doing.

A much, much higher percentage of our installations are self-installed. We didn't need as many technicians. But the bottom line is that we raised those rates in areas where there is competition with cable. We simply have not met the projections on DSL, and we are not making money on DSL today.

Mr. MCMINN. Actually, we are. It is like shooting fish in a barrel. The only reason we are not profitable is because we don't have enough subscribers. We can't sign them up fast enough because we can't get adequate performance out of the ILECs.

One more point. The cost of a line shared line is significantly less than the cost of a second line. Not just for us, but also for the ILECs. Their costs should have gone down as they more aggressively implemented line sharing.

Mr. DINGELL. If the gentleman would yield. Have you folks been down there talking to AT&T about making some space available to you? You are complaining about the Bells, and you are not building your own line, but you have not said a word to dear Mr. Cicconi over here, who has got lots of lines.

Mr. MCMINN. Actually, my network is far more expansive in Texas than AT&T's network. I have a network that covers all of Dallas, and all of Houston, and all of Austin, Texas, and all of San Antonio. I don't have the whole list off the top of my head, and the reason is because the copper was far more pervasive and available, and tuned up for high speed connections than the cable plant. The cable plant in that area is not very good.

Mr. DINGELL. Have you talked about telephone lines down there?

Mr. MCMINN. I don't know if he has telephone lines down there. If he does, he doesn't have very many; or the vast majority of the copper lines in the ground, Mr. Dingell, are under the control of one monopoly down there.

Mr. DINGELL. Have you talked with him about his cable facilities? He has got lots of cable space, and lots of good fiber, too.

Mr. MCMINN. Actually, we buy a lot of fiber capacity from AT&T, but in terms of our network, our DSL network is already bigger than all of the cable modem networks in the United States combined. They have not been upgraded. We have more coverage of more homes and more businesses than everybody who is in the cable modem business today because we get access to the copper lines.

Chairman TAUZIN. The gentleman's time has expired.

Mr. DEUTSCH. Just to reclaim my time for a minute. I'm glad that all of you were able to clarify the answer to that question.

Chairman TAUZIN. I just want to clarify. You said that you were still unprofitable though?

Mr. MCMINN. Absolutely.

Chairman TAUZIN. Is it like shooting fish in a barrel and you are still unprofitable?

Mr. MCMINN. We are unprofitable as a total company. In the first 22 markets we are in, we have——

Chairman TAUZIN. But you are still unprofitable?

Mr. MCMINN. Because we have to wade through this interminable cycle to get our lines installed. We can't get them installed fast enough. I wish we could get them installed at the rate that they install them for themselves.

Chairman TAUZIN. And I was asked by the ranking member are you building out lines?

Mr. MCMINN. We are putting our own equipment, our own fiber connectivity, our own switching centers. The only thing that we lease from them is the copper line.

Chairman TAUZIN. So you are not putting in the lines themselves?

Mr. MCMINN. Well, it is 1.6 billion miles of it. We can't afford to put place again.

Chairman TAUZIN. Mr. Pickering.

Mr. PICKERING. Thank you, Mr. Chairman. Mr. Henry, there have been several who have asked the different participants that if this bill passes what will happen as far as deployment in services.

I would like to ask you what would happen if this bill passes in the capital markets? What would happen to the emerging competition and the CLECs in that industry if this—or what would happen to the value of the other participants in telecommunications, the Bells and non-Bells, in the capital markets if this bill were to pass?

Mr. HENRY. Well, it is my impression that this would create first of all even greater uncertainty than already exists in the telecommunications industry and in the CLEC sector in particular, on the basis that it would reduce the Bells incentive in my opinion to open their markets to local competition on the basis that it would hurt both sides of the argument.

But I tend to think that the Bells will have the ability to restrict access to unbundled loops and dark fiber, and remote terminals, and things like that, which many of the CLECs are basing their business models on.

Mr. PICKERING. Mr. Tauke, as you know, as we have worked together on the 1996 Act, and everyone sitting at this table, and with some new people sitting at the table who have joined in support of the 1996 Act, but in the 1996 Act, we had both AT&T, and the Bells, and the long distance, and the other competitors—the lions and the lambs laid down together, and which is which I don't know—but peace was made and policy.

And my preference is to make peace and good policy. My concern here is that after 5 years, and I have to confess that part of this Act is borne out of the frustration of the time period to get from 1996 to get where we are in the marketplace today in full competition in all markets, and in the convergence and the hopes that we had seen.

But realistically 3 years out of that 5 years were spent in regulatory and court battles. We have had 2 years of the implementation of the Act, and it is beginning to work. Chairman Powell the other day testified that any change both in relation to the capital markets and in regulatory certainty which the Bells have testified today that it is one of the inhibitors of their deployment regulatory uncertainty, why shouldn't we allow the new chairman, Chairman Powell, to implement the Act?

We have got all those regulatory and court battles behind us, and he has already moved quickly on a 271 application in Massachusetts, and it seems to mean that he has committed to move quickly on the applications that come to the FCC. Isn't that the best way to have the best policy with the greatest certainty?

Mr. TAUKE. If I could just comment on that quickly. First, I think it is Congress' responsibility to set national policy. Congress has not as I alluded to in my opening comments set a national policy for broadband.

Three appellate courts have looked at it and can't figure out what it is that is supposed to happen in the broadband world, and whether these services are telecom services and Title 2 applies, or in some cases if they are cable services and Title 6 applies.

There has not been a policy established. I think in all due respect that Congress has a responsibility to establish policy for broadband services. This is a huge market, and it is very important to the growth of the economy and you are derelict in your duty if you don't say what the rules are for the game.

And it is about time that Congress stepped forward and said what the rules are, and you shouldn't defer that to the FCC Chairman who has to do it in the context of an Act that doesn't really address some of the issues.

And so I think that's why you can't leave it to Powell, because the Act isn't clear and the courts have not been able to figure out what it clearly says, and Congress has to set forth what the rules are.

Mr. PICKERING. Mr. Tauke, you said earlier in response to Mr. Cox that in an ideal world it would better instead of trying to differentiate on service data, voice, video, that it should be all distance, all everything. Isn't that the best policy outcome?

Mr. TAUKE. Well, in the ideal world, if we could reconstruct the world right now, we would say that distance should go away, and we shouldn't differentiate on the basis of service provided, and we

should say you have capacity, and how much capacity are you using, and what is the urgency.

If it is e-mail, you don't need it this second, and if you are exchanging other things, you might need it simultaneous, and that is the way that services should be priced. But we have a regulatory structure within which we are working which doesn't make that possible right now. I don't think that anybody wants to revisit the narrow band or voice structure.

If Congress does, we would welcome it, but I don't think that Congress is up to revisiting that. But we do believe that since there is a lack of policy and there is a policy for narrowbands, and there is a lack of policy for broadband, that there Congress should step up to the plate.

Mr. PICKERING. Mr. Tauke——

Chairman TAUZIN. The gentleman's time has expired, but proceed with your last question.

Mr. PICKERING. Yes, sir, Mr. Chairman. The Act really didn't make a difference between narrowband and broadband. It gave open access in local markets regardless of the product, and we try to be technology neutral, which is one of the strengths of the bill.

Again, I believe that Chairman Powell has indicated that he will move quickly and once you get a 271, you can do data, and you can do voice, and you can do everything. I am the Chairman of the Wireless Caucus. You mentioned earlier that if we free you from this that you will go to rural areas.

But really wireless and wire line are apples and oranges. Wire line is distance and density, and wireless leap frogs over that, and that is why in rural areas you will have different technologies and different means of distribution.

It just seems to me for regulatory certainty and the reality that you really cannot separate voice from data on a network, that this is the wrong approach. Now, if we wanted to sit down and try to figure out a way to do all distance, all everything, convergence, with greater certainty, that we would try to find agreement on how to enforce the local market openings, where we can increase and enhance local market competition, while at the same time giving you greater certainty for entry into other markets.

It seems to me that that would be a better way to go than a data only data relief, which is really again a step turning the clock backwards to segment and segregate policies of the past that really don't seem to work technically or economically, and is at the wrong time in an economic situation right now with emerging competitors. Mr. Chairman, thank you for your time.

Chairman TAUZIN. Thank you very much, sir. Before I move to Mr. Doyle, Chairman Powell has been quoted a number of times today, but incorrectly, and I want to correct it by reading his statement.

Mr. Powell testified on page 140 of his testimony, "I think my advice, such that it is worth anything, is that I think that you—any sort of wholesale rewriting to my mind is ill-advised unless you are very clear as to what it is that you think you are going to replace it with."

Mr. Powell was basically not coming out against "reopening" the Act. He came out against wholesale rewriting of the Act as I read his testimony. I just wanted to put that on the record. Mr. Doyle.

Mr. PICKERING. Would the chairman yield?

Chairman TAUZIN. I will be glad to yield, my friend.

Mr. PICKERING. In Mississippi and in Louisiana, we may have different definitions of wholesale, but——

Mr. MARKEY. Mr. Chairman, when you change the definition from yes to no, we consider that wholesale—and you have a different definition down in Louisiana. That is a pretty big change.

Chairman TAUZIN. That is retail in Massachusetts. Mr. Doyle.

Mr. DOYLE. Thank you, Mr. Chairman. Thank you for this hearing and thanks to the panel for sitting through these long hours. I apologize as my schedule today didn't permit me to sit through more of it. But rest assured as a new member of this committee we are reviewing all of your testimony very carefully.

Mr. Tauke, let me start with you to talk a little more broadly about the overall state of the deployment. In your statement, you were very emphatic about the timeliness of this bill, and tell me, why do you need this bill now? In specific terms, what is the urgency for long distance relief for data? Isn't the Act working on any level?

Mr. TAUKE. The Act in our view is working on many levels. A lot of good things have happened as a result of the Act, and including the development of competition in the local marketplace.

If you look at a State like New York, we know that 3 million lines are being served by competitors, and we have 100,000 customers a month who are moving, and in other States, we have very high levels of competition as well.

And a lot of that is a result of the Act and so that is stuff that is working. What is the sense of urgency here? The sense of urgency I think is as follows. Every day that consumers and small businesses and mid-sized businesses do not have access to broadband capacity, they are losing out on economic opportunities.

If you are a contractor who is dealing with Home Depot, Home Depot wants to deal with you over the Internet where you submit your plans and they send back to you what you need.

If you have broadband connections that works great, and if you don't, it doesn't work. If you are an auto dealer and you are dealing with Ford Motor Company, if you have got broadband connections and you can have great interaction with Ford Motor Company, you can handle your warranty issues, and your financing issues, your maintenance issues, on-line with Ford Motor and it works great. But if you don't have it, you are not doing so well.

And so every day is an important day for the economic growth of the country and the delay of broadband hurts the economy, and I think that the broadband deployment really is going to improve and help improve the productivity of our economy as it has in the recent past.

And so in terms of—so that's why this is urgent, and I think that bringing clarity and certainty to the marketplace by saying what the rules are, and then having rules that are appropriate for the marketplace, the combination of those would result in more rapid deployment of broadband services and benefits to the consumers.

Mr. DOYLE. Let me ask you also in terms of Verizon's efforts in rural areas. Can you tell me the status of your divestiture of rural exchanges, and are you committed to servicing these areas with or without the passage of this bill?

Mr. TAUKE. Well, first, just a little history here. The old Bell Atlantic has not in any recent history divested any rural exchanges. The old GTE prior to the merger did have a program of divesting rural exchanges, which they thought was rationalization of their service territory.

We have at Verizon not divested any service territories since the creation of Verizon, and we certainly don't have any plans for any major changes in our service territories, and not to say that there will never be any divestment of service territories, but there is going to be no wholesale divestment of rural exchanges.

Mr. DOYLE. Mr. McMinn, I understand that I missed a lively discussion about line sharing earlier. In someone's statement it was stressed that broadband deployment disparities not only exist along rural and urban divides, but they also exist within metropolitan areas.

And I think that is an important clarification to make I can tell you personally that I tried to get DSL service, and I signed up for it in November, and I got it last week. And it was very frustrating.

Mr. MCMINN. Was it from us, or was it from——

Mr. DOYLE. No, it wasn't through Covad.

Mr. MCMINN. Was it from an ILEC?

Mr. DOYLE. From America On Line had an AOL plus.

Mr. MCMINN. And they use the ILECs exclusively, and so you should have come to us for better service.

Mr. DOYLE. I will take that into account. I was interested in your Jump Start Kit just because of some of the frustrations that I had trying to access broadband services, and it appears that this kid is focused on providing additional options to consumers, and by extension deals directly with the concept of fair competition.

But we have heard different interpretations of what fair competition means, and how it is equated with successful deployment. And I am just wondering isn't that the viability of the jump start kid predicated on line sharing? And if so, wouldn't this venture be squashed by this bill?

I mean, how would this bill effect that?

Mr. MCMINN. Yes, our jump start kid is predicated on the fact that we can use a line shared line, and so we can mail to a customer the jump start kit, and they can put it on their existing telephone line without the need for a technician to come out to their facility to install a new wire.

That saves the telephone company, the ILEC, money. That saves us money in terms of putting DSL into service.

And we have talked a lot about DSL to consumers today, but we just were mentioning DSL to sm all businesses. Let me point out one other thing. None of the ILECs offer a suite of services for small businesses. If you tell them that you are at a business address, they will not offer you DSL. We are the only ones, CLECs like us, that offer DSL to small businesses.

It takes a different suite of services that the ILECs have chosen not to do, because they don't want to cannibalize their existing T-

1 and ISD end revenue. So if you are a small business, with a small business address, you must come to a CLEC to get DSL service.

Mr. DOYLE. Thank you. Mr. Cicconi——

Chairman TAUZIN. The gentleman's time has expired, but proceed with your last question.

Mr. DOYLE. Thank you. I didn't want to leave AT&T out of this. You know, it has been presented in testimony and it was emphasized that there are two land line technologies that are provided to residential customers with high speed Internet access at a reasonable cost being DSL and cable modem services.

And that only DSL was subject to regulation, significant regulation, and should be deregulated just like cable modem services. I just wanted you to react to that assertion that has been made regarding the linkage between DSL and cable, and do you think this assertion is a fair claim?

Mr. CICCONI. No, I really don't. I think it is a convenient claim. We see charts thrown up about the regulations that telephone companies have and that cable companies don't have. They are regulated differently, but they are both regulated.

They are each regulated under schemes set out by the Congress to deal with the specific circumstances of those companies. The one has a bottleneck facility and the other does not. By the way, I might add that the one is helping drive broadband deployment in this country and the other is following their competition in the case of the ILECs.

So I mentioned a few of the distinctions earlier, and I know that Mr. Mancini made light of having to be regulated by 30,000 local franchising authorities, but it can be pretty onerous, and $2 billion is not a small amount of money to pay if you consider that it could be going into actually upgrading facilities to provide these high speed services.

I don't see any volunteering on the part of the Bell companies to be regulated in this manner, and I don't see them volunteering for limitations on the number of subscriber lines that they can have. I dare say that SBC could probably not have merged twice with other companies if they had had similar restrictions.

Mr. DOYLE. Thank you.

Mr. TAUKE. I am getting a little tired of hearing about how the Bell companies haven't tried to deploy DSL services, and with all respect to my former colleagues and some of the witnesses.

The fact is that Bell Atlantic invested DSL service, and has the patent on DSL service and tried to put it into place first for video services, and put a lot of money into the creation of DSL in order for it to offer video services, and for a variety of reasons a lot of them due to regulation that didn't work.

We had then over time as the Internet developed, it became clear that this application could be put forward and used for data services. But back in 1993 and 1994, and 1995, there was no Internet that people were clamoring to hook up to, and so as a result of applying the service, or deploying the capability when there was not the service to put on it was not something that was particularly viable from a business perspective.

And the suggestion that we have been somehow dragging our feet to get it out to our customers I think is just an inappropriate suggestion. The second observation I would make is that Mr. Cicconi has spent most of the last couple of years fighting against the application of any franchise restrictions on broadband services. I don't think he wants to suggest that franchise restrictions imposed by communities are broadband services.

He went to the 9th Circuit Court of Appeals to make sure that they didn't apply franchise or didn't apply franchise restrictions to broadband services. Those kinds of restrictions just don't apply or he doesn't want them to apply to these services.

It is only the restrictions that are coming from the Federal and State authorities that apply to broadband services and they don't apply to cable, cable oriented broadband services.

Mr. CICCONI. May I respond.

Chairman TAUZIN. Mr. Cicconi, the time is up, but since you were named here, I think you have a right to respond.

Mr. CICCONI. We went to the 9th Circuit because the communities have areas where they are allowed to regulate by Federal statute, and one particular community frankly went well beyond that and tried to regulate us in an area where the Congress specifically we felt said in Black Letter Law that they can't do it.

The 9th Circuit Court of Appeals actually agreed with us in that case. I am very pleased that Mr. Tauke has actually indicated that they feel that they have full incentives and are doing a vigorous deployment of DSL currently, and I think that raises the question about the rationale for this bill.

Mr. DOYLE. Mr. Chairman, I want to thank you and this is all much clearer to me now.

Chairman TAUZIN. I want to acknowledge and announce that we have the last member who will be recognized for a round of questions of this extraordinary hearing today, and in doing so, I want to thank you for your great patience. The gentleman, Mr. Shadegg, is recognized.

Mr. SHADEGG. Thank you, Mr. Chairman. And I compliment you all on your stamina. It has obviously been an interesting day with a lot of controversy in the testimony, and I doubt if I am going to bring a calmness to the waters, because I don't have a dog in this fight either way, in terms of long distance or local, or the ILECs, CLECs, and the rest of them, the RBOCs, and the rest of the alphabet soup.

But what I do have is a letter of frustration and a concern that when Congress passes a law it ought to see that law works before it passes a new law in that area, and I have got to tell you that I don't see that in this circumstance.

I hear some of the witnesses here saying—and particularly Mr. Tauke, you saying that we don't have an established policy for broadband, and Congress ought to get in there and do its job.

And I don't disagree that Congress ought to get in and do its job. But it seems to me that we did have an established policy on the other side of the spectrum by the 1996 Act, and we were supposed to bring about competition. And we were supposed to bring about competition at the local level.

And I started to look at this legislation, and I support the legislation, and I am anxious to see us do something, but I want to see us do the right thing. I can't help but be frustrated. The reality is and you may sit here and say that we have competition in your perception at the local level, but I have to tell you that I think you are crazy.

Maybe it exists in New York, and maybe it exists in a few other places, but I don't know anyplace across America that we can point to vast expanses and say, yes, we have got great competition at the local level.

I asked my staff in Arizona how many providers can you go to to get local phone service. The answer? Realistically, one. I asked my staff in Washington how many providers can you go to to get local service? The answer? Realistically, one.

I had a staffer in Phoenix, Arizona, my chief of staff, who decided that I am going to give competition at the local level a chance and he went to Cox Cable, and got his local phone service. In about 3 weeks I told him that if he didn't switch back that I was going to fire him, because I literally could not get a hold of him, and it drove me absolutely crazy.

And ultimately I said this simply isn't working, and I don't have anything against Cox, but I can't get you on this phone system that they have sold you, and so you have got to go back to the baby Bell that he was being served by.

You say that every day consumers don't have access to broadband, and they are losing money, and I would argue that every day they don't have access to competition for local service, they area also losing money.

The reality is that every member of my staff will tell you that for local service who can they go to, they will say at a minimum three, and in reality 20. You can't turn on the television and watch an hour of a program and not see eight ads for somebody offering you a better deal than the guy who was on 15 minutes ago on long distance service.

I think you were right and that we have to have a public policy for broadband, but we are not effectuating public policy for local service. So, let me ask a few questions. Mr. McMinn, in your testimony, you say that Verizon was fined—and I will give Mr. Tauke a chance to respond to this, but Verizon was fined $13 million by both the FCC and the New York Public Service Commission for violating the law, and quote, losing thousands of collect orders.

And then you go on to say that Verizon was able to recover that $13 million in just 3 hours of operating revenues. Is part of the reason that Cox couldn't get service to my chief of staff the fact that we are not getting cooperation and access to the switch, and cooperation for competition to exist in local service?

Mr. MCMINN. There is no question that the CLEC community is being hampered by the ILECs. They somehow find the capability to service their own customers at 10, or 20, or 100 times the speed and the efficiency than they manage to serve CLECs.

We are battling through that and we are taking them to court, and we have an anti-trust suit out against Verizon, and we have an anti-trust suit out against Bell South, to try to enforce what has already been required of them under the Act.

So the notion that they should be given additional incentives on top of 271 and on top of everything else to me is not the direction that we ought to be going. One big aspect is enforce what has already been put into law. Get them to perform. All I want is parity, and all I want them to do is to perform as good for us as they do for themselves.

Mr. SHADEGG. The San Francisco Business Times also contains an article that I think you may also want to comment about, that says that he SBC, and I will let Mr. Mancini respond to this also, was fined $6.1 million at the end of 2000 by the FCC for failing to meet performance standards for wholesale service it provides to the competing companies. You were involved in that as well.

Mr. MCMINN. Yes, absolutely. It is again another example of where we have to resort to other than an arm's length arrangements with these companies. I have a real test about whether I am a customer of an ILEC or not. I want somebody to point me to the salesmen at the ILEC that gets a commission for the business that I bring to them. No ILEC yet has assigned me a salesman.

Mr. SHADEGG. Some people have argued that we can't fix the current bill to deal with that problem. Others say that we perhaps could. My question of you is or anybody on the panel is are there things that we can do to fix this current bill to deal with the lack of competition at the local level short of simply killing the bill and not asking for it, and then I will let Mr. Tauke and Mr. Mancini respond.

Mr. MCMINN. I think that a clear signal is that the consumer needs to have choice. Do what you need to do in a bill to enhance competition, but don't in the process reduce competition, and in my view there are two things that will enhance competition. One is to make sure that we continue to have access to the copper plant, which is the bottleneck, which is the uneconomically able to be reproduced in any significant amount of timeframe.

And the second is to make sure that there are very strong enforcement mechanisms put in place so that the ILECs must perform for us, rather than just accepting these fines as an ordinary course of doing business.

Mr. SHADEGG. Mr. Tauke, is there anything that you think can be done in the current bill to enhance competition at the local level or do you think that is not needed?

Mr. TAUKE. First, let me just say a word about competition at the local level if you might.

Mr. SHADEGG. Sure.

Mr. TAUKE. I think it is fair to point out that the telephone business is a tough business. It is a very technically complex business, and in order to develop competition you need two players. You need the incumbent and you need the new competitor coming in.

We have had difficulties, and there is no question about that in making this competition work. We have had systems difficulties as you referenced in New York, and we have had other challenges. So have the competitors had their challenges as they have tried to get ready for this market.

I think it is remarkable frankly that in 5 years that we have had so much of the market become competitive. If you look at what happened in long distance, it took longer for AT&T to lose the per-

centage of the market that we have lost, for example, in local for them to lose it in long distance, even though the long distance market is not as nearly complex.

We have lost over 10 percent of the market share and that is in dial tone market. We have lost 30 percent in the toll market, and we have lost much larger percentages in special access and other areas of the marketplace, because customers have gone after the high end pieces of the market.

The dial tone piece is the last to go because much of that is subsidized, and the rates are very low, and there isn't the incentive for competitors to come in and still in a State like New York, we have lost 25 percent of the lines, and in a State like Pennsylvania, we are losing a percent of the lines every month.

So I think the fact is that in a lot of cases that competition is developing and developing rapidly, but it takes two players, including a healthy competitor who is in the market and wants to compete.

Now, having said that, in terms of the FCC and its capability and what can it do, I think what happened in New York was a good example of what it can do. We had a problem with our systems in New York.

They hammered us hard, and within a few months after that problem with the systems was discovered, we had excellent review from the FCC and the New York Commission, and have had since, on delivering on the problem that was acknowledged at that time by us, and which was brought to our attention by the FCC.

They had the ability to hold our feet to the fire if you will. I don't think it is wrong for Congress to give the regulatory agencies the authority for us to hold our feet to the fire.

We also have performance guarantees, where we have performance guarantees that we have with the States, and if we mess up and we don't meet high standards, the more that we have to pay.

And we have performance guarantees in many of our contracts with competitors. I will say to you that having said all of that, however, if there is a problem in the local telephony market, don't punish the consumers of America by not doing what is right for the broadband market. Deal with the local telephony market and deal with that problem, but don't as a result just delay and not get the services delivered in the broadband side.

Mr. SHADEGG. You don't see any need to add anything to this to deal with the lack of competition. Mr. Mancini.

Mr. MANCINI. I will just make a few quick points as I know it is late. With regard to the reference to the $6.5 million fine, that was not a fine. That was part of the performance measurements on the systems that Tom talked about.

We agreed to put in place a comprehensive set of performance measurements which measures in detail the service we provide to CLECs with dollar amounts if we fall short. So if anything that is an indication of how much under a microscope we are, and if we do fall short, we pay a performance payment to the FCC or to the CLECs in a variety of States.

If one of your staffers was having a problem with Cox, it probably was not the ILEC's problem, because Cox, who is the cable provider, doesn't rely at all on the LEC. The problem is usually not

at the interconnection, but the problem is usually at the switch or the loop. So my guess is that they are providing all the facilities.

The third thing I would suggest is I think it is instructive of what happened in both New York and Texas as we got close to completing the 271 process.

In both States, the level of competition increased fairly dramatically as it appeared that the FCC would approve 271, and after the 271 approval occurred in both States, local competition went up significantly and long distance prices went down significantly, and as we competed in the long distance market, long distance rates came down, and local competitors increased their competition and offered bundles. So competition increased as you got 271 approval.

Mr. SHADEGG. Mr. Cicconi.

Mr. CICCONI. First of all, even if you offer phone service over cable, you have to be able to connect with a Bell company. So I don't know where the problem was there. But I know that we have problems with that interconnection even over cable facilities.

Second, you brought up the question of fine, and putting aside performance measures, the fact is that the Bell companies since early last year have been fined a total of $360 million for falling short of their obligations under law by various State and Federal authorities.

Now, if you think about that, that is a staggering number, and what it indicates to me and what we fear is that the Bell companies are deciding that these fines are a cost of doing business. That this is a better way to approach it than to service competitors.

The competitors are gradually going out of business and they are paying the fines, and it is a cost of doing business to them, and at the end of the day they end up with a secure monopoly. That would give me pause, and we fear that this bill would make that situation far worse.

Mr. SHADEGG. And to my other question, are there things that you think can be done to this bill or is it your position that it simply has to be canceled?

Mr. CICCONI. No, sir, I think it is irreparable.

Mr. SHADEGG. Thank you, Mr. Chairman. I yield back my time.

Chairman TAUZIN. Thank you, my friend. I want to mention for the record that there have been a lot of fines, and we have not totaled them up, but there have been a lot of slamming fines as well assessed to the telecom market, and everybody does make mistakes. We know that.

I will add for the gentleman, Mr. Shadegg, that one of the things that we have instructed the staff to work with members on, because we received a number of member requests to do so, is how we might add new enforcement authorities in the bill, and that is an area where not only Chairman Powell, but I think many members agree that we could probably enhance the spirit of competition a great deal more, and we are looking very seriously at that.

I would also announce before we adjourn that the record will stay open obviously, and we want to continue receiving your comments. If you have additional written comments, you are more than welcome to supplement your testimony.

If you heard something that you thought was wrong, or somebody said something that you really didn't agree with, and you

didn't have a chance to respond, please do so on the record for us. We will keep the record open an appropriate time for that.

Second, for members who have additional questions, we really pounded you hard today, and I apologize for this long day, but we will keep the record open for members to submit written questions, either one of you or collectively, and please respond if you do receive such a request timely, and we would appreciate that.

And there is one thing finally that I would like, Mr. Tauke, is that in the context of questioning you answered regarding line sharing, with reference to technical problems in deployment, and we heard a lot about financial incentives, but you mentioned technical problems.

If you can elaborate in writing for us those issues, because we want to understand them in regards to the time sharing issue, which is indeed a hard call for all of us to make here. Thank you, and you have illuminated the issue a great deal, and clouded it in some other areas, and we expected that, and it was great hearing from you, and I thank you, and we are all dismissed. The committee stands adjourned.

[Whereupon, at 5:05 p.m., the committee was adjourned.]